



An  
Bord  
Pleanála

## Inspector's Report ABP317508-23

<b>Development</b>	Retention of canopy and all associated site works (protected structure).
<b>Location</b>	43-44 Baggot Street Lower and 11A Fitzwilliam Street Lower Dublin 2.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	3606/23.
<b>Applicant(s)</b>	Greenfield Ideas Limited.
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Greenfield Ideas Limited
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	1 <sup>st</sup> November 2023.
<b>Inspector</b>	Philip Green

## 1.0 Site Location and Description

- 1.1. Premises (a protected structure) is located on the north eastern corner of Lower Baggot Street at its junction with and having a narrow frontage on to Fitzwilliam Street Upper. No 43 is a three bay four storey over basement former house with one bay side elevation on Fitzwilliam Street (No11A). 44 Baggott Street is a two bay four storey over basement former house. The premises have been interconnected now with shared shopfront at ground floor level and render applied to the elevations.
- 1.2. The premises have a commercial use (bar/restaurant) at ground floor and basement. I did not gain access to the upper floors of the building at my site inspection so I cannot confirm the uses made of those floors. There is some indication which suggests office use above ground floor level although stencilling on the fanlight to the door to 11A refers to 'Toms House'.
- 1.3. The premises has external seating and tables located under the canopy subject of this retention appeal along the length of its Baggot Street frontage. A planter box separates the seating from the pavement and are also used for locating the lower parts of the uprights of the canopy frame. There is a coffee dock with window opening serving drinks in the ground floor section fronting Fitzwilliam Street with a canopy over and behind a plinth and railings. Adjacent to this and separated is the front door to 11A appearing to give access to the upper floors. **Board to note certain elements of works carried out to these premises including a number of those referred to above are subject of concurrent retention planning applications/appeals (see planning history below.)**

## 2.0 Proposed Development

- 2.1. Seeks retention permission for the retractable closed ended canopy and support legs on the premises's Baggot Street frontage. The Board should note that whilst the description of development set out in the public notices and on the application form includes reference to the support legs these legs (and the overall canopy frame itself) are not clearly identified in red as part of the application on the accompanying drawings. **Board to note that there is a minor difference between the Board's description of development and that set out in the planning application and public notice and DCC description. The Board may wish to review this**

**however I consider that the description as ‘Retention of canopy and all associated site works’ addresses broadly the development proposed to be retained in its entirety.**

- 2.2. It was apparent at my site inspection that the majority of the metal vertical support legs (5 no.) were incorporated in to the planter box along the Baggot Street frontage. This planter is part of a separate retention planning application/appeal and report 317753-23 although there is a further freestanding vertical support post located in the ground at the western end of the canopy close to the entrance to the premises. The canopy frame in addition has horizontal support spars projecting from above the ground floor windows of the premises. The canopy is operated electronically and I was able to inspect the premises with this canopy extended and retracted. The Board should also note that within the canopy frame there is some limited strip lighting. The canopy structure extends to some 2.9m in height and projects some 2.5 metres from the building.
- 2.3. A Conservation Method Statement accompanied the application. This includes description of the site and surroundings including areas historical development and reference to the construction and then demolition and redevelopment of the nearby ESB building and the BOI building. It notes the appeal premises siting between these developments. Its protected status is referenced and it is commented that the proposal represents a modest alteration to a modest building between 20<sup>th</sup> and 21<sup>st</sup> century developments. It is considered that compared with neighbouring developments the changes made to a long existing canopy are infinitesimally small and that there have been canopies in this location since at least 2009 and likely for many years previously. Previous canopies carried branding which the present ones do not. Canopies are seen as a traditional architectural feature in the city (photographs provided) supporting legitimate business in this location for a century or more. They are of far less impact than many seating areas, barriers and marquees erected in the last 2 years. Reference to the Architectural Heritage Guidelines is made wherein designation as a protected structure does not mean that it is frozen in time and that it can still evolve to meet changing needs whilst retaining its particular significance.

### **3.0 Planning Authority Decision**

- 3.1. To refuse retention permission for single reason. Retention would seriously injure the architectural character, setting and amenity of the protected structure and character and amenities of the conservation area contravening Policy BHA2(d) and (e) and policy BHA9 of the Development Plan and policies of the Shopfront Design Guide setting an undesirable precedent and depreciating value of property in vicinity.

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

#### **3.2.1. Planners Report**

- Notes application site's Z4 zoning, building as a protected structure, listing on NIAH as of Regional Importance and location within a conservation area;
- Refers to Development Plan policies in relation to night clubs/licensed premises/private members clubs (15.14.12), development of protected structures (BHA2) and in conservation areas (BHA9), shopfront and façade design (15.17.5) and Shopfront Design Guide 2001);
- Notes quantum of unauthorised development still at the site and planning history including that refused permission under reg ref 4934/22 (ABP appeal ref 315381-22);
- Considered that individually and in combination with other unauthorised development proposal has significant adverse impact on presentation of the protected structure and the neighbouring environment.
- Refers to report of Conservation Officer which indicates failure to comply with required level of documentation accompanying an application related to a protected structure (Art 23(2) of P&D Regs and Chapter 6 and Appendix B of Architectural Heritage Protection Guidelines. The drawings are not considered to provide adequate detail to describe the works, impact on the front elevation and depth of blind box'
- Piecemeal nature of applications not considered appropriate to deal with regularising unauthorised development at the property. Current application

just for canopy cannot be treated in isolation from other works to pub frontage including planters which combine with canopy to form outdoor seating area;

- A single application for all works interior and exterior should have been made;
- works carried out cannot be treated in isolation as combined impact is considerable and detracts from architectural quality and character of building;
- Principle of shopfront with canopy and precedent of canopy to structure accepted however existing canopy not acceptable and does not comply with Shopfront Design Guidelines as it is closed end, permanent frame with vertical and horizontal elements has adverse impact on character of front elevation,. Combination of fixed structure with legs and closed end canopy form a significant adverse permanent addition to front elevation of building and conservation area and adverse impact on neighbouring residents;
- Overall unauthorised works create visual clutter, is visually obtrusive and has negative impact on building, streetscape and residential amenity and sets unacceptable precedent;
- Appropriate Assessment screening concludes given nature of application that no appropriate assessment required;
- Concludes that given nature and scale of development no EIA required.

#### 3.2.2. Other Technical Reports

- DCC Conservation Officer's report referred to above;
- TII recommend seeking S49 Supplementary levy to any permission granted under the S49 Supplementary Development Contribution Scheme LUAS Cross City (St Stephens Green to Broombridge Line) if not otherwise exempt.

## 4.0 Planning History

The following planning history has been brought to my attention

- **0307/22:** Section 5 application (whether specified works to a protected structure require planning permission) sought for a variety of works at 43-44 Baggott Street the majority of which with exception of replacement of outdoor seating were deemed by DCC to require planning permission. Works requiring permission

included changed text on fascia sign, external wall mounted heaters, shopfront changes, replacement canopies, planters, new window opening, serving coffee through window and restoration of granite plinth wall and railing.

- **PL29S 209464 (DCC Reg Ref 4066/04).** Third party appeal against DCC decision to grant permission for cast iron railings extending from building to boundary within private landing (footpath area) and change of use of private landing to external screened seating area. Board granted permission subject to conditions including conditions requiring removal of all visible advertising from canopy when retracted and alternative design for screens. I draw the Board's attention to the details, Board considerations and final decision with conditions and the Inspector's report and photographs related to this case. In particular pre-existing canopies on Baggot Street are referred to and shown in photographs. These canopies would appear to have been the subject of complaint but were considered in the Inspector's report to be 'time exempt' and further were not considered by the Inspector to be directly the subject matter of that appeal/application. The Board did however require by condition any visible advertising on the canopy when retracted to be removed. It is a useful exercise in my opinion to compare those canopies with that present today and subject of this appeal. The details on this previous appeal file will also be of some assistance in the consideration of the other cases related to these premises currently before the Board.
- **ABP315381-22 (DCC Reg Ref 4934-22):** Retention of foldable canopy over ground floor window facing Lwr. Fitzwilliam St. and installation of two no. illuminated projecting signs at corner of building. Refused by DCC. Subject of separate current planning appeal and report.
- **ABP317753-23 (DCC Reg Ref 5254-22):** Retention permission for changed text on sign fascia, provide external wall mounted heaters, changes to shopfront (minor), provide planters, make new window opening, serve coffee through window and restore granite plinth and railing. Refused by DCC. Subject of separate current planning appeal and report.
- **EO226/22:** Planner and Conservation Officer's reports refer to open enforcement file relating to removal of railings but now includes other unauthorised

works carried out to the interior at ground floor level and exterior of the protected structure.

## 5.0 Policy and Context

- 5.1. **Ministerial Guidelines:** Section 12.4 of the Architectural Heritage Protection Guidelines for Planning Authorities states Awnings and Blinds 12.4.1 Proposals to install new awnings or blinds to the shopfront of a protected structure should be treated with caution. Some modern awnings require large blind boxes that can be difficult to integrate successfully with an existing shopfront without damaging its special character. Blind boxes should not be allowed to mask or cut through any detailing which contributes to the interest and quality of the façade or shopfront....12.4.2 Where the fitting of a new awning or blind is considered acceptable, the design and materials should be appropriate to the character and quality of the building and its setting and, where relevant, to the character of an ACA'.
- 5.2. **Dublin City Development Plan 2022 – 2028:** On the Zoning Map of the Development Plan the premises is identified (along with a row of property fronting Baggott Street) as zoned Z4 Urban Village, within a Conservation Area and is also identified as a Protected Structure RPS No 366 'Commercial Premises'.
- 5.3. The immediately adjoining property and others fronting Fitzwilliam Street are zoned Z8 within the Georgian Conservation Area.
- 5.4. Policy CCUV12 Shopfront Design To require a high quality of design and finish for new and replacement shopfront signage and advertising. Dublin City Council will actively promote the principles of good shopfront design as set out in Dublin City Council's Shopfront Design Guidelines and Chapter 15. Other relevant sections of the Development Plan thus include section 15.17.5 (Shopfront and Façade Design), there is reference to the Retail Design Manual, 2012, Dublin City Council's Shopfront

Design Guide, 2001 and Appendix 17 sets out the Advertising and Signage Strategy of the Development Plan.

5.5. Policy BHA2 of the Development Plan seeks to conserve and enhance protected structures and their curtilage and to....

- (b) Protect structures included on the RPS from any works that would negatively impact their special character and appearance...
- (d) Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout and materials...
- (e) Ensure that new and adapted uses are compatible with the architectural character and special interest(s) of the protected structure.

5.6. The premises lies within a conservation area and section 11.5.3 of the Development Plan recognises these areas as areas that have conservation merit and importance and warrant protection through zoning and policy application. It states “Designated Conservation Areas include extensive groupings of buildings, streetscapes and associated open spaces and include (parts of) the medieval/walled city, the Georgian Core, the 19th and 20th century city, and the city quays, rivers and canals. The special interest value of Conservation Areas lies in the historic and architectural interest and the design and scale of these areas. Therefore, all of these areas require special care in terms of development proposals. The City Council will encourage development which enhances the setting and character of Conservation Areas’ Under Policy BHA9 it is stated policy in Conservation Areas to

protect the special interest and character of all Dublin’s Conservation Areas – identified under Z8 and Z2 zoning objectives and denoted by red line conservation hatching on the zoning maps. Development within or affecting a Conservation Area must contribute positively to its character and distinctiveness and take



opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

#### **5.7. Natural Heritage Designations**

- None of relevance to this case

#### **5.8. EIA Screening**

Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

### **6.0 The Appeal**

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

- Seeks retention of a replacement canopy which has existed at site for some decades;
- Common ground that canopies are acceptable and desirable features on commercial premises;
- Although almost disappearing in twentieth century they were dominating features in commercial areas in nineteenth century providing visual interest and protection;
- Outdoor eating is now popular and follows pedestrian of areas of the city;
- Important for businesses to be able to plan on number of seats available to patrons and not viable to have half of seats unusable due to weather;
- Issue here is not canopy but whether it should have support legs and rigid fixed eaves beam;
- In some circumstances one might agree that support legs and eaves beam are a visual disfigurement or obstruction to foot traffic. Legs are however

located on perimeter of a private landing colinear with planters subject of a separate application;

- Notwithstanding that subject of another application/appeal the planters replace long extant metal and perspex screens which had prominent branding. Planters are perfectly reasonable landscape feature and are similar to those in Merrion Row. It is noted in that other application that a hedge as a replacement would almost certainly not need permission;
- Support legs are six in number each about 75mm wide in a facade of 21m and legs are read architecturally only for some 1.2m above the planters;
- Building is not considered of very high quality and does not have richness of decoration or exemplary craftsmanship associated with Georgian Squares. Its façade has been rendered and painted for decades, It has later aluminium top hung windows and a succession of non original shopfronts of varying quality;
- Legs are visually unobtrusive and insignificant and installation is reversible. Whether canopy has closed ends or not is a distraction. We have recollection of such in Dublin and they are evident in many historic photographs. There is no reason therefore to discourage their use and to do so misunderstands their evolution and purpose. However Appellant would accept a condition requiring their removal;
- Board requested to have regard to support canopies throughout the city some of which have permission (photographs provided)

## **6.2. Planning Authority Response**

- None received.

## **6.3. Observations**

- None received.

## 7.0 Assessment

7.1. The Board will note that there are references on file to alleged contraventions of planning control and unauthorised development at these premises. A number of these works are now subject of 3 separate concurrent retention planning appeals being this current appeal and appeal references 317753-23 and 315381-22. The DCC express a concern at the approach by the Applicant of making separate applications for the different elements of unauthorised works rather than one unified application which would allow for the overall impact of all these works to be considered together. Notwithstanding this I consider that there is no substantive reason for the Board not to continue to a determination on each of these individual appeal cases albeit that they are related to the same premises, would have cumulative impacts and indeed some having physical inter connectivity. I refer to this where relevant in my assessments. In regard to enforcement proceedings, should any matter remain outstanding following the determination of these appeals and the works for retention for which they specifically relate then this would be a matter for the planning authority to deal with separately via enforcement or other proceedings should they consider it expedient.

7.2. In my opinion the main issues therefore to be considered in this case are as follows:

- Level of detail provided with retention application:
- Principle of canopy in this location on these premises:
- impact of the development proposed to be retained on the protected structure and character and appearance of the area.
- Appropriate assessment

7.3. **Level of detail:** I would refer the Board to DCC comments in regard to the inadequate level of detail made available to describe the development to be retained and particularly that shown on the drawings provided. I would generally support such concerns. As stated above the full extent of the supporting infrastructure for the canopy is not clearly delineated on the drawings submitted. This is particularly important given the protected structure status of the building, location within a conservation area and the reference made to pre existing canopies at the premises

so that comparison might be made. I have already referred to the support legs (vertical uprights) not being highlighted in red on the application drawings. Whilst the application description in public notices does refer to support legs it is clear that there is a substantial permanent support structure/frame/apparatus constructed to accommodate the canopy. This is referred to further in the appeal submission in regard to the installation partly within the planter box and in referring to the rigid fixed eaves beam. In my opinion however the full and detailed nature and extent of the existing support frame vertical and horizontal including 'eaves beam' blind box and its construction including sections and technical specification is not clearly or fully delineated or described on the drawings/details to the extent which one should expect for a protected structure (and provided for in the legislation cited by DCC). The fact that the application seeks retention is not in my opinion overriding in this regard. The Board may wish to consider seeking such technical detail by way of a further information request. As I was able to inspect and consider the impact of the canopy and support structure on the building (protected structure) and surrounding conservation area(s) at my site inspection (canopy extended and retracted) and given my conclusion on the merits of the canopy and associated works to be retained it may not consider it justified in the circumstances.

- 7.4. **Principle of canopy:** A zoned Z4 Urban Village's stated function is to serve the needs of the surrounding catchment providing a range of retail, commercial, cultural, social and community functions that are easily accessible by foot, bicycle or public transport; in line with the concept of the 15-minute city and to promote the creation of a vibrant retail and commercial core with animated streetscapes. It promotes a diversity of uses to maintain vitality throughout the day and evening. On this basis and noting the DCC planner's report which comments that the principle of a canopy within a shopfront is accepted as is the precedent of a canopy to the structure on its Baggot Street frontage I consider that a canopy to an established use supporting the objectives of the Z4 zoning is, in principle, entirely reasonable. Notwithstanding this, the sensitivity of this building being a designated protected structure, in a conservation area and in addition in immediate proximity to and visible from the designated Georgian Conservation Area are significant material considerations. In this regard I have similar concerns (see below) to those expressed in the DCC objections to the canopy to be retained. I would also point out that the form of

installation and scale of this current canopy proposal is materially and markedly different to the canopy currently sought for retention on the premise' Fitzwilliam Street frontage and subject of separate report under Board appeal reference 315381-22.

- 7.5. Impact of the development proposed to be retained on the protected structure and character and appearance of the area** The canopy subject of this appeal runs along the ground floor Baggot Street frontage (some 18 metres) from above the ground floor shopfront windows and bottom of fascia and projecting some 2.5m and with max. height of some 2.9m. above ground level. This canopy extends out and is supported by a substantial metal frame with vertical square shape supports the majority of which have their lower sections inserted into the planter box (subject of separate appeal) on the street frontage and the horizontal elements of which extend out from the building façade. This provides cover for the external seating area separated from the street footpath by the planter box. The canopy has fixed closed ends at opposite ends of the supporting structure. I was able to inspect the overall canopy structure extended and retracted and, in my opinion, its associated apparatus, supporting frame and screens have a substantial and significant adverse impact on the interpretation of the building in both open and closed settings. Retracted its apparatus and frame appears as a somewhat large, cumbersome and obtrusive scaffold like structure projecting from the building façade detracting from the form and appearance of the protected structure whilst extended it presents itself as a substantial, bulky and dominant feature and obscuring the ground floor façade (which is exacerbated by the planter box in to which the uprights are located). The scale and form of the canopy and its supporting structure and apparatus create a substantial obtrusive feature in the conservation area at this point detracting from the character and appearance of the area.
- 7.6.** I have had regard to the Applicants submissions concerning the changes made, quality and appearance of the protected structure to which this canopy and supporting apparatus is affixed. I also noted the character and appearance of the Conservation Area in which the building is located and its immediate proximity to and visibility from the Georgian Conservation Area. There are commercial uses along Baggott Street in the Z4 zoned area some with canopies along with large modern re developments nearby (see photographs provided in association with the appeals and

taken at my site inspections). It is my opinion that the policies applicable to protected structures and conservation areas rightly seek to protect them from unsympathetic additions that would detract from the character and appearance of the individual protected structure and the wider conservation area in which it is set. Canopies would be a traditional feature to such a commercial use. However it is the design, scale, form and consequential impact of this specific canopy and supporting structure and apparatus on this specific building which must be considered. The appearance of this building and alterations made to it as cited in the Appellant's submission or indeed the new larger scale redevelopments nearby do not, in my opinion, diminish the requirement to protect such buildings and areas from incremental unsympathetic or unsightly additions. Nor do they justify the impact of the development proposed for retention in this instance.

- 7.7. I have reviewed the Guidelines and other policies and guidance in relation to such canopies and carefully considered the impact of the canopy on the protected structure, its fabric and appearance and its appearance in the wider street scene. I note that the Shopfront Guidelines on P28 require open ended blinds, blind box to be recessed and do not permit shop names or advertising on the canopies. As stated this canopy (whilst not containing advertising) along with its substantial supporting infrastructure and apparatus has resulted in a large and somewhat cumbersome and unsightly addition to the building in its prominent and sensitive location. The close ended nature of the canopy conflicts with the Council's approach as set out in the Guidelines and adds to the bulky and obtrusive nature of the overall structure. The substantial supporting and associated apparatus could not in my opinion be deemed to be discrete or sympathetic to the appearance of the protected structure or character and appearance of the conservation area. I accept that there are a number of other properties within the Z4 zoned area of Baggott Street with canopies and the previous use of canopies on these premises at this point. Notwithstanding this I conclude that these issues would not establish a precedent for this particular canopy on this particular building being a protected structure within the conservation area and visible from the Georgian Conservation Area. I would also invite the Board to review its own file, decision and the Inspector's report and photographs on appeal 29S 209464 and which show the type of previous canopies in situ but which would also appear to have been the subject of public complaints.

## **7.8. Appropriate Assessment Screening**

- 7.9. Having regard to the nature and scale of the proposed development, to the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.
- 7.10. I have considered all the other matters raised including the continued use of the Baggot Street frontage for outdoor seating. It would not be unreasonable to conclude that this could be achieved by a more sympathetic form, design and scale of canopy to provide shelter to this area and which would be fully justified by the protected status of the building and conservation area location. I have also considered the question of devaluation of property in the vicinity and precedent set should retention permission be granted as cited in the DCC reason for refusal but it seems to me that they are not so material to the consideration of this case which must be treated on its merits to warrant reaching a different recommendation to that set out above and below
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## **8.0 Recommendation**

- 8.1. In conclusion I recommend that the Board refuse permission for the retention of the canopy and all associated site works for the following reason.

## **9.0 Reasons and Considerations**

1. The canopy and supporting structure and apparatus proposed for retention is located in a prominent location close to the junction of Baggot Street Lower and Fitzwilliam Street Lower. They are affixed to a protected structure located within a conservation area and close to and visible from the Georgian Conservation Area. It is considered by virtue of its form of construction, appearance, location, size, design and projection that the canopy and its supporting structure and apparatus makes an incongruous and insensitive

addition to the external façade of the protected structure detracting from its special architectural character and legibility and appears as an unsightly and obtrusive feature on the protected structure in this sensitive streetscape. The proposed development would, therefore, be contrary to the provisions of Section 12.4 of the Architectural Heritage Protection Guidelines for Planning Authorities 2011, Policies BHA2 (b), (d), and (e) and BHA9 of the Dublin City Development Plan 2022 – 2028 and the Dublin City Council Shopfront Design Guide 2001 and would as such be contrary to the proper planning and sustainable development of the area.

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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Philip Green  
Planning Inspector

13<sup>th</sup> November 2023