



An
Bord
Pleanála

Inspector's Report ABP317753-23

Development

Protected structure: Retention for a) change text on sign fascia, b) provide external wall mounted heaters, c) changes to shopfront (minor), d) provide planters, e) make a new window opening, f) serve coffee through window and g) restore granite plinth, wall and railing.

Location

43-44 Baggot Street Lower and 11A Fitzwilliam Street Lower Dublin 2.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

5254/22.

Applicant(s)

Greenfield Ideas Limited.

Type of Application

Retention.

Planning Authority Decision

Refuse.

Type of Appeal

First Party

Appellant(s)

Greenfield Ideas Limited.

Observer(s)

None.

Date of Site Inspection

1st November 2023

Inspector

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. In front of its Baggot Street fascia and shopfront the premises has external seating and tables located under a canopy and support frame. A planter box along this street frontage separates the seating from the pavement and is also used for locating a number of the lower sections of the uprights of that canopy frame. There is a coffee dock with window opening serving drinks in the ground floor section fronting Fitzwilliam Street with a canopy over which is located behind a plinth and railings . this area is paved and has access stairs leading to a basement level. Adjacent to this and separated is the front door to 11A appearing to give access to the upper floors.

2.0 Proposed Development

- 2.1. Seeks retention permission for various works to this protected structure. These are stated as
 - change text on sign fascia,
 - provide external wall mounted heaters,
 - changes to shopfront (minor),
 - provide planters,
 - make a new window opening,

- serve coffee through window and
- restore granite plinth, wall and railing.

2.2. It was apparent at my site inspection that there is a relationship between the works specifically sought for retention in this appeal and those subject of separate concurrent retention appeals. This includes the canopy and supporting structure and apparatus on the Baggot Street frontage which impacts on the fascia and shopfront and uses the planter box sought for retention in this appeal for most of the lower sections of its support frame uprights. On the Fitzwilliam Street elevation a canopy, also subject of a separate concurrent retention appeal (which also seeks retention of 2 internally illuminated projection signs at the corner of the building) , provides shelter for and attention to the new window opening in to the building's Fitzwilliam Street façade and is used for serving drinks the works for and use of which are also sought for retention in this current appeal. I refer to these matters further as necessary in my assessment below. It was notable that there were other works to the premises such as the external swan neck spot lights illuminating the shopfront fascia and music speakers on the shopfront (and other works referred to by DCC in this and related concurrent appeals) which do not appear specifically as the subject matter of this current (or other) appeals. Again I refer to such matters as necessary in my assessment below.

2.3. A Photographic Report (including images of the premises prior to the retention work) and Conservation Method Statement accompanied the application. The Method Statement included the following comments:

- Only those works specifically referred to are subject of this retention application. Any other works are subject of separate applications either for permission or retention permission;
- Refers to historical development and more recent planning history of area including large scale ESB and BOI developments;
- Protected structure status of building noted and described;
- 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;

- Considered that development to be retained is a modest alteration to a modest building between 2 large 20th and 21st century developments. Alterations are infinitesimally small compared to neighbours. They serve to support a legitimate business in this location for many decades and are of far less visual impact than many eating areas, barriers and marquees provided around the city in the last 2 years.

3.0 **Planning Authority Decision**

3.1. Refuse retention permission for single reason. Retention works would seriously injure architectural character, setting and amenity of protected structure and conservation area. Conflict with Policies BHA2 and BHA9 of Development Plan and Shopfront Design Guide setting undesirable precedent and seriously injuring the amenities or depreciating the value of property in the vicinity.

3.2. **Planning Authority Reports**

3.2.1. **The initial DCC planners report** noted following:

- Z4 zoning (to provide for and improve mixed services facilities), Protected structure status and identification of structure on NIAH as having Regional Importance and location within Conservation Area;
- Planning history and enforcement history;
- 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. Noted that Conservation Officer seeks FI to determine impact of unauthorised works. However it is noted that a significant amount of unauthorised work undertaken do not form part of this retention application and thus do not form part of this assessment;
- Refers to comments of Conservation Officer in 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;
- Inadequate level of detail provided to describe each of the interventions and their implications and insufficient photographic evidence provided. Full scale of works not fully detailed and Conservation Method Statement uninformative. More holistic approach to submission of individual applications is required;
- Application does not address at all works to interior carried out including alteration to partition walls, insertion of WC, removal of corner chimney breast to WC space. 1:50 plans and photographic records prior to works and after required. Existence of a mural recorded in NIAH is also uncertain. Planner notes that these works do not form part of present retention application and cannot therefore be addressed by way of FI;
- Whilst noting previous fascia on premises considered inadequate details of materials, size and how new fascia complies with Shopfront Design Guidelines provided;

Wall mounted heaters will allow patrons to spend extended periods outside creating noise disturbance. Outdoor seating area is large and can accommodate many patrons. No information provided to demonstrate compliance with section 15.14.12 of Development Plan and how amenities of area and residents will be protected;
- Inadequate details provided of changes to shopfront and thus description as 'minor' not accepted. Canopy structure obscures detail on drawings, and it is clear that substantial modifications have been made including shape of

window opening, sash windows in lieu of previous windows installed, pilasters removed with only those at end retained and these replaced or significantly altered, removal or carved detail, plinths, two console brackets, finials and cresting that ran above. Although a later insertion and not of specific merit it is important to be able to understand the impact on the architectural character of the front elevation. These insensitive and inappropriate works are not supported;

- Planters form a significant permanent barrier to the front of the building altering its interaction with the street (notes ABP decision 29S 209464 Condition 5 required canvas screens in lieu of the demountable screens. Planters and canopy support are very substantial feature to front elevation. Recommend compliance with ABP requirement;
- New window to Fitzwilliam Street is a significant intervention materially altering elevation and no justification provided for this. The door opening is a later insertion (possibly when pub installed) and analysis shows basement wall returning around Baggot Street corner to Fitzwilliam Street with no evidence of a door at this point but a door is centrally placed to Baggot Street. It is possible that there may have been a window centrally placed at this point at ground floor level similar to those above. New window not based on historic configuration of elevation and insertion not supported;
- Inadequate description provided of works to restoring granite plinth, walls and railings as this does not describe extent of work. A completely new higher granite plinth has been installed, new steps to the door and area within railings altered with new surface. Insufficient detail and no justification for this work provided;
- Appropriate Assessment screening concludes given nature of application that no appropriate assessment required;
- Concludes that given nature and scale of development no EIA required;
- Piecemeal nature of application considered unwelcome not facilitating comprehensive assessment of work undertaken and serious concerns that works have had detrimental impact on building fabric character and amenity of building and area;

- **DCC sought (24th January 2023) FI** for details in regard to fascia, applicant to address s. 15.14.12 of Development Plan, provision of photographic survey before and after works, sections through seating area, 1;50 sections of planters, photographic evidence of any opening uncovered during insertion of new window and details of intervention of new railings, steps and surfaces.

3.2.2. **Applicant responded to the DCC FI request** on 14th June 2023. Response included further drawings, photographs and statement including

- Changes to shopfront are insignificant notwithstanding that MDF window heads changed from arched to square. Arched windows were of lowest design quality, of no architectural merit and resembled theatre scenery. New square headed openings are more appropriate to architecture of building whilst retaining overall proportions of shopfront;
- Previous fascia in place for over 2 decades, in painted gold coloured letters approx 30cm. high and stated name of proprietor. New name is of traditional painted lettering, part gold part red and 30cm. high. Complies with DCC guidance requiring letters to be individually painted, simple and legible. Lettering on fascia is commonplace on traditional shopfronts and 2 of most highly regarded shopfronts in city are nearby and have similar lettering (see photographs). Supplementary lettering has existed on the fascia for some time and is part of the layered history of the premises;
- Licensed premises has existed for at least 70 years and likely to predate residency of nearby neighbours. It has provided outdoor seating for at least 14 years without objection from planning or other authorities. Seating area not on public footpath and there is no mechanical ventilation or air conditioning. No other measure available to the business other than to completely enclose the open air seating area which would defeat its purpose. Only mitigation is good management. It is open to residents to complain to environmental authorities or Garda if nuisance created and ultimately to object to Licence review. Heating in area not new and probably dates back to smoking ban. Area has 24 seats and six tables with max capacity of 24 no persons unlike much larger outside areas provided elsewhere. Applicant confirms area will be cleared by midnight and number of patrons in area will

not exceed 30. Noise levels do not exceed ambient noise levels and are mitigated by canopy and planters/windbreaks. Applicant aware of only one noise complaint since premises re opened (see photograph showing previous heaters);

- Photographic survey provided;
- Longitudinal sections provided showing before and after shopfront. This previous shopfront dated from 1990s prior to which there was a modernist shopfront with solid projecting canopy (see photograph)
- 1;50 section showing planters removed. However applicant wishes to retain planter at a time when Council permitting and providing such elsewhere. It is accepted that waist high screening is desirable for comfort of patrons and to discourage dogs from entering area or birds scavenging. Planters reduce visual clutter and are akin to flowerpots or other landscaping features. It would be possible to plant a real privet hedge without planning permission but this would be to no-ones advantage;
- No records of any opening found during construction are available. However in a 1936 painting (copy included) a window is shown and even if this is artistic licence it supports view that façade design looks unresolved without the opening. Opening does not materially affect building façade;
- Photographs of before and after railing restoration provided. Original railings and plinth were damaged and in poor condition and some replaced with non original railings and concrete plinth. These were removed and original finials and vertical bars were refurbished and reused. The plinth wall is of new granite and modelled on plinth of adjoining building.

3.2.3. Following receipt of this response a **second planners report** was prepared with further input from the DCC Conservation Officer. This includes following additional commentary:

- Two toned lettering and additional text on fascia appears visually cluttered and detracts from character of protected structure and should be refused;
- Section of shopfront provided shows works were not minor, are significant and that current shopfront is not a sensitive insertion nor is it necessarily an

improvement. Works were carried out with little consideration of policies of Development Plan BHA2 and BHA9;

- Copy of painting confirms Conservation officer's view of historic treatment of façade along Fitzwilliam Street with windows in a vertical line and current door as a later insertion. The drawing demonstrates that the applicant has no historic evidence save for uncovering of a section of the window head of the historic window. The opening is not in the location in the image which shows a centrally placed window while the existing opening is off centre and muddles the historic record of the building.
- If carried out in accordance with normal practice the works would have been supervised by a conservation expert and would have been interpreted more appropriately;
- Works to railings considered acceptable but applicant has not addressed unauthorised works within basement where a new surface has been provided;
- Concludes that works seriously injure character of protected structure. Piecemeal nature of applications to address interior and exterior unauthorised works not considered appropriate means to regularise these works. Individual elements cannot be treated in isolation as combined impact is considerable and detracts substantially from quality and character of the building and area.

3.2.4. Other Technical Report

- DCC Conservation Officer's reports 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 clarifying that permission was for provision of 2 cast iron railings and change of use of private landing to external screened seating area, railings to incorporate granite plinth and match in height and design those of 11A, requiring removal of all visible advertising from canopy when retracted and alternative design for screens and omission of demountable screen and replacement with canvas screens of max height of 1.3metres in location shown for demountable screens (details to be agreed with DCC) and no signs or advertising on canvas 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. The details on this previous appeal file will be of some assistance and is of some relevance in the consideration of the retention works related to this appeal case (and to others 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.
- **ABP317508-23 (DCC Reg Ref 3606/23):** Retention of canopy and all associated site works (protected structure). 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 12.1.1 Carefully-designed and well-constructed shopfronts are important features of many buildings and streetscapes. Section 12.1.2 Because of the prominent role which shopfronts play in businesses, they are frequently subject to pressures for alteration or replacement to meet changing needs. A balance will need to be struck between the commercial requirements of the owners and the protection of shopfronts of special importance within the context of architectural heritage. 12.1.7 Architecturally valuable shopfronts, whether original to the building or of a later period, should not be demolished or dismantled even if a change of use is proposed which will make the shopfront redundant. This may occur, for example, when a commercial premises is to be converted to a dwelling. It could be a requirement that the shopfront be retained in place after the change of use. Proposals to remove a good, but later, shopfront in order to build a new ground floor façade purely on the basis of speculation should generally not be considered acceptable. All light-fittings, security alarms, cameras, cabling etc. which are proposed to be fitted to or across a historic shopfront, and cannot be located elsewhere, should be required to be carefully located and fixed in order to minimise their visual impact and to avoid physical damage to the fabric. Section 12.3 and 12.4 state “Signage 12.3.1 New lettering and signage should be required to respect the character of the protected structure and its setting and, where relevant, the character of an ACA. 12.4 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”

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'.

The immediately adjoining property and others fronting Fitzwilliam Street are zoned Z8 within the Georgian Conservation Area.

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.

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.

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.

5.2. **Natural Heritage Designations**

None relevant to this case

5.3. **EIA Screening**

5.4. 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

- Sequence of applications arose due to sequence of enforcement action and applicants belief that many of the works were exempt;
- Query DCC approach in taking enforcement action against fascia. DCC acknowledge that shopfront and fascia sign of no historical significance and do not contain historic fabric. Query DCC approach having regard to s.4(1) of principal Act);
- No analysis of why this sign is unacceptable here yet acceptable in other traditional shopfronts (see photographs attached);
- Pointed out that heaters were in place for many years and simple replacement of those existing does not justify DCC objections on issue;
- Whether changes to shopfront are minor or not is subjective. Applicant view that they were and also exempt however permission now sought for changes which have no effect on character of protected structure in that one modern reversible addition has replaced an earlier less appropriate one. Both shopfronts are modern fabrications using modern materials predominantly painted sheet plywood or MDF. Overall dimensions, proportions projection, number and width of openings, use of pilasters, ratio of fascia to height, height of lettering and cills are all similar;
- DCC view of location of a ground floor window aligned with those above is physically impossible in conjunction with the door in place since the 1950s and necessary as a fire escape. Commonplace for hall floor window to be unaligned and this is prevalent pattern in Baggot Street. Where hall windows are aligned is in 3 bay buildings which is not case here. .
- Serving of drinks through hatch depends on success of retention of window. Similar hatches exist elsewhere (such as Devlin Hotel Ranelagh);
- DCC considers works to railings acceptable but has refused anyway leaving requirement for further application should this appeal fail. Concern now appears solely with platform. Photographs attached showing previous and

existing situation. Differences are imperceptible. What has occurred is that external steps to basement level have been relocated to outside of the enclosed area adjacent to railings rather than against wall. This could not be said to have a material effect on character of protected structure much less an adverse effect;

- 2 elements of appeal were either deemed exempt (seating) or are acceptable (railings). Other changes are inconsequential, reversible and resulted in virtually no loss of historic fabric. Alterations are part of relaunch of public house business closed for many years. Main concern appears to be alteration of a non descript shopfront and upgrade of a long existing canopy and screening around a permitted seating area precedent for which already exists in the city.
- Legal article attached relating to when permission required.

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 317508-23 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 and its use, would

have cumulative impacts and indeed some having physical inter connectivity. I refer to this where relevant in my assessments.

- 7.2. In regard to enforcement proceedings, should any matter remain outstanding following the determination of these appeal(s) 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.
- 7.3. In my opinion the main issues therefore to be considered in this case are as follows:
- Exempt development/descriptions of development;
 - Level of detail provided with retention application:
 - Principle of works sought for retention
 - impact of the various aspects of development proposed to be retained on the protected structure and character and appearance of the area.
 - Appropriate assessment
- 7.4. **Exempt development/descriptions of development** I note the Applicants submissions concerning certain works carried out which in their opinion should be deemed exempt. However as indicated by the Applicants themselves, as an application for retention permission has now been made then the merits of each of the separate elements for which retention permission was sought is now open for consideration by the Board. I assess each of these separate elements (although having interrelationships in use and physical construction) separately below (and in the other appeals currently before the Board). I do not however accept the contention that certain of these works would constitute exempt development (as not constituting a material alteration to a protected structure). It appears to me from the submissions, information available and my own inspections that these works have made significant and material impacts, individually and in combination, on the fabric and appearance of this protected structure notwithstanding that they might replace previous features or involve alterations to non original fabric such as to the Baggot Street shopfront.
- 7.5. The Applicants in their initial application were very clear in stating that only those works actually cited in their description and Notices were the works for which they

were specifically seeking retention permission. Other works would be subject of other applications for retention or permission. I will consider the appeal on this basis. I would point out to the Board however that this will create some anomalies. For example in considering the fascia lettering this new advert is illuminated by new external swan neck spot lights over the fascia. Although the application drawings show these as 'replacement lights' they are not included in the written description. Nor are they properly described or specified in terms of appearance, materials and intensity in the details provided. In my opinion they form an integral part of the fascia advert and its illumination and illumination of the shopfront and building façade. Similarly the area enclosed by the plinth and railings subject for retention in this appeal would appear to have been reconfigured and resurfaced yet as specifically described this does not form part of this retention application. The new window opening on Fitzwilliam Street and alterations to the public entrance would also appear to have resulted in some internal reconfiguration and loss of internal partitions. I address these further as necessary in my comments below although the Board may consider such omissions to be fatal to the consideration of the merits of this case..

- 7.6. **Level of detail provided with retention application:** I would refer the Board to DCC comments in regard to the inadequate level of detail made available to describe the various works. I have alluded to related matters and difficulties created above. I would generally support such concerns. Whilst additional drawings and photographs and other images were provided as part of a FI response there is a general lack of specificity and detail in regard to the exact nature, specification, materials, extent and how the works sought for retention were carried out. Exact schedules and specifications of works (and how they relate to other works sought for retention such as the canopy, frame and fascia box on Baggot Street for example) are not provided and detail is lacking and unclear. Exact implications for the protected structure is therefore somewhat difficult to ascertain retrospectively. Although the works may not be large in scale they are nonetheless significant in the context of works carried out to this protected structure. I would agree that not all the works are fully or clearly delineated or described on the drawings/details to the extent which one should expect and require 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 reasonably wish to consider seeking such technical detail by way of a further information request. I was able however to inspect and consider the visible and immediately apparent impacts of the various works on the protected structure and on the surrounding conservation area(s) at my site inspection. As I will also be limiting my assessment precisely to that requested by the Appellant to those works sought by them in the application and given my conclusions on the merits of each of the various elements to be retained it may not consider it justified in the circumstances.

- 7.7. I find it somewhat surprising for a commercial operator in taking over a protected structure in a prominent position in a conservation area to have not participated in pre planning consultations. The DCC planners report indicating no record available in regard to this proposal. Clearly this could have avoided some of the present situation the Appellants find themselves in. This is also notable in circumstances where the Board itself has previously made an appeal on an appeal in regard to the property and certain related issues albeit under a previous applicant. .
- 7.8. **Principle of works sought for retention:** 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 has concerns in regard to potential intensification of use of the outdoor seating area from the heaters provided I consider that the proposed retention works to an established commercial premises within the Z4 zoned area in facilitating for example outdoor seating, ancillary coffee dock and ancillary advertising are broadly and in principle in accordance with the objectives of the Z4 zoning. 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 and close to residential property are significant material considerations. I address these material considerations below in the context of each of the works proposed for retention.

7.9. **impact of the various aspects of development proposed to be retained on the protected structure and character and appearance of the area:**

- **Changed text on sign fascia:** I treat this aspect of the appeal solely as described by the Appellant on the basis that an existing fascia has been painted over and with hand painted lettering provided with no further alterations or replacement of the fascia itself to facilitate the lettering. I also have not considered the spot lights as part of this application/appeal albeit that in my opinion they are not, in principle an unacceptable means to provide external illumination to a fascia advertisement on a protected structure in a conservation area. Although noting the DCC concerns in regard to this lettering, I consider that the size and type of two tone red and gold lettering on black background of the main 'Thomas Rody Maher' signage and street numbering to be acceptable. It is not unsightly or intrusive and, in my opinion does not detract from the overall appearance or character of the protected structure. Neither does the additional limited gold text at either end of the fascia result in unduly excessive or visually harmful additions to the signage on the fascia. I would tend to support the Appellants view that it adds some interest to the fascia. I recommend that retention permission be granted for the changed text on the fascia subject to a condition clarifying the extent of the permission granted.
- **Provide wall mounted heaters:** There is information to clarify that there were heaters providing comfort to outdoor patrons previously affixed to these premises. This includes from written submissions and photographs available including on the Boards previous appeal case file 29S 209464. I have considered this information and considered the potential impact of those previous heaters. It seems to me that the principle of the external use of this area on Baggot Street frontage for seating was accepted by the Board under its decision on appeal 29S 209464. I consider some degree of comfort to outdoor patrons might be reasonably expected with such seating and use. DCC concerns appear to focus on the potential noise and disturbance on local amenities and residents facilitated by such heaters. I would however agree with the Appellant that should excessive noise and anti social activity occur as a result of use of this space facilitated by the heaters then this is an issue for

management and for the relevant policing and environmental control agencies. I consider that of much greater concern is the nature of the new heaters installed on the character and appearance of the protected structure at this point. Whilst noting again the previous presence of heaters it is my opinion that the five new linear modern metal heaters installed along the shopfront are prominent and unsightly and represent intrusive, harsh, incongruous modern features adding clutter to the shopfront and being highlighted by their stark contrast with the dark background of the shopfront itself. Although recognising the attraction of providing such outdoor heating as a comfort to patrons it would appear to me that there are other entirely more sympathetic and sensitive ways of achieving this in the context of a protected structure. I recommend that retention permission be refused for the wall mounted heaters.

- **Changes to shopfront:** I draw the Board's attention to my comments above which are applicable in particular in regard to the changes made to the shopfront. The DCC planners report references changes they consider have been made to the pre existing shopfront which itself replaced an older. The Appellants have not provided a clear and itemised inventory of the works involved and now sought for retention. I would agree with DCC and do not consider that such works can be construed as 'minor' on a shopfront on a protected structure notwithstanding that it is a non original feature to the building. It is clear from the drawings that the previous shopfront had a greater degree of detail and ornateness some of which has been removed notwithstanding the Appellants contention that such features were 'theatrical' and overall proportions of the shopfront were retained. In their own way such details provide a level of form and interest to the structure albeit not historic fabric and incremental loss of which can nonetheless be material and of significance to the appearance of the building.

Notwithstanding these changes I have considered the shopfront as now exists on its merits. On balance I conclude that the works although appearing material and significant have not so detracted from the overall character and appearance of the protected structure as to justify a recommendation of refusal. I give significant weight to the fact that the shopfront prior to these

works was in itself not original and that some elements of variety, interest and articulation are retained in the shopfront albeit not to the extent which pre-existed. I consider that the overall composition of the shopfront as sought for retention on balance to be acceptable on the building and to the conservation area and recommend that retention permission for the changes to the shopfront be granted.

- **Planter box:** I would concur with the DCC conclusions on the merits of the planter box along the Baggot Street frontage. Of dimensions of approx. 15m length x 1.3m in height its overall size and design appears as a dominant and solid feature interfering with the appearance of the protected structure and its setting and intruding significantly in to the streetscape. I concur with the DCC comments that it creates a permanent barrier to the front of the site and significantly alters the building's interaction with the street. I would repeat that this planter forms part of the large canopy structure subject of a separate current planning appeal and report. Combined they appear as substantial structures impacting negatively on the character and appearance of the protected structure and conservation area. Whilst planters may be used elsewhere in the city the visual impact of this planter in this location must be considered on its merits in light of its impact on the immediate setting of this protected structure and wider conservation area in which it is set. I have reviewed the Board's decision on appeal 29S 209464. The Inspector whilst accepting the principle of screens to demarcate the seating area was concerned about affects of enclosure at this point from the canopy and screens combined. The Board in its decision required canvas screens of max. height of 1.3 metres instead of the proposed 1.6m high demountable screens of grey painted steel framed semi glazed construction. It would appear to me that the planter sought to be retained in this appeal creates a substantial barrier and visual clutter matters which were sought to be avoided in the overall context of the Board's decision on this history case. I believe that there is no substantive and overriding reasons why such concerns would no longer apply. I recommend that retention permission for the planter be refused.

- **Make new window opening and serve coffee through opening:** There is a dispute between the parties in regard to the presence or otherwise of an opening on the building's ground floor Fitzwilliam Street frontage. Whatever conclusions are reached it would appear to me that this is a significant intervention that would have resulted in some unrecorded loss of original building fabric. It is indeed unfortunate therefore that precise photographic details of this work are not available. There also appears to have been an internal reconfiguration as a result of this work including loss of partitions but which do not expressly appear to form part of the work now sought for retention in this appeal. I will therefore only consider specifically the merits of this new window insertion (canopy above subject of current separate retention appeal).

Until recently there would appear to have been a blank façade at ground floor level to this corner of the building. However I consider in principle that to insert a new opening at this point is not entirely unreasonable in the context of an existing commercial premises seeking to utilise and develop its services in accordance with zoning provisions. Although slightly off centre with windows above I consider that its immediate overall impact is not ideal but not one that is seriously detrimental to the balance, symmetry and thus proportions and appearance of the protected structure or the character of the area. I was able to view other buildings at this prominent corner junction and it appeared to me that although likely inherent to their original design and symmetry there were either windows or doors in the ground floor corner locations of the buildings at this junction fronting Fitzwilliam Street. Whilst therefore regrettable loss of some building fabric would appear to have resulted I do not on balance recommend refusal for such loss. I also consider that the insertion does not seriously detract from the composition, character of appearance of the building or Conservation Area. I perceive that such works are a reasonable and not entirely unsympathetic evolution of the building facilitating its continued economic and beneficial use and recommend that retention permission be granted for the new window opening and serving of drinks.

Restore granite plinth, wall and railing: I note that the DCC consider these works to be acceptable. I similarly am of that opinion as it would appear that

they have been carried out sensitively and in keeping with the character of the protected structure and appearance of the conservation area. Again I note that further works have been carried out including reconfiguration of the area and repaving however these are not the subject matter of this retention appeal. I recommend that retention permission be granted for the restoration of granite plinth, wall and railing.

7.10. In regard to suggested conditions for the element of the development recommended for permission I note that the Dublin City Council Development Contribution Scheme 2020-2023 (under Section 48, Planning & Development Act, 2000 as amended) appears to be based on floor area created. As the development recommended to be retained creates no additional sq.m. floor area I do not recommend a s. 48 development Contribution. In addition, the TII make reference to an adopted s. 49 Supplementary Development Contribution Scheme. (LUAS Cross City St Stephens Green to Broombridge). The same issues arise here with contributions based on floor area.

7.11. **Appropriate Assessment Screening**

7.12. Having regard to the nature and scale of the proposed development, the nature of the foreseeable 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.

7.13. I have considered all the other matters raised but it seems to me that they are not so material to the consideration of the merits of this case to warrant reaching a different recommendation to that set out above and below.

8.0 **Recommendation**

8.1. In conclusion I recommend that the Board issue a split decision granting retention permission for change of text on fascia, changes to shopfront, make a new window opening, serve coffee through window and restoration of granite plinth, wall and

railings but refuse retention permission for provision of external wall mounted heaters and provision of planters.

9.0 Reasons and Considerations

9.1. First Schedule

The external wall mounted heaters and planters proposed for retention are located in a prominent location close to the junction of Baggot Street Lower and Fitzwilliam Street Lower. They are affixed and in immediate proximity 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 their appearance, location, size, design, materials and projection that they make incongruous, insensitive and obtrusive additions to the external façade of the protected structure and detract from its special architectural character legibility and setting and appear as unsightly permanent additions contributing to visual clutter to the building in this sensitive streetscape. The proposed development would, therefore be contrary to Policies BHA2 and BHA9 of the Dublin City Development Plan 2022 – 2028 and would as such be contrary to the proper planning and sustainable development of the area.

9.2. Second Schedule

Having regard to the established commercial use of the ground floor of these premises, the premise's location within an Area zoned Z4 of the Dublin City Development Plan 2022 – 2028, to the established character and appearance of the protected structure and surrounding area and to the size, design, materials and colouring of: a) the changed text on the fascia, b) the changes to the shopfront, c) the new window opening and serving of coffee through the window and d) the restoration of granite plinth, wall and railings to be retained and subject to the conditions set out below it is considered that the retention of these works and use would not detract from the special architectural character, appearance and legibility of this protected structure or the character and appearance of the sensitive streetscape in which it is located and would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would as such be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>This permission relates only to the retention of a) the changed text on the fascia, b) the changes to the shopfront, c) the new window opening and serving of coffee through the window and d) the restoration of granite plinth, wall and railings as specifically applied for as set out in the retention application and appeal documentation and for no other works or uses whatsoever. .</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The new window opening and its use for serving of coffee through the window shall only be utilised in conjunction with and ancillary to the occupation and use of the remainder of the ground floor commercial use of these premises and shall not be sold, let or otherwise occupied independently.</p> <p>Reason: In the interests of clarity and to ensure that an independent and separate use of the premises is not introduced that would detract from the special character of the protected structure, the amenities of the area or the amenities of property in the vicinity.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Philip Green
Planning Inspector

13th November 2023