



An  
Bord  
Pleanála

## Inspector's Report

### ABP-318243-23

#### Development

Retain the change of use of a 75 sqm ground floor room from educational to gymnasium/fitness studio (class 11) and all associated site works. PROTECTED STRUCTURE (RPS. 7181)

#### Location

New Acropolis, 43 Rathmines Road  
Lower, Dublin 6

#### Planning Authority

Dublin City Council South

#### Planning Authority Reg. Ref.

4220/23

#### Applicant(s)

District One Gyms Limited

#### Type of Application

Retention Permission

#### Planning Authority Decision

Grant

#### Type of Appeal

Third Party

#### Appellant(s)

Quirke Lynch Holdings Ltd

#### Observer(s)

None

#### Date of Site Inspection

06<sup>th</sup> August 2024

#### Inspector

Clare Clancy



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## **1.0 Site Location and Description**

- 1.1. The appeal site comprises of a single storey building with an art-deco style façade which fronts onto the western side of the Rathmines Road Lower (R114). It immediately abuts a more substantial three storey building on its northern side which is of art-deco design architecture and is known as the Kodak building. Both buildings are protected structures. The primary use of the existing building is for education and the adjoining Kodak building facilitates offices.
- 1.2. The application site boundary encompasses the building which occupies the full extent of the site from the Rathmines Road to the rear of the building with rear door access to the fire escape and loading bay, which are also included within the application site boundary.
- 1.3. The fire escape and the loading bay area open onto another loading bay, an adjoining small car parking area and a service yard which are noted to not be within the application site boundary of the appeal site. The service yard has direct access onto Blackberry Lane and is gated. Pedestrian access to the premises is from the street (Rathmines Road Lower). A bicycle stand was noted to be located in the service yard along the western boundary wall of the Kodak building which can facilitate c. 12 bikes. It was noted that the car park contains a designated space labelled no. 43 which relates to the appeal site.
- 1.4. Immediately adjoining the service yard, there is a car park separated by bollards which has its own direct access onto Blackberry Lane that is gated and which serves the Kodak building.
- 1.5. There is on-street Pay and Display car parking adjacent to the northern boundary of the Kodak Building. The immediate area is characterised by residential development and rich architectural heritage. There is an existing single storey residential premises which appears to be operated by a housing agency adjoining the site to the south. There is an existing residential development to the west of the site separated by an access road.

## **2.0 Proposed Development**

- 2.1. The appeal site relates to retention permission for the following:

To retain the change of use of a 75 m<sup>2</sup> ground floor room from educational to gymnasium / fitness studio (class 11), and all associated works. The existing structure is a protected structure (RPS No. 7181).

- 2.2. It is noted from the file details that no material alterations are proposed / indicated to be carried out to the existing structure internally, or proposed to be carried out externally, within the application site boundary.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Dublin City Council granted retention permission by order dated 18<sup>th</sup> September 2023 subject to 8 no. conditions.

- Condition no. 2 relates to car and bicycle parking and states that no parking is permitted for the gymnasium and requires 3 no. cycle parking spaces within the application site.
- Condition no. 3 requires the submission of a vibration monitoring assessment, photographs of the existing floor within 6 months of the grant.
- Condition no. 5 and 6 relate to the management of advertising signage. It should be noted that reference to 'takeaway' is cited in condition no. 6.
- Condition no. 7 relates to the control of sound levels within and emanating from the premises.

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

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

One planning report forms the basis of the assessment and recommends retention permission to be granted. It assesses the development in terms of principle of development noting that it is acceptable in accordance with the zoning objective for the site. It also addresses the following issues:

- No proposals for access arrangements to the premises are provided by the applicant. Pedestrian access is off the Rathmines Road and there is rear gated

access off Blackberry Lane to a service yard and car park which is separate and are not within the application site boundaries. It notes a Right of Way is shown on the drawings submitted. The third party has made a submission on the Right of Way, but the Planning Authority considered these to be civil matters between the parties.

- The absence of car parking requirement is justified on the basis of the sites' location, access to public transport and parking controls in the area. Reference to condition no. 5 of P.A. Ref. 2001/13 is noted requiring cycle parking for educational use previously permitted.
- Considers the impacts arising from the use as a gym on residential and environmental amenities and on the structural fabric of the Protected Structure in relation to noise from loud music and vibration from heavy weights being dropped, as raised in the third-party submission. Conditions are included to address the aforementioned.
- No Appropriate Assessment issues arise.

#### 3.2.2. Other Technical Reports

- Drainage Division: No objections raised.
- Transportation Planning Division: No objection raised subject to conditions, in particular not permitting car parking to be provided, and seeking the provision of a minimum of 3 no. cycle parking spaces.
- Conservation Officer: No objections raised subject to conditions relating to noise and vibration monitoring and photograph survey of the existing floor.

#### 3.3. Prescribed Bodies

None.

#### 3.4. Third Party Observations

Two third party observations were received in objection to the proposed development. The matters raised are largely covered by the grounds of appeal.

## 4.0 Planning History

### 4.1. Appeal Site

- P.A. Ref. 2001/13/X1 – Extension of duration granted up to 23<sup>rd</sup> May 2023 in relation to P.A. Ref. 2001/13. (Decision date 21<sup>st</sup> March 2018).
- P.A. Ref. 2001/13 – Permission granted for change of use from industrial to educational use and alterations to internal and external of the building. (Decision date 10<sup>th</sup> April 2013).

- Condition no. 7

Evening classes shall cease at 10 pm Monday to Fridays and 6 pm Saturdays and Sundays.

**Reason:** In the interest of protecting residential amenity.

- Condition no. 5 – the following is relevant:

(a) Car parking spaces shall be permanently allocated to the educational use and shall not be sold, rented or otherwise sub-let or leased to other parties.

(b) Prior to commencement of development the applicant shall submit proposals for the written agreement of Road and Traffic Department to provide bicycle parking to development plan standards on the subject site or the surrounding road networks. All works shall be at the applicants expense.

**Reason:** In the interest of orderly development.

#### 4.1.1. Enforcement

- P.A. Ref. E0980/22 – Change of use to gym without planning permission.

## 5.0 Policy Context

### 5.1. National

Architectural Heritage Protection Guidelines for Local Authorities (2011).



- Section 6.8.8 Material Change of Use – promotes the adaptation of protected structures so as to prolong their life, and development plan policies will be required to be flexible to be responsive to appropriate, alternative uses for a structure.

## 5.2. Development Plan

The Dublin City Development Plan 2022-2028 (CDP) is the relevant development plan which sets out the local planning policy for the area. The relevant CDP policy and objectives include the following:

### 5.2.1. Chapter 11 Built Heritage and Archaeology.

- Policy BHA 2 Development of Protected Structures.

### 5.2.2. Chapter 14 Land-use Zoning.

- Section 14.7.1

The site is zoned Z1 Sustainable Residential Neighbourhoods, the objective for which is “to protect, provide and improve residential amenities”.

### 5.2.3. Chapter 15 Development Management.

- Section 15.14.11 Leisure / Gym / Fitness Studio – notes that Dublin City Council will support the provision of such uses within the city.
  - Proposals should address the street frontage and avoid full manifestations on windows and doors.
  - Requirement to support active travel to these facilities and should be located in close proximity to public transport services and cycling facilities.
  - Noise and vibration assessment required where the proposals adjoin sensitive uses such as residential development.
- Section 15.15.2. Built Heritage.
  - Section 15.15.2.3 Protected Structures.
- Section 15.18.9 Noise.

- Where it is considered that a proposed development is likely to create a disturbance due to noise, a condition may be imposed limiting the hours of operation and level of noise generation.

#### 5.2.4. Appendix 5 – Transport and Mobility; Technical Requirements.

- Section 3.0 Cycle Parking Standards – there is a requirement to provide fully integrated cycle facilities in accordance with Table 1.
- Table 1: Bicycle Parking Standards for Various Land Uses.
  - Enterprise and Employment – Clubhouse Gymnasium.
    - Long Term – 1 per 5 staff.
    - Short Stay / Visitor – 1 per 50 sq.m GFA.
- Section 4.0 Car Parking Standards – notes that the car parking standards set out in Table 2 shall be generally regarded as the maximum parking provision.
- The Dublin City Council area is divided into three areas for the purpose of parking control as shown on Map J – The site is located in Zone 2.
- Table 2: Maximum Car Parking Standards for Various Land Uses – Sports and Recreation.
  - Dependent on nature and location of use.

### 5.3. Natural Heritage Designations

5.3.1. The appeal site is not located in or immediately adjacent to a European site, a Natural Heritage Area (NHA) or a proposed NHA (pNHA) and there is no connection to any European sites and no pathways. The nearest European Sites and Natural Heritage Areas in close proximity to the appeal site are the following:

- Grand Canal pNHA (Site Code 002104) approx. 191 m to the north.
- South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) approx. 3.7 km to the east.
- South Dublin Bay SAC (Site Code 000210) approx. 3.7 km to the east.
- South Dublin Bay pNHA (Site Code 000210) approx. 3.7 km to the east.

- North Dublin Bay pNHA (Site Code 000206) approx. 5.3 km to the northeast.
- North Bull Island SPA (Site Code 004006) approx. 6.9 km to the northeast.
- North Dublin Bay SAC (Site Code 000206) approx. 6.9 km to the northeast.
- North Dublin Bay pNHA (Site Code 000206) approx. 6.9 km to the northeast.

#### **5.4. EIA Screening**

- 5.4.1. The development does not constitute a project for the purposes of EIA. Refer to Appendix 1.

### **6.0 The Appeal**

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

- 6.1.1. One third party appeal submission was received from Quirk Lynch Holdings Ltd of no. 41 Rathmines Road Lower, which immediately adjoins the appeal site to the north. The grounds of the appeal can be summarised as follows:

- Landownership / Access / Car Parking.
  - The existing gated access to the service yard and car park to the rear of the appeal site and to the western side of no. 41 (Kodak building) adjoining Blackberry Lane is in the ownership of the third-party appellant.
  - Use of this access by the appeal site is available for fire escape and occasional servicing and is only accessible through the private lands of No. 41. There is an established right of way to car park space no. 43 only, which is limited by deed.
  - There is no formal agreement for public access, and the gym uses the service yard as the primary access to the gym and for outdoor exercise classes.
  - A bicycle rack belonging to the gym is in situ in the loading bay which was not identified on the plans and drawings.
  - In the event of a grant, requests the inclusion of a condition to restrict access to the gym from the front of the building off the Rathmines Road

Lower, and the submission of an operational management plan for the gym use to include proposed access arrangements requiring written agreement for the use of third-party lands.

- Previous planning history on the appeal site and non-compliance with conditions no. 3 of P.A. Ref. 2001/13 which related to the restriction and management of advertising signage on the building, and condition no. 5(b) which required cycle parking to be provided for the educational use permitted on the site.
- Zoning – the subject development is contrary to the zoning objective as it does not protect, provide or improve residential amenities and is not an appropriate use, is incompatible with adjoining residential uses and impacts on staff and residential amenities from noise and vibrations.
- Built Heritage & Policy Objective BHA2 – it does not address the street frontage and is contrary to Section 15.14.11 of the CDP and has not shown compliance with policy objective BHA2.
- Residential Amenities, and also adjoining occupiers of the Kodak building – the use of the gym gives rise to operational noise and vibration disturbances arising from loud music and heavy weights being dropped on the floor, noise can be heard from the service yard.
- Vibrations causing wear and tear to the existing building affecting its structural integrity and travelling to the adjoining building.
- The opening hours of the gym impacts on the existing education use that takes place in the evenings and in the morning and afternoon on Saturdays and on occupiers working in the Kodak building.
- Precedent – if permitted would set an undesirable precedent for similar types of proposals in terms of impacts on adjacent residential and neighbouring areas, as a comprehensive assessment on the impacts arising was not provided.

## **6.2. Applicant Response**

None received.

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

None received.

### 6.4. **Observations**

None received.

## 7.0 **Assessment**

Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report/s of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development.
- Amenity Impacts.
- Access and Parking.
- Impact on Protected Structure.
- Other Matters.

### 7.1. **Principle of Development**

- 7.1.1. The appeal site is zoned Z1 the objective of which is '*to protect, provide and improve residential amenities*'. The proposed development is for the retention of the change of use of the existing premises from educational use to gym / fitness studio. This use can be categorised as a sports facility / recreational use and is a use that is deemed to be acceptable in principle, having regard to Section 14.7.1 of the CDP, subject to all other relevant considerations in the CDP are satisfied.

### 7.2. **Amenity Impacts**

- 7.2.1. The third-party appellant argues that operational noises from the gym associated with loud music, exercise machines and vibrations from weights being dropped and outdoor exercise classes, interferes with the business activities of staff in the adjoining Kodak

building and on adjoining residential amenities. It is also argued that the hours of operation result in further negative impacts to occupants within the existing building during classes, and to occupiers of the Kodak Building with gym exercise classes commencing as early as 06:30 a.m.

- 7.2.2. The nearest residential developments are located to the south and to the west of the appeal site. Immediately to the south of the site, there is a single storey housing agency development which shares a boundary wall with the appeal site that is >2 m in height. This residential complex is setback by approx. 6 m from the shared boundary. To the west of the site there is a housing scheme comprising of duplex apartments. It is setback by approx. 10.8 m from the appeal site and is separated by an internal access road.
- 7.2.3. The Kodak building comprises of commercial / office use and abuts the appeal site. The gym is located to the rear of the existing building with a classroom adjoining it. There is an internal corridor separation between the boundary wall of the Kodak building and the gym, which extends from the front entrance off the street to the rear of the building. There are various rooms such as w.c's, maintenance room, classrooms etc off the corridor located along the northern boundary wall which would be of concrete masonry construction.
- 7.2.4. At time of site inspection, I observed that the gym was in use, however not intensely, and it was noted that there was no music being played. It was also noted that rubber matting is laid on the floor and that the room has been adapted for gym use.
- 7.2.5. From the planning history of the site, I note that the former use of the building was an industrial use which facilitated a photographic processing laboratory that was associated with the Kodak building which facilitated a former photographic processing business. I note that the building was retrofitted internally to comply with fire safety standards which included for new half hour fire rated stud partition walls and with acoustic insulation between.
- 7.2.6. Section 15.14.11 of the CDP relates to noise and vibration whereby an assessment should be carried out where a proposed development adjoins sensitive uses such as neighbouring residential development. I note that there are no objections raised by other users of the existing building on the appeal file, therefore I would conclude that

the operational use of the gym does not unduly impact on the educational use / classes within the premises itself, in terms of noise and vibration impacts.

- 7.2.7. In relation to the occupiers of the adjoining commercial building and possible impacts, the rubber matting that is in place would absorb some of the impact arising from weightlifting exercises. The gym room is located on the ground floor and does not directly adjoin the northern boundary masonry wall with the Kodak building. I would therefore consider that the transfer level of noise and vibration from dropping heavy weights would be internal and would not be significant.
- 7.2.8. Condition no. 3 (a) relates to ensuring the conservation of the structural integrity of the protected structure rather than monitoring vibration and noise associated with the use and impacts to residential amenities. I propose to address impacts to the protected structure later in the report under Section 7.4. While I acknowledge that there will be some level of vibration arising from weights being dropped, I am satisfied that it will not unduly impact on amenities of the occupiers in the adjoining building.
- 7.2.9. In addressing noise impacts arising from the operational use of the gym, the Planning Authority included 2 conditions. Condition no. 7 requires noise levels arising from loudspeakers, music or other material projected from the premises to be controlled so that the sound is not audible to adjoining premises, or at 2 m from the frontage. The condition does not specify a noise level limit. Condition no. 8 requires compliance with Codes of Practice from the Noise and Air Pollution.
- 7.2.10. Section 15.18.9 of the CDP provides that if a proposed development may give rise to disturbance due to noise, a condition may be imposed in regard to limiting the hours of operation and noise generation.
- 7.2.11. With regard to neighbouring residential amenities and noise impacts, I am satisfied that the nearest residential amenities will not be unduly affected given the location of the gym and the separation distances as described in Section 7.2.2 above.
- 7.2.12. In relation to the adjoining commercial building, it is stated that music and intermittent noise and vibrations associated with classes can be heard from the service yard to the rear of the building. I would note that outdoor classes carried out within the service yard are not within the scope of this application.

- 7.2.13. As it is not known what the current operational noise levels are as it is not stated in the appeal file or planning application details, and whether or not existing noise levels are in excess of minimum levels, I recommend the inclusion of a standard condition to manage daytime and night-time noise levels, to ascertain what the existing noise levels are, and a monitoring condition to determine if these levels are achieved.
- 7.2.14. In relation to opening times at the gym, I note that the Planning Authority did not include such a condition and that the application details do not provide information on hours of operation. The appellant argues that the subject development impacts on the amenities of the occupiers working in the Kodak building and the students attending the subject building for classes and noise as a result of the opening hours, particularly early opening hours at 06:30 a.m. The appellant provides the hours of operation for the existing educational use permitted under P.A. Ref. 2001/13 from 6 pm – 10 pm Monday to Friday and Saturday mornings and afternoons until 6 pm and has further outlined the gym opening hours to be 6:30 a.m. – 8.00 p.m. Monday to Friday, Saturday 9.00 a.m. – 11:30 a.m., Sunday closed.
- 7.2.15. Although it is not stated within the appeal file, it is likely that the adjoining Kodak building business operating hours would be typical weekday working hours, c. 9:00 a.m. – 5 p.m. Monday to Friday. I do not consider it reasonable to restrict the hours of operation for the gym particularly the early opening hours, and also when other occupiers within the subject building did not raise any specific objections to the use of the gym. However, I would consider it appropriate and would recommend the inclusion of a condition regarding the hours of operation in the interest of clarity. I am therefore satisfied that the impacts to adjoining amenities will not be significant.

### **7.3. Access and Parking**

- 7.3.1. The third-party appellant has raised issue with the use by the gym operators of the service yard to the rear for access to the premises and for outdoor exercise classes.
- 7.3.2. I note that the owners of the premises of no. 43 gave consent to the gym owners to make the planning application on their lands, and that the gym owners are leasing the premises.
- 7.3.3. Reference to a Right of Way on submitted drawings is made in the local authority planning report, however I note that this does not appear to be the case. Having



reviewed the planning history of the site, I note that under P.A. Ref. 2001/13 that the site location map shows the service yard, loading bay, parking area and the adjoining access off Blackberry Lane with an 'established Right of Way' highlighted in yellow. This area encompasses car parking space no. 43 to which the appellant states that there is an established Right of Way over, with access to this space limited by deed.

- 7.3.4. Section 15.14.11 of the CDP refers to leisure centres / gym / fitness studio and notes that the provision of such facilities should be supported by active travel. In relation to car parking provision, Section 4.0 of the CDP Car Parking Standards notes that the car parking standards set out in Table 2 shall be generally regarded as the maximum parking provision.
- 7.3.5. I note that no car parking proposals are provided with the application details in relation to access, and car parking to serve the gym and the application site boundary does not encompass the adjoining service yard and loading bay. Table 2 of Appendix 5 specifies that the requirement for car parking for sport and recreation uses is dependent on nature and location of use.
- 7.3.6. Pedestrian access to the gym is available from the street through the front door of the building off the Rathmines Road. There is access to the gym through the adjoining service yard at the rear of the site which is gated and opens onto Blackberry Lane where there is on-street Pay and Display parking. The appeal site is situated within a highly accessible location that is well served by public transport and there is a Bus Connects Core Bus Corridor Scheme proposed for the Rathmines Road. The area is also highly accessible by walking and cycling. Having regard to the availability of on-street car parking along Blackberry Lane and the availability of high frequency public transport, I consider that the requirement for car parking in accordance with Table 2 is not a necessary requirement for the use of a gym in this location. The Transport Planning Division required the inclusion of condition 2(a) to not permit car parking to serve the subject development on the basis of nature and location of use, however I do not consider it necessary to include such a condition having regard to the above.
- 7.3.7. Notwithstanding the above, it is evident that there is 1 no. car parking space available to the overall site which I note is not included within the application site boundary. The appellant contends that the intended use for this space was to serve the use of the education centre as per condition no. 5(a) of P.A. Ref. 2001/13. It is not known from

the details contained on the file who uses the car parking space, however it was noted at time of site inspection that a sign above the car park space indicates that the space is reserved parking for no. 43.

- 7.3.8. In the appeal it is stated that the bicycle stand was placed by the gym owner on the property of no. 41 (Figure 7). It was noted at time of site inspection that there was a bike stand which can facilitate up to 12 bikes located within the service yard along the western elevation of the Kodak building, which is outside of the application site boundary and which is not within the scope of this application. It was also observed that there was only 1 patron using the gym and 1 employee in attendance, and that there was 3 no. bikes using the stand. This would indicate that there may be others using the bicycle stand, other than users of the gym and which may relate to the overall educational use of the building or other adjoining uses.
- 7.3.9. Having regard to Table 1 of Appendix 5 of the CDP, there is a requirement to provide 1 no. cycle space per 5 staff and 1 no. per 50 sq.m GFA. It is not known from the file details how many staff operate from the gym. In any case 1 no. space would be required per 5 staff and having regard to the floor area, I would consider that max. 3 spaces would be required overall, which would be in line with the report of the Transport and Planning Division.
- 7.3.10. In reviewing the planning history of the appeal site with specific reference to P.A. Ref. 2001/13, the requirement to facilitate bicycle parking was addressed by condition 5(b) as a pre-development condition. It is unclear from the details on the file what the 'educational use' requirement for bicycle parking amounted to at that time as it was not assessed in the planning report. It is further unclear if condition no.5 (b) was implemented.
- 7.3.11. It was however evident from site inspection that there is adequate cycle parking available in the service yard adjoining the appeal site. The location of the bike stand and the access to it is an issue raised in the grounds of appeal, however I would consider this to be a matter to be resolved between the relevant landowners. Notwithstanding, I would have concerns in relation to requiring the bicycle stand to be located within the area that appears to provide a means of fire escape to no. 43 the appeal site, as per the requirements of condition no. 2(b) of the final grant. In that regard, overall, I do not consider it appropriate to include condition no. 2 and

recommend that it is not included. While the adjoining service yard can easily facilitate bicycle parking, I consider that a development contribution in accordance with Section 48(2)(c) of the Planning and Development Act 2000 (as amended) in lieu of cycle parking provision within the site is appropriate in this regard, and therefore recommend the inclusion of such a condition. The location of a public bicycle stand could plausibly be considered on-street similar to public car parking.

7.3.12. The appellant has raised issues in relation to landownership, rights of access and use of Right of Way in relation to the abovementioned service yard, loading bay and car park space to the rear of the site. In addition, the appellant states that the service yard is used by the gym for outdoor classes however, I would consider that such outdoor use is outside of the scope of this application. The appellant also seeks to restrict access to the gym from the Rathmines Road by way of condition and to require an operational management plan for the gym use to include proposed access arrangements requiring written agreement for the use of third party lands.

7.3.13. I note the concerns raised, while I have no objections in planning terms to access from the lane with regard to safety or amenities, I do not consider it appropriate to restrict access to the premises in this manner, particularly having regard to the need to maintain fire escape access through the building. In addition, having regard to the provisions of Section 34(13) of the Planning and Development Act 2000 (as amended), I consider that such issues relating to the title of land and/or premises, or rights over land or use of the service yard or car parking, are a civil matter to be resolved between the relevant parties. Such matters are covered under separate legislation and are not a matter for the Board to determine and in that regard, I do not recommend the inclusion of such a condition.

#### **7.4. Impact on Protected Structure**

7.4.1. A number of points raised in the grounds of the appeal made reference to the subject development not addressing street frontage and the impact that the use of the gym would have on the structural integrity of the building.

7.4.2. It was evident from my site inspection that the alterations carried out internally to adapt the room to a gym did not involve significant alterations, and it is indicated on the plans that no material alterations were proposed to the existing fabric. I note that the

Conservation Officer did not raise specific issues in regard to same. In noting the planning history of the overall building as described in Section 7.2.5 above, alterations were carried out to the interior of the overall building to adapt the former use to an educational use which required extensive retrofitting to bring the building up to the minimum standards to comply with fire safety and building regulations.

7.4.3. The appellant states that the subject development has not demonstrated compliance with policy BHA2 in particular (a), (c), (d) and (e) of the CDP, and Section 15.14.11 in regard to street frontage. The appellant argues that the subject development does not address the street frontage, is located to the rear of the building farthest away from the street and fails to animate the frontage. I do not agree with this point. Section 15.14.11 of the CDP provides guiding principles in relation to development proposals for gyms. The use of the gym is located within the existing premises to the rear of the existing property, it does not create street frontage and therefore is not considered to be an issue. Furthermore having regard to the provisions of BHA2 of the CDP, I am satisfied that the use of the gym does not negatively impact on the special character and appearance of the protected structure, and that the use seeks to ensure the viability of the building which would be in line with the provisions of Section 6.8.8 of the Architectural Heritage Protection Guidelines for Local Authorities, and is therefore acceptable.

7.4.4. In relation to the impact on the structural integrity of the existing building, the report of the Conservation Officer notes that there may be vibration impacts associated with the use of the room as a gym, which may have a subsequent impact on the primary structural fabric of the protected structure. A vibration monitoring assessment is recommended to be undertaken as per condition 3(a) in the final grant. I note the concerns raised by the Planning Authority and I consider it reasonable to include a similar condition to safeguard the integrity of the existing building.

## **7.5. Other Matters**

### **7.5.1. Unauthorised Development**

Other grounds raised within the appeal submission relate to non-compliance with conditions relating to P.A. Ref. 2001/13, in particular condition no. 3 with respect to unauthorised advertising signage mounted to the façade of the existing building, and

condition no. 5 in relation to the provision of car parking and bicycle parking to serve the existing development, which is not within the scope of this development. In this regard, I submit that any matters relating to unauthorised development is a matter for the Planning Authority, as the matter of enforcement falls under the jurisdiction of the Planning Authority. Consequently, the issues raised in the appeal submission are not a matter for the Board to consider in this appeal.

#### 7.5.2. Precedent

The grounds of appeal submit that the subject development for which retention is sought will set undesirable precedent for similar types of proposals in terms of impacts on adjacent residential and neighbouring areas, as a comprehensive assessment on the impacts arising was not provided.

It is my consideration that the subject application / appeal should be considered on its own merits and on a site-specific basis, having regard to national and local policy and other relevant planning considerations, and in that regard I do not agreed with this point.

### 8.0 **Appropriate Assessment**

8.1.1. I have considered the proposed development in light of the requirements of S177U the Planning and Development Act 2000 as amended.

The subject site is not located within or adjacent to any European Site.

The closest European Site, part of the Natura 2000 Network is the South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC located approx. 3.7 km to the east of the proposed development.

The subject site which is an existing developed site, is located along the Rathmines Road Lower in a busy urban village and it comprises the retention of the change of use of the premises from education use to gymnasium use. No alterations were made to the exterior of the elevations.

No nature conservation concerns were raised at planning application stage or in the planning appeal.

8.1.2. Having considered the nature, scale and location of the subject development, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.

The reason for this conclusion is as follows:

- The small-scale commercial nature of the development.
- The location of the development in a serviced urban area, that has the benefit of piped water and wastewater services, distance from European Sites and urban nature of intervening habitats, absence of ecological pathways to any European Site.
- Screening assessment of the Planning Authority.

8.1.3. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

## **9.0 Recommendation**

Having regard to the above, I recommend that retention permission be GRANTED for the development, subject to conditions, for the reasons and considerations set out below.

## **10.0 Reasons and Considerations**

Having regard to the zoning objective relative to the site 'Z1 Sustainable Neighbourhoods' the objective for which is 'to protect, provide and improve residential amenity', the planning policies and objectives of the Dublin City Development Plan 2022-2028, the nature, limited scale and siting of the gym, the sites close proximity and accessibility to the city centre and the Rathmines urban core, the availability of high frequency public transport and the existing pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the retention of the proposed development would not impact negatively on the character and setting of the protected structure, would not unduly impact on the residential amenities or the commercial activities of property in the immediate vicinity, and would be acceptable in terms of pedestrian and cycle convenience. The retention of the gym

is, therefore, in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1.	<p>The development shall be carried out and retained in accordance with the plans and particulars lodged with the planning application on the 25<sup>th</sup> July 2023 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the Planning Authority, the developer shall agree such details in writing with the Planning Authority prior to commencement of development, and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The hours of operation of the gym shall be between 0630 hours and 2000 hours Monday to Friday and between 0830 and 1700 hours on Saturdays, unless otherwise agreed in writing with the Planning Authority.</p> <p><b>Reason:</b> In the interest of clarity.</p>
3.	<p>Within six months of the grant of permission, the developer shall submit a vibration monitoring assessment and a photographic survey to assess the impacts of the use of the gym on the primary structural fabric of the building which is a Protected Structure. Should remediation measures be required in order to address any issues associated with vibration, the developer shall submit for the approval and written agreement of the Planning Authority, a specification and method statement covering all works to be carried out, to ensure the development is carried out in accordance with good conservation practice.</p> <p><b>Reason:</b> In the interest of preserving the architectural integrity and heritage value of the retained Protected Structure.</p>

4.	<p>a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the boundary of the site, shall not exceed:-</p> <p>(i) An Leq,1h value of 55 dB(A) during the period 06:30 to 20:00 hours from Monday to Saturday inclusive.</p> <p>(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.</p> <p>(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.</p> <p>(c) Procedures for the purpose of determining compliance with the set limits shall be submitted to, and agreed in writing with the planning authority, within 3 months of the grant of permission.</p> <p><b>Reason:</b> To protect the residential amenities of property in the vicinity of the site.</p>
5.	<p>No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001 (as amended), shall be displayed or erected on the building exterior/within the curtilage of the site without a prior grant of planning permission.</p> <p><b>Reason:</b> To allow further assessment of the impact of the permitted advertisement on the amenities of the area and the impact on the protected structure.</p>
6.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>



7.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Clare Clancy  
Planning Inspector

16<sup>th</sup> September 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	318243-23		
<b>Proposed Development Summary</b>	Retain the change of use of a 75 sq metre ground floor room from educational to gymnasium/fitness studio (class 11) and all associated site works. PROTECTED STRUCTURE (RPS. 7181).		
<b>Development Address</b>	No. 43 Rathmines Road Lower, Dublin 6.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b>	✓  No further action required
<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>		Class.....	EIA Mandatory EIAR required
<b>No</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 (if relevant)</b>
<b>No</b>	✓	N/A	No EIAR or Preliminary Examination required

<b>Yes</b>		Class/Threshold.....		Proceed to Q.4
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<b>4. Has Schedule 7A information been submitted?</b>		
<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

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