



An
Bord
Pleanála

Inspector's Report

ABP-318445-23

Development	PROTECTED STRUCTURE: Retention of outdoor seating area structure and associated signage on a temporary basis for three years
Location	'Osteria Lucio', The Malting Tower, Grand Canal Quay, Clanwilliam Terrace, Dublin 2
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	4373/23
Applicant(s)	Osteria Lucio
Type of Application	Retention Permission
Planning Authority Decision	Refusal of permission for 2 no. reasons
Type of Appeal	First Party
Appellant(s)	Osteria Lucio
Observer(s)	None
Date of Site Inspection	22 nd December 2023
Inspector	Bernard Dee

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1.0 Site Location and Description

The appeal site is located at Clanwilliam Terrace to the south east of the city centre. The appeal site is occupied by a restaurant at the ground floor of an existing 6-storey Protected Structure (residential on the levels above). The site is adjacent and south of the rail line with a bridge over the road adjoining the site. The rail bridge adjoining the site is also a Protected Structure (RPS 883/3276). Grand Canal Quay waterway is located to the east of the site. To the south are existing two-storey office buildings along Clanwilliam Street of late 20th century construction in a pastiche style.

2.0 Proposed Development

Retention permission is sought on temporary basis for three years for the retention of an outdoor seating area structure. The structure is an aluminium and glass enclosure with a floor area of 23.2m² and which is 11.1m in length, 1.74m in depth and 2.9m in height.

The structure has seating for 15 no. patrons and also has a retractable roof.

Retention permission is also sought for associated advertising signage on the stallriser, glazing and fascia board of the structure.

3.0 Planning Authority Decision

3.1. Decision

A refusal of retention permission was issued by the Planning Authority on 19th October 2023 for 2 no. reasons:

- 1. The outdoor seating structure is excessive in both width and volume and seriously impacts the historic building, the railway bridge and arch (A Protected Structure) and the public street, which is located in a conservation area. Having regard to Policies BHA9 (1) and (4) and BHA2 (d) and BHA4 of the Dublin City Development Plan 2022-2028, the proposed retention of the seating structure and signage would seriously injure the special architectural character of the historic building at the Malting Tower, the architectural character of the adjoining bridge (a*

Protected Structure), the regionally rated Malting House building and the public street, which is located in a conservation area. The development for retention creates a precedent for similar type undesirable development, would be contrary to the provisions of the Dublin City Development Plan 2022-2028 and is not in accordance with the proper planning and sustainable development of the area.

2. The outdoor seating area enclosure to be retained, which creates a fixed structure on the public footpath and reduces the width of the public footpath to less than 1 metre, endangers public safety by reason of traffic hazard and obstruction of pedestrians. The proposed development would create a precedent for similar type undesirable development, would be contrary to the provisions of the Dublin City Development Plan 2022-2028 and therefore is not in accordance with the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planner's Report notes the planning history of the dining structure and the Board's previous temporary retention permission for a two year period. The report also notes that there is no street furniture licence in place covering the tables within the dining structure. The plans show a public footpath width of 0.98m due to the presence of the dining structure which is deemed to be inadequate to accommodate pedestrian traffic.

The Planner's Report notes the visually prominent location of the dining structure and the fact that it is attached to a Protected Structure and within a Conservation Area. The report concludes that the retention of this structure would create an undesirable precedent for similar structures in similar contexts and that such a visually obtrusive structure should not be permitted.

[Inspector's Note: The Malting Tower is not indicated as a Protected Structure on Zoning Map E. References to an 'Old Malt House' in Volume 4 RPS of the Dublin City Development Plan, 2022-2028, RPS Ref.3277, relate to a structure at 8 Grand Canal Quay, Dublin 2 which lies to the north of the rail line and not the building to which this current appeal relates which is located on Clanwilliam Terrace].

3.2.2. Other Technical Reports

- The Archaeology, Conservation & Heritage Section recommended refusal of retention permission for the following reason.

The outdoor seating structure is excessive in both width and volume and seriously impacts the historic building, the railway bridge and arch (A Protected Structure) and the public street, which is located in a conservation area. Having regard for Policies BHA9 (1) and (4) and BHA2 (d) and BHA4 of the Dublin City Development Plan 2022-2028, the proposed retention of the seating structure and signage would seriously injure the special architectural character of the historic building at the Malting Tower, the architectural character of the adjoining bridge (a Protected Structure), the regionally rated Malting House building and the public street, which is located in a conservation area.

- The Drainage Division responded that there was no objection to this development, subject to the developer complying with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.
- The Transport Planning Division recommended that retention permission be refused for the following reason:

The outdoor seating area enclosure to be retained, which creates a fixed structure on the public footpath and reduces the width of the public footpath to less than 1 metre, endangers public safety by reason of traffic hazard and obstruction of pedestrians.

3.2.3. Prescribed Bodies

- Transport Infrastructure Ireland had no observations to make on this retention application.

3.2.4. Observations

An observation was submitted within the five week period by Cian Brennan who states:

In this planning submission I think it's important to take into account the large proportion of the footpath used by the temporary structure, especially as the

opposite footpath is currently unusable due to the ongoing building works. This road is part of the SO1 orbital cycle lane, and there is a constant stream of cycle and motor bike traffic along the road, along with construction traffic. Despite this, the temporary structure means that pedestrians are very regularly forced to walk along the road, creating conflict between pedestrians and cyclists.

4.0 Planning History

4.1. On the Appeal Site

- ABP-305391-19 (3447/19): Permission granted for an outdoor enclosed dining area which is the subject of the current appeal on 21st January 2020 subject to 2 no. conditions for a two year retention (temporary) permission contrary to Inspector's recommendation and the refusal issued by Dublin City Council. Condition No. 2 of the permission stated:

2. This permission shall be for a period of two years from the date of this Order. The outdoor seating area structure shall then be removed unless, prior to the end of the period, permission for its retention shall have been obtained. Reason: To allow for a review of the development having regard to the circumstances then pertaining and in the interest of visual amenity.

- There is an open enforcement file (Ref. E0540/23) on the appeal site in relation to the lapsing of the retention time for the previous application - ABP-305391-19 (3447/19). This application seeks to extend the previous retention permission for a further three years.
- 2783/04: Permission granted for the placing of 2 no. tables, 4 no. chairs, and canvas screens on the pavement area, provision of retractable awning and relocation of signage.
- 1552/04: permission granted for change of use of an existing retail unit from a hairdressing salon to a delicatessen.

4.2. In the Vicinity of the Site

- None relevant in close proximity to the appeal site.

5.0 Policy and Context

- 5.1. The relevant Development plan is the Dublin City Development Plan 2022-2028. The site is zoned Z6-Employment/Enterprise with a stated objective *‘To provide for the creation and protection of enterprise and facilitate opportunities for employment creation’*. Restaurant use is deemed a ‘Permissible Use’ under the Z6 zoning objective.

Policy CCUV30 - Cafés / Restaurants To promote and facilitate the provision of cafés / restaurants in the city and support their role in making the city more attractive for residents, workers, and visitors and in creating employment.

Policy CCUV32 - Outdoor Dining Proposals for outdoor dining / trading from premises extending into the street will be supported where they would not harm local amenity or compromise pedestrian movement, accessibility needs or traffic conditions.

15.14.7.2 Restaurants/Cafes

The positive contribution of café and restaurant uses and the clusters of such uses to the vitality of the city is recognised. In considering applications for restaurants, the following will be taken into consideration:

The appeal site is located directly south of the North Lotts & Grand Canal SDZ Planning Scheme Area and ‘The Malting Tower’ is located within a Conservation area (red hatched), i.e. not an Architectural Conservation Area.

Policy BHA9 - 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.

Enhancement opportunities may include:

1. Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting.

2. Re-instatement of missing architectural detail or important features.
3. Improvement of open spaces and the wider public realm and reinstatement of historic routes and characteristic plot patterns.
4. Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area.
5. The repair and retention of shop and pub fronts of architectural interest.
6. Retention of buildings and features that contribute to the overall character and integrity of the Conservation Area.
7. The return of buildings to residential use. Changes of use will be acceptable where in compliance with the zoning objectives and where they make a positive contribution to the character, function and appearance of the Conservation Area and its setting.

The Council will consider the contribution of existing uses to the special interest of an area when assessing change of use applications, and will promote compatible uses which ensure future long-term viability.

15.15.2.2 Conservation Areas

Conservation Areas include Z8 (Georgian Conservation Area) and Z2 (Residential Conservation Area) zones, as well as areas identified in a red hatching on the zoning maps which form part of the development plan. These red-hatch areas do not have a specific statutory protection but contain areas of extensive groupings of buildings, streetscapes, features such as rivers and canals and associated open spaces of historic merit which all add to the special historic character of the city. All planning applications for development in Conservation Areas shall:

- Respect the existing setting and character of the surrounding area.
- Be cognisant and/ or complementary to the existing scale, building height and massing of the surrounding context.
- Protect the amenities of the surrounding properties and spaces.
- Provide for an assessment of the visual impact of the development in the surrounding context.

- Ensure materials and finishes are in keeping with the existing built environment.
- Positively contribute to the existing streetscape Retain historic trees also as these all add to the special character of an ACA, where they exist.

Development of Protected Structures

It is the Policy of Dublin City Council: BHA2 - That development will conserve and enhance protected structures and their curtilage and will:

- Ensure that any development proposals to protected structures, their curtilage and setting shall have regard to the Architectural Heritage Protection Guidelines for Planning Authorities (2011) published by the Department of Culture, Heritage and the Gaeltacht.
- Protect structures included on the RPS from any works that would negatively impact their special character and appearance.
- Ensure that works are carried out in line with best conservation practice as advised by a suitably qualified person with expertise in architectural conservation.
- 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.

[Inspector's Note: Policy BHA2 (c) and (d) on page 349 of the Development Plan are mislabelled but do in fact relate to different sub-policies of BHA2]

- Ensure that the form and structural integrity of the protected structure is retained in any redevelopment and ensure that new development does not adversely impact the curtilage or the special character of the protected structure.
- Respect the historic fabric and the special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials.

- (e) Ensure that new and adapted uses are compatible with the architectural character and special interest(s) of the protected structure.
- (f) Protect and retain important elements of built heritage including historic gardens, stone walls, entrance gates and piers and any other associated curtilage features.
- (g) Ensure historic landscapes, gardens and trees (in good condition) associated with protected structures are protected from inappropriate development.
- (h) Have regard to ecological considerations for example, protection of species such as bats.

15.17.4 Outdoor Seating and Street Furniture

Certain uses in the public realm, including elements of street furniture, can lead to problems of visual clutter and to obstruction of public footpaths for pedestrians, in particular people with disabilities. These elements include newspaper stands, telephone kiosks, traffic and bus signs etc. It is an objective of Dublin City Council to control the location and quality of these structures in the interests of creating a high-quality public domain.

All street furniture provided by private operators including retailers, publicans and restaurateurs, etc., and utility companies should be to the highest quality, preferably of good contemporary design avoiding poor historic imitation and respect the overall character of the area and quality of the public realm and be so located to prevent any obstruction or clutter of all footpaths and paved areas including landings.

In this regard, street furniture requires either a licence under Section 254 of the Planning and Development Act, 2000 (as amended) or planning permission (including street furniture erected on private lands). In both instances, the applicant is required to submit details of the location, design, specification and quality of the proposed elements of street furniture. Details of maintenance and cleansing schedules, together with a certificate of structural stability, may also be required. Street furniture should be designed to be accessible to disabled persons where possible.

In considering applications for outdoor furniture, the planning authority shall have regard to the following:

- Size and location of the facility.
- Concentration of existing street furniture in the area.
- The visual impact of the structure, particularly in relation to the colour, nature and extent of advertising on all ancillary screens.
- Impact on the character of the streetscape.
- The effects on the amenities of adjoining premises, particularly in relation to hours of operation, noise and general disturbance.
- Impact on access and visibility.

5.2. Natural Heritage Designations

There are two natural heritage designations located approximately 2km east of the appeal site - South Dublin Bay and River Tolka Estuary SPA (004024) and South Dublin Bay SAC (000210).

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. The First Party grounds of appeal are, in summary, as follows:

- The 1st reason for refusal relating to the inappropriate nature of the dining structure and the adverse impact of said structure on the character of the area is overstated.
- The pastiche buildings along Clanwilliam Terrace combined with the lack of other restaurant/café uses on this street mean that the dining structure for

which retention is sought brings life and animation to an otherwise bland streetscape.

- The appeal site is located in a Conservation Area and not in an Architectural Conservation Area and regard must be had to recent development and grants of permission for modern buildings in the immediate area which lessens the historic importance of The Malting Tower to which the dining structure, a removable and modestly proportioned structure, is attached.
- While the rail bridge to the north of the appeal site is a Protected Structure, The Malting Tower is not and regard must be had to this in the Board's assessment of the retention application.
- The current design of the dining structure which removed an earlier modern awning, permits more of the stonework of The Malting Tower to be seen and thereby contributes positively to the character of the Conservation Area and does not involve the loss of historic fabric
- The Board has previously decided, ABP-305391-19, that the dining structure would not have a detrimental impact on the visual amenities of the area and the contemporary building material does not detract from the historic fabric of The Malting Tower.
- The dining structure is completely demountable and does not represent a permanent structure in the streetscape.
- Regarding the 2nd reason for refusal relating to the pedestrian traffic hazard caused by the dining structure reducing the footpath width to 0.98m, the First Party states that there is no through vehicular traffic allowed under the rail bridge and the carriageway effectively acts as a shared surface for pedestrians and cyclists at this point in the Clanwilliam Terrace/Grand Canal Quay through route.
- Given that the rail arch measures 2.36m at its highest point, pedestrians and cyclists tend to be funnelled into the centre of the arch and carriageway when using the Clanwilliam Terrace/Grand Canal Quay through route and a footpath width of 0.98m next to the dining structure is not as hazardous as would be thought at first glance.

- Public realm improvements associated with the development of a 10-storey block opposite The Malting Tower, (Ref. 2808/19, Boston Sidings Site), which involve the removal of existing parking spaces and the extension of the footpath at this location will mean that pedestrian and cycle traffic will dominate this area thus further minimising traffic hazard in the area.

[Inspector's Note: Ref. 2808/9 was granted on appeal – ABP-304878-19 and was subsequently modified by Refs. 2682/21, 3386/21 and 5106/22]

6.2. Applicant Response

- Not applicable.

6.3. Planning Authority Response

- The Planning Authority have responded that the Board uphold the decision to refuse retention permission but in the event of a grant issuing from the Board, that a condition requiring the payment of a Section 48 contribution be applied.

6.4. Observations

- No Observations have been received in relation to this appeal.

7.0 **Assessment**

7.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The assessment below therefore addresses whether or not retention permission should be granted for the dining structure having regard to the historic context within which the structure is located and the consequent visual impact attached to the structure, and also having regard to the issue of traffic safety.

7.1.1. The issue of AA Screening is also addressed in this assessment.

7.2. Visual Impact

7.2.1. The proposal is for the retention (for 3 years) of an outdoor dining structure which is an aluminium and grass enclosure with retractable roof was refused by the Planning Authority on the basis that the subject site is located within a Conservation Area and

the outdoor seating by reason of its design and material would excessively dominate and be injurious to the character and amenities of this sensitive streetscape and the proposed retention of the enclosure would seriously injure the special architectural character of the historic building at the Malting Tower and the architectural character of the adjoining rail bridge which is a Protected Structure and would therefore set an undesirable precedent for similar type of development in the area.

- 7.2.2. I would note that the structure for which retention is sought is a semi-permanent structure which is attached to the facade of the existing restaurant projects out onto the public footpath. The Malting Tower is attractive in character and located in a Conservation Area and while this structure is not a Protected Structure, the adjacent rail bridge is on the RPS in Volume 4 of the Development Plan. The area has an attractive character due to the cobbled street, the adjoining stone bridge and the existing structure on site.
- 7.2.3. Having regard to the streetscape context, I am of the opinion that the outdoor dining structure is an unsympathetic structure that projects into the public realm and that instead of enhancing the vibrancy of the streetscape as claimed by the First Party, has the opposite effect by being detrimental to the visual character and streetscape of the area.
- 7.2.4. Claims by the First Party that the removal of the awning to accommodate the current structure enhance the visual amenity of the area by virtue of more stonework on the west façade of The Malting Tower becoming visible, are, in my opinion without any substance in fact. The previous awning protecting the outside seating area of The Malting Tower was more visually appropriate and more sensitive to the historic context of the area.
- 7.2.5. I would consider that the adverse visual impact associated with the nature and scale of the outdoor dining structure would be detrimental to the visual amenities of the area regardless of the fact that the appeal site is not located within an ACA. The Malting Tower itself is not a Protected Structure but the rail bridge to the north of the appeal site is on the RPS list in the Development Plan. I would concur with the Planning Authority decision, that permitting the development for which retention is sought would set an undesirable precedent for similar development in the immediate area and throughout the city and accordingly recommend that the Board refuse

retention permission for the outdoor dining structure on grounds relating to the adverse visual impact and detrimental impact on the character of the area associated with this structure.

7.3. Traffic Hazard

7.3.1. The outdoor dining structure projects 1.74m onto a public footpath leaving a space of 0.986m between the structure for which retention is sought and the edge of the public footpath. This restricted footpath area extends for the entire 11.m length of the outdoor dining structure.

7.3.2. I note the First Party comments regarding the pedestrian and cycle traffic being funnelled off the public footpath and into the centre of the carriageway due to the shallowness of the rail arch at the springing points and also note that the Clanbrassil Terrace/Grand Canal Quay route is closed to vehicular traffic excepting emergency vehicles.

7.3.3. However, notwithstanding this noted phenomenon, I note that the current situation creates an obstacle to pedestrian traffic by potentially forcing them onto the carriageway and therefore into conflict with cycle traffic. The dining structure also impedes less mobile members of the community and this is not a desirable situation which should be allowed to continue.

7.3.4. Accordingly, I would support the second reason for refusal cited by the Planning Authority in their decision and recommend that retention permission be refused

7.4. AA Screening

Having regard to the relatively minor development proposed within an existing urban area and the distance from the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that retention permission be refused for the reasons set out below.

9.0 Reasons and Considerations

1. The subject site is located within a Conservation Area and adjacent to a Protected Structure, and by reason of its design, scale and its projecting nature relative to the existing streetscape would have disproportionate and detrimental impact on the visual amenity of the area and character of the Conservation Area. The development for which retention permission is sought would, contrary to Development Plan policies which seek 'to protect the special interest and character of all Dublin's Conservation Areas', set and undesirable precedent for similar development throughout the city and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The development for which retention is sought would be located within the existing pedestrian footpath and reduce the effective width of the pedestrian footpath so as to constitute an obstruction of said footpath with insufficient width to cater for such foot traffic as well as being severely constrained in regards to pedestrians with impaired mobility. The development for which retention is sought at this location would, therefore, be contrary to the proper planning and sustainable development of the area.

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

Bernard Dee
Planning Inspector

9th January 2024