



An  
Bord  
Pleanála

## Inspector's Report ABP 318620-23

### Development

PROTECTED STRUCTURE: Connect the two premises existing bar and bar / restaurant, new shopfront and hatch and construction of an extension. Change of use of existing commercial/office use at upper levels to guest bedroom accommodation and all associated works.

### Location

79 Queen Street, Dublin 7, D07  
DW3R & 91-92 Benburb Street, Dublin 7, D07 WFH3.

### Planning Authority

Dublin City Council.

### Planning Authority Reg. Ref.

3365/23

### Applicant(s)

Fidelity Hospitality Limited

### Type of Application

Permission

### Planning Authority Decision

Refuse

### Type of Appeal

First Party

### Appellant(s)

Fidelity Hospitality

### Observer(s)

TII

### Date of Site Inspection

4/4/24

### Inspector

Rosemarie McLaughlin

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## 1.0 Site Location and Description

- 1.1. The corner appeal site consists of No. 79 Queen Street and No. 91/92 Benburb Street, Dublin 7. No. 79 is a three storey, over basement, redbrick Protected Structure (RPS No. 6884) that is two bays wide fronting Queen Street to the east, a splayed corner and a 6 bay section fronting Benburb Street and the Luas line to the north. A bar called Fidelity is located at ground floor with office, art studio and some vacant uses above. Adjacent to the west, are amalgamated No.s 91 and 92 Benburb Street which are lower in height than No.79 Queen Street and are not protected structures. No. 79 Queen Street is included in the National Inventory of Architectural Heritage (NIAH) with a regional rating, Ref. 50070233. Opposite the appeal site to the north at 78 Queen Street is a large bar, McGettigan's, with tourist accommodation over. No. 5 Queen Street, Frank Ryan's public house and restaurant is located on the opposite side of the road to the southeast.
- 1.2. No. 92 is a 2 bay plastered building with irregular windows and No. 91 is a brick fronted, three bay building, bounded by a laneway to the west which is outside the appeal site and within the applicant's control. No.91/92 are amalgamated with a combined new shop front. The ground floor of No.91/92 on the date of inspection was at the final fit-out stage for a new business, where the layout was along the lines of the submitted FI Dwg.No PL030.
- 1.3. To the rear of No. 91/92 is a new access door to a yard (on a lower level) via a stepped platform. A large standalone storeroom outside the application site within the blue line appears to be used in conjunction with the appeal site. The rear yard also provides access to the rear of No. 80 Queen Street, a protected structure also within the blue line of the applicant and to the rear of buildings fronting Ellis Quay. No. 80 is vacant at ground floor and appears to be undergoing internal works and builders were operating between the No.91/92 and No.80 Queen Street via the rear lane/yard. The upper floors of No. 91/92 (residential) are accessed from a door on Benburb Street and are not part of the application.
- 1.4. In addition to the application site 390.5 sqm outlined in red, the applicant has control over c. half of the city block bounded by Ellis Quay, Queen Street and Benburb Street as illustrated by the blue line submitted in the FI site plan drawing No.PL 001 Rev A.

- 1.5. For the information of the Board, while this is an application for works and change of use certain works have taken place on the site. The works that have been carried out are detailed below beside the proposed development so as to provide context.

## 2.0 Proposed Development

- 2.1. There are a number of elements to the advertised application, and I provide relevant information below each element.

(a) connect the existing ground floor bar at 79 Queen Street and existing restaurant/bar at 91/92 Benburb Street to include new shopfront and hatch and construction of a new single-storey 20sqm WC extension to the rear side (east) of 91/92 Benburb Street and to the rear (south) of 79 Queen Street;

**For information**, a new combined shopfront is in situ in the amalgamated No.91/92. This appears to vary from the permission sought but without detailed drawings of what has been built, an exact comparison cannot be made with application Drawing PL018 and PL019 (FI). The existing elevation shopfront drawing is also to the shopfront permitted DCC Ref. 2190/14. The hatch was removed from the proposal in FI.

The new extension has been built. Two connections have been created (to the toilets), one from the south elevation of No.79 Queen Street and one from the east elevation of No.91/92

The location of the new opening to the new toilets from the south elevation of Fidelity Bar was blocked with a screwed in panel to the wall. The site was under fit out and the person in charge of the works and he confirmed that an opening was in place. The proposed main connection is not opened on the west side of Fidelity bar. The planning appeal submitted a photograph of a brick arch on this area which has been obscured by a new heating unit and suspended ceiling in No. 91/92 and it is unclear if any works have taken place behind the smooth panel. No works are evident on the Fidelity side of the bar as panelling prevents visibility of the area in question.

(b) **replace existing flat roof** to the rear (south) over existing ground floor restaurant/bar of 91/92 Benburb Street with corresponding minor change to rear side (west) elevation including new door;

**For information**, a new flat roof with new rooflights has been constructed. A new door has been placed in the rear south elevation per FI Dwg. No.PL030 not on the west elevation as shown on the proposed drawings first lodged. A new platform with steps has been built from this new access to the yard to the south, outside the red line. The west elevation has also been altered with ventilation and an integrated infrastructure box (not shown on the drawings) close to Benburb Street.

(c) **change of use** of existing commercial/office use at first and second floor level of 79 Queen Street to associated guest bedroom accommodation for the provision of a total of 8 en suite bedrooms (5 double bedrooms, 3 single bedroom).

**For information**, no change of use has occurred.

All to include associated works and services at 79 Queen Street, Dublin 7, D07 DW3R, a protected structure (RPS ref. 6884) and 91/92 Benburb Street, Dublin 7, D07 WFH3.

**For information**, drainage and ventilation works have taken place. It may be noted (and is raised in application and appeal) that a modern fit out has occurred to Fidelity bar at ground floor in No.79 Queen Street. The drawings annotate that this is not part of the application. The interior works to the protected structure at ground floor include, inter alia, a suspended ceiling and wall panels which appear to be relevantly recently carried out and internal illumination. A box type structure extends from the rear of the bar into the hallway to the upper floors of No.79 Queen Street which appears larger than the submitted drawings.

**2.2. Further Information(FI):** In summary FI received 24/8/2024:

- Check in/out will be done at Bar No.2 (No.91/92), permanently manned. Stays are anticipated between 1 and 14 Days. Breakfast will be provided in restaurant area to ground floor.
- Restaurant use established by DCC Ref. 2190/14.
- Bar/restaurant will be normal hours unless exemption from Court.
- Ventilation to restaurant will not cause any nuisance to guest accommodation.
- Further details of shopfront (at No.91/92) provided and amendment to omit window to serve coffee, so window arrangement matches Fidelity.

- Revised conservation report and photographic record provided and detailed drawings of historic fabric of ground floor of No. 79. Window and door schedule provided and details of alterations. Methodology of fire upgrading and acoustic works to floors ceilings. Detailed method statement requested to be provided by way of condition. Repointing and cleaning of roof details provided.
- Drainage from ensembles of guest accommodation to be provided externally and drainage from protected structure to rear yard, details submitted on drainage routes.
- Same landlord owns both properties and the door has been in existence for c 20 years. Landlord approves fire escape to south wall of No.92 into adjoining yard. Laneway bin storage to be maintained.
- Section and roof plan provided. Details to reduce ensuite impact provided, where beside window, this is to reduce impact on historical fabric and shower curtain suffices.
- The request to omit the new openings between No.79 and adjacent not part of design strategy. Sanitary services grouped. Bar and restaurant will operate different opening hours.

**2.3. Clarification of Further Information (CFI).** In summary, CFI received 18/10/2023:

- The applicants view is the permitted change of use to restaurant 219/14, was subject to a commencement notice in 2019, and the use automatically started at that time.
- The subsequent fit out is irrelevant as internal works are exempt under section 4(1)(h) of the PDA 2000.
- Revised ventilation and extraction system provided per DCC Ref. 219/14 and will be carried out accordingly.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission was refused for two reasons:

1. The proposed development, providing for the amalgamation of the two ground floor units at Nos. 91-92 Benburb Street with the existing public house at No. 79 Queen Street (a protected structure) by the creation of new openings in the party wall, would result in the loss of historic fabric within the boundary walls, and give rise to the amalgamation and blurring of historic plots, and the potential creation of a 'superpub' arrangement at ground floor level in No. 79 Queen Street, Nos. 92 and 91 Benburb Street. The proposal would therefore be contrary to best conservation practice, and to the provisions of the Dublin City Development Plan (2022-28), including Policy BHA2 (f) which is to 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, Policy BHA2 (g) which is to ensure that new and adapted uses are compatible with the architectural character and special interest(s) of the protected structure and Section 15.14.12 which discourages the development of 'superpubs'.
2. The proposed provision of guest accommodation at first floor level, by reason of its layout with independent access from Queen Street and lack of supporting facilities, is not considered to comprise traditional type bed and breakfast or guesthouse type accommodation. The proposed accommodation is considered to be short term tourist accommodation, which would be contrary to the provisions of Section 15.14.3 of the current Dublin City Development Plan (2022-28) in which there is a general presumption against the provision of dedicated short term tourist rental accommodation in the city due to the impact on the availability of potential housing stock. The proposal, in itself and in the precedent it would set for further developments of this type on upper floor levels, would therefore be contrary to development plan provisions and to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

**Final Planning Report 9/11/23:** incorporates earlier reports and request for AI (9/5/23) and CFI (22/9/23) and the responses thereto.

- Zoning, site description, proposed development, planning history, interdepartmental reports, observation are provided.
- Specific City Development Plan (CDP) provisions are repeated focusing on short term tourism, restaurants/cafes, licenced premises, conservation and specific relevant development plan standards.
- Initial assessment led to FI (4 items and 19 sub sections on item no.4), and then CFI (2 items) and the responses are stated. (The responses are summarised under the proposed development section of this report).
- Following FI and then CFI, the Conservation officer (CO) recommends a grant subject to detailed conditions including the the omission of the two ground floor openings at ground level through the western wall of the protected structure and through the southern rear wall as it could result in a superpub and revised shopfront. The CO also considers the suspended ceiling and other works at No.79 require a separate permission. The planner notes a dance area in the updated drawings.
- It is considered that the recommended conditions essentially amounts to a refusal of element (a), i.e. the connection between the properties.
- There is substantial concern the guest accommodation would not meet traditional bed and breakfast, guesthouse or hotel accommodation. Having regard to the CDP, the upper floors have potential for traditional residential accommodation without private open space. Permission is recommended to be refused for the reasons outlined above.

#### 3.2.1. Other Technical Reports

**Archaeology Report 24/4/23:** The proposed 20sqm extension may have potential to affect sub-surface archaeological features but this is low. A condition should be attached to any permission.

**Transport Report 20/4/23:** Recommend grant with conditions. TII comments noted.

**Drainage Report 28/4/23:** Three conditions are provided.



**TII Submission 6/4/23:** Recommends section 49 contribution if exemption does not apply.

**Conservation Reports:** Report dated 3/5/23 Recommended FI. Report dated 13/9/23 on foot of FI recommended permission subject to conditions. Of note the proposed change of use of upper floors into tourist accommodation is considered acceptable subject conditions and notes that while traditional residential use over public houses occurred, this is less common owing to late night noise whereas short term may be more appropriate and retains a use in a protected structure. The proposed new openings would result in the loss of historic fabric, give rise to amalgamation and blurring of historic plots and creation of super pub arrangement contra to best conservation practice and CDP. It is recommended they be omitted. If Planning section recommend a grant of this element, conditions are recommended. Also of note, the proposed shop front on 91-92 Benburb Street should be of a more contemporary design

## 4.0 Planning History

4.1. The following is the relevant planning history on the appeal site.

**DCC Ref. 2190/14: 91-92 Benburb Street.** Development comprising change of use of 2 no. adjoining (and internally connected) ground floor units from existing retail to restaurant use (approx. 203 sqm); internal fit out; new signage to be painted onto the existing signage zone on the shopfront; 2 no. new doors to the front elevation; provision of bin storage area; provision of a new ventilation duct (400mm x 400mm) which is fitted to the rear elevation of No.91. Final grant subject to 14 conditions dated 14<sup>th</sup> October 2014.

4.2. The following history file on the south side of the city that the Board may find of assistance.

**ABP- 301816 (2547/18).** Permission refused for inter alia alterations to provide link at Ground Floor Level to link into No. 4 Merchant's Arch and from there at first floor level into Nos. 1, 2 & 3 Merchant's Arch; to provide an enlarged restaurant/public house premises. Change of use of existing buildings at 1 Merchant's Arch at ground from retail to restaurant/public house for reasons that included:

- significant intensification of the existing use would have a detrimental impact on the historic fabric and character of the subject site and of the local area.
- overconcentration of licensed premises in this area of the city - and would lead to conditions that would seriously injure the residential amenities of existing residents in the area, by reason of additional levels of noise and disturbance.
- merging of two or more units or buildings into one unit or building at ground and/upper floor level through the demolition of dividing walls or the provision of interconnecting doors or entranceways can only be permitted in exceptional circumstances, and no such exceptional circumstance to warrant such intervention has been proven.

## **5.0 Policy and Context**

### **5.1. Development Plan**

The Dublin City Development Plan 2022-2028 (CDP) applies, and key provisions are summarised below.

- The appeal site is zoned Z5 'City Centre', the objective for which is 'To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed use development which create a sense of community, and which sustain the vitality of the inner city both by day and night, subject to noise reduction measures. Restaurant and public house use are permissible in principle within the Z5 zoning. Bed and breakfast and guesthouse use are also permissible in principle.
- Chapter 4 sets out the overarching framework and strategy to guide the future sustainable development of the city. The vision for the urban form and structure of the city is to achieve a high quality, sustainable urban environment, which is attractive to residents, workers and visitors. Sections 4.5.5 and 4.5.6 of the Plan set out policies and guidance in relation to Urban Design, Architecture, and the Public Realm.
- Chapter 6 on City Economy and Enterprise. Of note:

- Policy CEE26 Tourism in Dublin
- Policy CEE28 Visitor Accommodation
- Chapter 11 recognises the importance of protecting built heritage and archaeology in quality place-making and urban design. Policy BHA2 – To conserve and enhance Protected Structures and their curtilage. BHA2 has applicable subsections (a) to (h) which where relevant are outlined in the assessment.
- Chapter 15 sets out the standards and criteria to be considered in the development management process, as well as the information to be submitted for various applications. Of note:
  - Section 15.14.2 bed and breakfast
  - Section 15.14.3 -short term tourist accommodation
  - Section 15.14.7.2 - restaurants and cafes
  - Section 15.14.12 - licenced premises, super pubs will be discouraged
  - Section 15.17.5 -shopfronts and signage
  - Appendix 6 - outlines further detail on Conservation.
  - Appendix 17- signage

## 5.2. Relevant Guidelines

- 5.2.1. The **Architectural Heritage Protection Guidelines for Planning Authorities, 2011**, (AHPGPA) sets out detailed guidance to support planning authorities in their role to protect architectural heritage when a protected structure is the subject of development proposals. It also guides those carrying out works that would impact on such structures.
- 5.2.2. The **Development Management Guidelines 2007** provide inter alia, recommendations to PAs on FI and subsequent decisions.

## 5.3. Natural Heritage Designations

None.

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

- 5.5. 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**

- The Development Management Guidelines 2007 (section 5.7) provide that FI/CFI should be sought only when PA considers permission should be granted. The proposal accords with national, regional, and local planning policies. The process of FI/CFI indicated a likely grant and CFI should not issue if there was a fundamental objection. Board urged to grant permission.
- ABP is offered to remove the tourist accommodation by reason of split decision. This would result in the overall project not being lost over the prejudice against innovative way to increase tourist accommodation. No works would take place in that area. The critical part of the application is the amalgamation of the units at ground floor.
- The appeal to be decided de novo. The reasons for refusal are repeated. The details of what was submitted at FI stage is repeated. Details are provided of site context, planning policy, etc. The north inner city area is in need of investment. The current premises (Fidelity) like the previous use as the Dice bar is not a sustainable business and needs to extend. The proposed use of toilets and kitchen is efficient. Alterations to no.79 would be more intrusive to the building. The new owners have had the highest regard in upgrading the building.
- The AHPGPA is quoted which in summary refers to sensitive adaptation and designing for change. Best use of a protected structure is its continued use. The application is overseen by a conservation architect.
- Sections 14.4, 15.14.2, 15.4.3, 15.4.7.2, 15.17, Table 2 of appendix 3 and BAH2, BAH6, BHA11, BHA24 (in a table format) are all repeated and in summary, the

appeal states that the proposed development is in compliance. The closure of the Dice bar illustrates that the development is not viable on its own.

- 3 no. connections to the adjacent property are proposed, 2 no. are required in form of two openings so existing toilets would be connected to new toilets. A connection c 1.4m wide is to re-use an original arched opening between the buildings neither accepted or identified by DCC which has been filled in previously and was pre 1964. Photographs are submitted. There is therefore evidence of a previous connection between the buildings.
- Proposal will provide disabled access, there is no report from DCC disability officer. In the past the Dice Bar and No. 91/92 operated side by side where one having a drink in No. 79 had to go to the footpath to No.91/92. The loss of historic fabric is minimal. Policy BHA2 which is extensive does not prohibit such development. Extensions and amalgamations have been carried out to several notable buildings. The works are wholly reversible.
- Condition of 2190/14 required inter alia, works to be carried out prior to occupation as a restaurant.
- The proposed hatch (at shopfront) was removed at FI stage. The buildings will be improved. A small toilet extension will tidy up the rear area. Ventilation is sensitively sited. Roller shutters will be removed. The replacement to the flat roof is exempted development.
- DCC incorrectly considers the application is to amalgamate No. 91/92 which is incorrect as they were already merged and had permission for change of use from retail to restaurant. The notion of super pub is not applicable, No.79 is small premises and 91/92 is not a large premises. The refusal cherry picks parts of the CDP and Policy BHA2 (f) and (g) but fails to address sections that support the application and the CDP conservation policy in the round. The planning report may have erred and meant sections (d) and (e). The proposal is smaller than other merged premises McGettigans and Token restaurant on Queen Street. No. 91/92 was part of the Bargaintown operation and both units were in restaurant use until acquired by applicant. The total visible loss of the historic fabric is the location of the larger opening and the reason for refusal is not merited that one would not understand they were walking through one building to another, like many other situations. There would be no blurring of historic plots.

- There are no third party objections or from An Taisce or Heritage Council. The proposal is acceptable to relevant sections of DCC. The development accords with best practice. The approach of DCC is effectively to let buildings fall into disrepair rather than allow minor amendments.
- In relation to the CO recommended conditions, the appellant agrees regarding the submission of drawings but rejects that the shopfront should be redesigned. It is in keeping with the area and McGettigans. It is not the role of DCC to redesign the shopfront. The CO does not know what the Dice bar looked like, and no permission is required for the current layout.
- DCC refer to the upper floor suitability for standard residential use. This was not applied for. Tourist accommodation is permitted in principle. The applicant received a grant for soundproofing upper floors and this can be dealt with by condition.

## 6.2. Planning Authority Response

- Request decision to refuse be upheld. If permission is granted, it is requested to attach section 48 and section 49 contribution conditions.

## 6.3. Observations

- **TII** request conditions that deliveries shall limit interference with Luas operations, Code of practice for works on or near Luas to be complied with and section 49 contribution to be applied if not exempt.

## 6.4. Further Responses

None

## 7.0 Assessment

- 7.1. This appeal is considered as if the application had been made to the Board in the first instance. I have read the contents of the file and consider the assessment may be addressed under the following headings.

- NEW ISSUE: Procedural issues regarding retention of certain development, works not included in application and correct planning notices.
- Amalgamation of ground floor between 79 Queen Street, a protected structure and 91/92 Benburb Street, creating new openings, 20 sqm toilet extension and replace flat roof
- Change of use of upper floors of 79 Queen Street to guest bedroom accommodation
- New shopfront 91/92 Benburb Street

**7.2. NEW ISSUE: Procedural issues regarding retention of certain development, works not included in application and correct planning notices.**

- 7.2.1. As indicated in section 2 of this report, the planning application is for change of use and works. As described in section 3 of this report, the 20 sqm extension has been constructed, a new shop front has been created, openings have been made into the toilet extension, a new roof has been erected with associated site works and elevational changes have occurred, some of which are not indicated on the plans. Works have occurred within and outside of the red line, all within the blue line. The new access on the western side of Fidelity bar to No. 91/92 Benburb Street and change of use of upper floors to tourist accommodation have not yet been carried out. Owing to the works that have taken place, the appeal becomes complex in terms of proper procedures involving retention of development not included in public notices and the fact that the site includes a protected structure. The appellant contends that certain works sought is in fact exempted development, however the fact remains that they sought permission before asserting this position. From the contents of the file and my inspection of the site, I consider that the application should be regularised where drawings should be provided that clearly distinguish between retention and permission.
- 7.2.2. In the interest of balance, I consider that it is likely that at the time of making the application (13/03/2023) that the description was correct in seeking permission rather than retention.
- 7.2.3. Having regard to the level of detail that may be required, the Board may consider that it is precluded from giving further consideration to the granting of permission for the development the subject of the application and refuse permission or as I

recommend below, the Board can exercise its discretion pursuant to section 132 and 142(2) of the PDA2000 and seek the submission of plans and particulars which are detailed in section 8 of this report (which may also have a consequence for the appropriate appeal fee). Thereafter revised public notices may be sought under Section 142(4) of PDA2000.

- 7.2.4. Related to the procedural issue above, internal works have been carried out in the protected structure at Fidelity Bar as raised by the PA in the FI. The appellant responded in FI that such works are exempt under section 4(1)(h) of the PDA2000. The appellant also considers the Conservation section does not know what the Dice Bar looked like previously. The CO maintains in her report on Clarification of FI, that the internal works require retention permission. There is no history of any declarations for exemptions on the said works. The PA did not include in the reason for refusal that the interior works carried out to the protected structure at ground floor should have been included in the application.
- 7.2.5. I am mindful that the Board has no role in enforcement. I do consider however, that as this application is considered as if it were made to the Board in the first instance and that obligations exist to ensure that protected structures are protected, that the internal works carried out to the protected structure should form part of an overall assessment at No.79 Queen Street. While internal works may be acceptable, in planning and conservation terms, I do not consider it appropriate to carry out an assessment on a piecemeal basis where certain works within the red/blue line are excluded from part of the overall development. I consider that the details of the internal fit out at no. 79 Queen Street should also be incorporated into the section 132 request for further particulars. The Board may disagree with this approach and therefore this matter is separately itemised in the recommendation.
- 7.2.6. A further procedural point arose during the application. The PA sought clarification as to the implementation of Ref. 2190/14 which permitted “change of use of 2 no. adjoining (and internally connected) ground floor units from existing retail to restaurant use (approx. 203 sqm); internal fit out; new signage to be painted onto the existing signage zone on the shopfront; 2 no. new doors to the front elevation...”. The Board may note the current application includes “connect the existing ground floor bar at 79 Queen Street and existing restaurant/bar at 91/92 Benburb Street”. The response to the PA is that a commencement notice served in 2019 triggered the



permission. In the appeal, it is stated on page 5 that “both units were in restaurant use until our client began refurbishment works (which are available for ABP to view on request)”. As the appellant has made much about the previous use in Fidelity bar, I consider the material submitted on the recent uses of No.91/92 (previously part of the Bargaintown operation), as wholly insufficient and the site reads as having been developed from a shell condition. I also note the shop front was not carried out in accordance with the permission (which is indivisible), and elements of condition No. 2 were not carried out (works to upper floor sash windows outside this application), and I consider the service of a commencement notice is not in itself evidence that a permission was implemented within the appropriate period. Details of the restaurant use that operated should be provided to ensure that the permission was implemented within the appropriate period.

- 7.2.7. I would point out to the Board having regard to the Development Management Guidelines, I would not make the recommendation to serve a notice under section 132/142 PD2000, if I considered that the application should be refused in principle. I also have no objection to change of use that was granted by Ref. 2190/14 but consider that the information provided as inadequate to allow the Board to be satisfied that that this was in fact the existing use rather than a lapsed permission which would need to be rectified. The development involves the amalgamation of No. 91 and 92, into a protected structure and I consider that the correct process is important to ensure protection of the protected structure and to ensure ongoing protection to such structures is adhered to from a process position. This point can be clarified in the section 132 request.
- 7.2.8. In the event that the Board disagrees with the view above, I will assess the application as submitted to DCC for permission as if it had been made to the Board in the first instance and have noted for the information of the Board where development has already taken place. I consider that to carry out the assessment below will also provide the Board with more detailed information in coming to a decision.
- 7.3. **Amalgamation of ground floor between 79 Queen Street, a protected structure and No. 91/92 Benburb Street, creating new openings 20 sqm toilet extension and replace flat roof.**

7.3.1. The views of the appellant in relation to the necessity to make the business viable having failed before as a small, licenced premises, the compliance with the CDP and AHPGPA have been outlined above. The specific elements of the refusal can be broken down:

- ⇒ loss of historic fabric within the boundary walls, give rise to the amalgamation and blurring of historic plots, the potential creation of a 'superpub' arrangement, contrary to best conservation practice,
- ⇒ contrary and to the provisions of the Policy BHA2 (f) and (g) and 15.14.12 which discourages the development of 'superpubs'

7.3.2. I consider that the key element of the appeal is the first reason for refusal issue of the loss of historic fabric within the boundary walls, giving rise to the amalgamation and blurring of historic plots and the potential creation of a 'superpub', arrangement. The main proposed connection is a double door on the west elevation of Fidelity bar. The CO recommended a condition to refuse the openings between the properties but accepted the change of use of upper floors in principle.

7.3.3. At the outset, I consider the size of the existing Fidelity bar as a very small premises in a city centre location. While it is not specifically stated, the floor area of No. 79 Queen Street including the bar, access and circulation appears c.81 sqm excluding the toilets. No.79 is one room deep (c 4.5 m in depth) fronting Benburb Street on a narrow plot within a protected structure, constrained as a business by those facts. The back bar area extends c 0.75m in a box form into the hallway that leads to the upper floors and abuts the staircase access off Queen Street to the serious detriment of the proportions and scale of the hallway. New plastering work has been carried out to the box and it unclear from the submission when this development occurred, if it has been altered, and it may or may not be long standing. The photographs submitted exclude this element from the angle they were taken and given that it is such a notable feature, this a significant omission for assessment purposes. The Fidelity bar area is attractive and cosmopolitan but limited in size in a city centre setting. While the restricted size of the layout is undoubtedly part of its unique character, the appellants claim it is unviable, hence the closure of the Dice Bar. The AHPGPA encourage the use of protected structures and if the premises were to be unoccupied again, this would endanger the building.

- 7.3.4. Development of Protected Structures is provided in policy BHA2 subsections (a) to (h). The reason for refusal specifies (f) Protect and retain important elements including historic gardens, stone walls, ..and (g) ensure historic landscapes, gardens and trees ...are protected from inappropriate development. The appellant contends the PA mistakenly included these and I concur. I consider the most relevant are (b) protect structures from any works that would negatively impact their special character and appearance, (c) ensure that works are carried out in line with best conservation practice as advised by a suitably qualified person.. and (d) 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.
- 7.3.5. The curtilage of the protected structure is not identified, and I would consider that the yard to the rear as part of No.79, but this is obscured on site with the new development. The yard also serves rear accesses to other building within the blue line. A standalone building to the rear of No.79 Queen Street accessed from the shared yard appears to be used in conjunction with No. 91/92 but is not included in the application. No. 80 Queen Street, a protected structure is accessible to the yard and provides a connection via the yard into the rear of No.91/92 Benburb Street. Any extension of the proposed development uses into No. 80 Queen Street from the proposed development would require planning permission and a detailed conservation and planning assessment.
- 7.3.6. A modern internal fit out was in the final stages in No. 91/92 on retaining elements of the original retaining walls in the internal footprint. Owing to the central staircase location, the commercial areas on each side of the stairs are small with the west side adjacent to the lane (kitchen) at c 3.75m wide and the entrance area on the east as c 5.7m wide. No. 91/92 widens to the rear and this is the largest area c 97 sqm set up as two distinct areas where the southwest quadrant contains an area annotated on the drawing PL008 (application, first submission) as a small dance floor and small stage with the remainder as tables and seating.
- 7.3.7. I consider that No.79 Queen Street, a protected structure would not be negatively impacted by the creation of a double door c 1.4m wide into the adjacent premises, and this would not create a blurring of the historic plots owing to the very definitive and unique existing plan-form of No. 79 in terms of width and length. The narrow

single room containing a bar and patron area will be retained and the proposed doorway would be reversible in line with conservation practice. I consider the original plan-form would remain as clearly discernible and respected despite the addition of the double door and would not contravene policy BHA2, specifically subsection (d). The proposal does not propose to remove the bulk of the west wall reconfiguring the shape of the plan-form into the adjacent premises but to provide a doorway that can be closed

- 7.3.8. Section 11.2.18 of the AHPGPA provides that the formation of new openings in existing walls should be minimised, or avoided altogether, “in an interior of quality”, as this inevitably leads to the destruction of existing fabric. While the wall is obscured by panelling, the submitted documentation does not suggest that the proposed doorway access is located at any part of the interior with a special conservation value and this is not raised as an issue in the CO or planners report or by the conservation report and subsequent submissions.
- 7.3.9. The appellant has submitted an interesting photograph of the specific area of the proposed door with an existing lintel and brick arch over from the non-protected side, which they suggest is evidence of an early access point and was unearthed during the refurbishment of No.91/92. There is no submission accompanying the appeal from the applicant’s conservation architect on this point and no response from the PA. While there is little detail, there is a reasonable possibility that this was an opening in place from before the development of No. 91/92 or it was a connection between the properties. I do not think the issue turns on this point as the available information is limited. I consider that the removal of the panelling on the Fidelity side of the boundary wall and an examination by a conservation architect would shed more light on the issue. If an arch is discovered as part of a historical opening, the proposed access should respect that detail, and this could be dealt with by way of condition.
- 7.3.10. At No. 79, the east-west ridge and hipped roof at the junction clearly distinguishes the protected structure from the lower buildings at No. 91/92 from the exterior, as No. 91/92 has both a hipped roof in the opposite direction to No.79 and a flat roof. The non protected No. 91/92 retain on the Benburb side the smaller footprints either side of the central staircase and provide a wider rear area c 97 sqm resulting in a reasonable layout to adjoin No.79 without creating a large single merged space. It

appears that the entire operation is capable of operating at the one time or No. 79 and No.91/92 may open at different times. No.79 does not have room to provide a kitchen at ground level and this can be facilitated by the location of the kitchen in the property adjacent. Within the sections of No.91/92, the layout also appears to allow certain parts operate at the same time or again some parts may be open and others not. This seems entirely reasonable and appropriate for a city centre bar and restaurant use and would allow for an all-day vitality to this part of the city that is close to Smithfield Square and accessible by public transport, foot and cycle.

7.3.11. The CDP acknowledges in section 4.5.1 that the inner city, performs the function of a capital city core and Covid-19 brought new challenges to the vitality and viability of the city particularly to the retail, hospitality, entertainment and culture sectors. In summary, section 15.14.12 relating to Licenced Premises etc, recognises there is a need to facilitate the concept of the 24-hour city, particularly in the city centre. The CDP states that DCC will encourage entertainment/cultural/music uses which help create an exciting city for residents and tourists alike. The CDP also provides that the development of 'superpubs' will be discouraged. and the concentration of pubs will be restricted in certain areas of the city where there is a danger of overconcentration. This is not a new pub but an existing one.

7.3.12. Superpub is not defined in the glossary of terms CDP. Having visited the site, I do not consider the amalgamation of the properties by a new doorway would create a Superpub in the ordinary sense of the word, especially as the existing licenced premises at No.79 is such a small premises. This is not the creation of a large open space that can accommodate several hundred or a thousand patrons and is limited to the existing redline footprint of c 390 sqm including the serving areas, toilets, circulation, staircase to No.79 and kitchen. The protected structure has survived mostly intact in an area that historically suffered severe neglect and urban blight and after a period of non-occupation has reopened as a small, licenced premises. I consider that extending into the adjacent protected structure on No. 80 Queen Street would have a much greater impact on the plan form of both buildings and it is preferable that the connection is into No.91/92 with its new eclectic layout, retaining elements of the original supporting walls and providing an interesting overall space which respects the historical layout.

7.3.13. Permission is also sought for a 20 sqm toilet extension attached to the protected structure and this is acceptable in principle. The toilet block is essentially an infill of irregular shaped area. The toilet as illustrated in the Fidelity Bar is limited by size and I consider that access to a new toilet block and larger toilets is acceptable. A new flat roof and new skylights is acceptable in principle.

7.3.14. As noted at the start of this report, the extension and new accesses to it are in situ and this is not an application for retention. Works involving breaking out a wall, even in secondary areas in a protected structure should be overseen by a conservation architect and the legislation in relation to material works to protected structures requires permission or a relevant declaration.

#### 7.4. **Change of use of upper floors of 79 Queen Street to guest bedroom accommodation**

7.4.1. The views of the appellant have been summarised and an offer to omit this part of the application if the Board wishes to remove this element as they consider the ground floor amalgamation the critical part of the application. I will assess the proposal against the relevant CDP provisions and having regard to the location of site, the associated uses in the building and the surrounding area. The key issue in the second reason for refusal relate to:

- ⇒ Layout with independent access from Queen Street/lack of supporting facilities, is **not considered traditional type bed and breakfast /guesthouse type accommodation** and to **be short term tourist accommodation** contrary to s.15.14.3 of CDP general presumption against the provision of **dedicated short term tourist rental accommodation** in the city due to the impact on the availability of **potential housing stock**.
- ⇒ Would set precedent it would set for further developments of this type on upper floor levels.

7.4.2. The CDP does not define short term tourist accommodation. It is the case that many apartments are let to tourists on an ongoing basis, where tourists can avail of a kitchen and laundry and I would consider that type of short term tourist accommodation places severe pressure on the availability of housing stock. Bed and breakfast in the CDP is referred to in the context of where permission is required to

provide more than four rooms in residential setting. New hotels are considered separately to the above in the CDP.

- 7.4.3. The CDP states up front in section 14.3 that there is a general presumption against the provision of dedicated short term tourist rental accommodation in the city due to the impact on the availability of housing stock and then goes onto detail that applications for short term tourist rental accommodation will be considered on a “case by case basis in certain locations that may not be suitable for standard residential development such as tight urban sites where normal standards or residential amenity may be difficult to achieve”. Applications may also be considered in locations adjacent to high concentration of night / time noisy activity where standard residential development would be unsuitable.
- 7.4.4. The proposed tourist accommodation is in the form of ensuite bedrooms, with breakfast available at ground floor, similar to what one would expect in a “traditional” bed and breakfast. There is no kitchen or laundry area proposed for the bedrooms. One can collect the key at a dedicated area in No.91/92. The proposed bedrooms are located in the main within existing rooms on the upper floors of a protected structure with little potential for external or internal amendments. Private open space, storage and cycle provision would not appear to be able to be achieved and while the Apartment Guidelines allow flexibility for conversions to certain sites, the general standards for modern apartment living would be difficult to achieve in this protected structure.
- 7.4.5. I consider that No.79 Queen Street is a tight urban site as identified in the CDP. Furthermore, the location is directly adjacent to the Luas, above a pub and opposite a pub where it is reasonable to assume there will be associated nighttime noise in this inner city location, particularly at the weekend, The existing timber sash windows are to be repaired and such windows generally do not provide the same soundproofing as modern multiple glazed windows that one might expect in a residential unit. The largest part of No.91/92 is to the rear (south) where the building is single storey with the kitchen and bar 2/check-in area below the residential uses over reducing the noise impact.
- 7.4.6. A consequent issue arises if the location is suitable for tourist rooms owing to the potential noise. I consider that the tourists who book a short stay room above a city

centre pub in a protected structure will be aware of what they are booking and would make the choice accordingly.

7.4.7. The AHPGPA in sections 6.8.8 and 6.8.9 assist this part of the proposal assessment. The guidelines consider the best way to prolong the life of a protected structure is to keep it in active use, ideally in its original use and where this is not possible, there is a need for flexibility within development plan policies to be responsive to appropriate, alternative uses. The Board has to balance continuing economic viability if the change is not permitted against the effect on the character and special interest of its fabric of any consequent works if they grant permission. I have considered these issues and consider that the alterations required to achieve a proposed change of use on the upper floors will not have an undue adverse effect on the special interest of the structure subject to an agreed detailed method statement from a grade 1 conservation architect to be agreed in writing in advance of any development and suitable conditions protecting features to be agreed in writing with the PA.

7.4.8. Having regard to the above, I consider that the upper floors of the protected structure are located on a tight urban site with limited opportunity for providing potential residential units and the proposed tourist uses make good use of the existing layout of the protected structure, ensuring its continued viability and use into the future. I also note the CO of DCC did not object to the change of use of the upper floors and required detailed conditions in relation to interior features.

7.4.9. The PA consider that the change of use would set a precedent for similar future development on upper floors. I do not agree as No.79 Queen Street is a unique structure in plan form, use and location and is a protected structure. I also consider that as breakfast is to be available on the ground floor, making use of an existing commercial kitchen and dining area early in the morning, that an efficient use of the premises is proposed and welcomed. This is a different situation a potential residential unit above a non-nighttime use. In that circumstance, flexibility can be applied to the Apartment Guidelines and CDP standards to encourage residential development and where the internal layout can be reconfigured without conservation issues.

I recommend the tourist accommodation be granted subject to conditions in relation to conservation protection.



## **7.5. New shopfront 91/92 Benburb Street**

- 7.5.1. The CDP provision on new shopfronts is set out in section 15.17.5. Shopfront design plays a key part in contribution to the quality of the public realm and I consider that particular regard has to be had to the adjacent to a protected structure. Appendix 17 relates to signage. Permission was granted for a new shopfront as part of the planning history 2190/14 but this does not appear to have been implemented from the details submitted and the CO has raised issues about the design as proposed in the application and has included photographs of other more subtle shopfronts. The applicant has constructed a new shopfront which also does not appear to match the submitted drawings. While the applicant could have a plan to remove what has recently been erected and build what is proposed, I have no knowledge of their intentions. The shopfront that has been erected is a prominent protruding box and the section provided at 1:20 on drawing PL018 does not correspond with what has been built.
- 7.5.2. The location of the development is on a prominent corner in an area of the city undergoing transformation. The internal fit outs of No.79 and No.91/92 are contemporary, high quality, works. The front elevation as proposed at No.92/02 does not correspond in terms of detailing. No. 91/92 is adjacent to a protected structure, and I consider that the proposed frontage needs refinement and concur with the view of the CO in her report on the CFI. The appellant states it is not the job of the CO to design the shopfront. The CO has offered an assessment on the proposal having regard to the protected structure adjacent and has provided examples for the information of the applicant. The shopfront as recently erected without permission is more modern than that sought but remains significantly heavy in depth and requires revision. I concur with the view of the conservation officer that the shop front and fenestration should be reconsidered on this important location.
- 7.5.3. If the as-built shop front was the only issue, I consider that it could be dealt with by way of condition. I also consider that this can also be dealt with by section 142(2) of the PDA2000 where the Board may invite revised plans or other drawings modifying, the development in relation to the shopfront given that further details are to be required.

## 7.6. Development Management Guidelines 2007

The application for permission was lodged in March 2023. The PA sought FI and CFI on detailed matters and then refused permission for two reasons which may be described as fundamental objections in principle. The appellant has raised the issue of the Development Management Guidelines 2007 (DMG2007) and I consider that the PA did not have regard to section 5.7 as there are fundamental objections to the proposed development.

## 7.7. Appropriate Assessment Screening

- 7.7.1. 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 distance from any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

## 8.0 Recommendation

- 8.1. A **NEW ISSUE** in relation to the validity of the application and procedural matters has arisen. The submitted application is for works and change of use but certain works have been carried out and the submitted drawings and particulars do not include retention. I recommend that the Board exercise its powers and discretion under section 132 and 142(2) of the PDA2000 the first instance with notice to the applicant in the DRAFT format set out below, followed by a request for revised public notices pursuant to section 142(4) of the PDA2000 in the DRAFT format below.

### **Notice under section 132 and section 142(2) of the Planning and Development Act 2000 as amended**

**Pursuant to section 132 of the Planning and Development Act 2000 as amended, the Board is of the opinion that the following should be submitted:**

1. Drawings including floor plans, sections and elevations at a scale of 1:100 clearly distinguishing between retention and permission sought. All works carried out within the blue line shall be included and any buildings associated with the application shall be included.
2. Various fit-out works have been carried out to the interior of the ground floor of the Protected Structure No. 79 Queen Street, comprising inter alia, the

installation of a sub-ceiling below the original ceiling/cornicing and wall panels, which appear as recent works and may therefore consist of works to a protected structure which are required to be included in a planning application. The applicant shall submit details of all internal works that have been carried out since they acquired control of No. 72 Queen Street at a scale of 1:50 to include sectional internal elevations of all walls and drawings and to illustrate the number and nature of the fixing positions. The boxed-in area in the hallway to the upper floors of No. 72 from Queen Street shall be included. A detailed method statement and report shall be provided by a grade 1 conservation architect regarding the works carried out to be retained and clear colour photographs of the interior of an appropriate size shall be provided of all relevant elements.

3. A method statement by a conservation architect, grade 1 shall be submitted in relation to any works that have been carried out in the form of new openings in No. 72 Queen Street, a protected structure.
4. The applicant shall submit details of the former restaurant use that was in place at No.91/92 Benburb Street until the applicant commenced refurbishment works (as stated on page 15 of the appeal submission). The applicant shall provide information that the permitted elements of permission Ref. 2190/14 were implemented within the appropriate period. The applicant is advised should they consider that permission has expired, an application for retention of use would be required.

**Pursuant to section 142(2) of the Planning and Development Act 2000 as amended, the Board is of the opinion that the following should be submitted:**

5. The Applicant is requested to reconsider the proposed design and submit revised 1:20 plan, section and elevation drawings through all critical elements of the proposed shopfront design at No.91/92 Benburb Street to reflect the view of the Dublin City Council Conservation Report on Clarification of Additional Information which is considered reasonable on this prominent corner adjacent to a protected structure. Details of fenestration and internally positioned security shutters shall be provided. A drawing and section at a

scale of 1:200 of the shopfront that has been recently replaced at No. 91/92 Benburb Street shall also be submitted.

The above information required is to be provided, by on or before **[INSERT DATE/ 5 WEEKS]**.

If the information required is not received before the end of the specified period, the board will dismiss or otherwise determine the appeal without further notice in accordance with section 133 of the Planning and Development Act 2000 as amended, and the submission in response to this notice must be received at the offices of the Board no later than 5:30 pm on the date specified.

- 8.2. Subsequent to receipt of the information received under section 132, I recommend that the Board exercises its powers pursuant to Section 142 of the Planning and Development Act 2000 as amended in the following **DRAFT** format.

**Notice under section 142(4) of the Planning and Development Act 2000 as amended**

The Board has received information under sections 132/142(4) of the Planning and Development Act 2000 as amended. Articles 17 to 19 and schedule 3 of the Planning and Development Regulations 2001 as amended, set out the requirements for public notices, which require that notices should state that the application is for permission for development, outline permission or retention. Pursuant to Section 142(4) of the Planning and Development Act 2000 as amended, the Board requires the applicant who is the first party to the appeal, to provide revised public notices at the site and publication in a newspaper circulating in the district in which the structures are situated. The notices shall include that submissions or observations may be made in writing to the Board on or before a date of five weeks from the date of the publication of the public notices and that no fee is required.

The applicant is advised to publish the newspaper notice on the same day as erecting the site notices to avoid any confusion to the public.

## 9.0 Reasons and Considerations

9.1. **Reason (Points 1 to 5):** Having regard to the submitted application for works and change of use, the Board is aware that certain works have been carried out on the site and the submitted details do not include elements of retention. Articles 17 to 19 and schedule 3 of the Planning and Development Regulations 2001 as amended, set out the requirements for public notices, which require that notices should state that the application is for permission for development, outline permission for retention and the submitted site notices and drawings did not include any elements of retention. Having regard to these facts and that application site includes a protected structure, it is considered In the interest of clarity, proper procedure, the protection of a protected structure and the interest of the proper planning and sustainable development of the area the above information should be submitted.

9.1.1. **Reason (Point 6):** Having regard to the submitted application, the Board is aware that certain works have been carried out and a new shopfront has been erected which does not match the submitted application drawings or the permitted planning history. The view of the Clarification of Further Information report by the conservation officer, a grade 1 architect and countersigned by a senior conservation officer is considered reasonable. Having regard to these facts and that the shopfront is adjacent to a protected structure which is part of the application, it is considered in the interest of clarity, proper procedure, the protection of a protected structure and in the interest of the proper planning and sustainable development of the area, the above information should be submitted.

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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Rosemarie McLaughlin  
Planning Inspector

9<sup>th</sup> April 2024