



An  
Bord  
Pleanála

## Inspector's Report ABP-319313-24

### Development

Change of use of building from office use to restaurant use over three floors, conversion of "The Rocket Shed" to ancillary kitchen facilities with associated plant and all associated site works.

### Location

12 James's Terrace, Malahide, Co. Dublin, K36 N996 (a protected structure) and at "The Rocket Shed" (rear of 12 James's Terrace), Townyard Lane, Malahide, Co. Dublin, K36 A722.

### Planning Authority

Fingal County Council

### Planning Authority Reg. Ref.

F23A/0314

### Applicant(s)

Dara View Ltd.

### Type of Application

Permission

### Planning Authority Decision

Grant Permission

### Type of Appeal

Third Party and First Party against  
Financial Contribution Condition

<b>Appellant(s)</b>	Third Party- Ronny Maiti and Suzanne Donohue First Party- Dara View Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30 <sup>th</sup> May 2025
<b>Inspector</b>	Emer Doyle

## **1.0 Site Location and Description**

- 1.1. The site has a stated area of 0.252 hectares and is located in the Malahide Historic Core Architectural Conservation Area (ACA) just off the main street of Malahide, Co. Dublin. No. 12 James's Terrace is a Regency style two bay, two storey over basement end of terrace dwelling which is part of a group of 12 terraced dwellings dating to c. 1835 at this location. No. 12 is on the Record of Protected Structures No. 0419. There is a detached pitched roof building to the rear known as the 'Rocket Shed'. The group of 12 No. buildings are included in the NIAH and are of regional importance. Rocket Shed is a detached structure located to the rear of the main building which is accessed from a right of way via Townyard Lane. This building has been modernized internally but the exterior of the premises retains features of interest.
- 1.2. There is metered parking on both sides of the road. There is a wide range of uses within existing buildings at this location including residential, financial brokers, counselling services, restaurants, beauty therapists and hairdressers, letting agents and architectural design services.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises of the following:
- The change of use of the existing building from office use to restaurant use over three floors and the conversion of the 'Rocket Shed' to ancillary kitchen facilities with associated plant.
  - Provision of glazed roofing at the rear of the structure over the existing terrace to provide a courtyard dining space.
  - Construction of new access staircase from courtyard to upper ground floor area.
  - Application accompanied by an Architectural Heritage Report and Impact Statement. This contains a table which describes each element of the

proposed works together with an outline of the impact on the protected structure.

- In response to a Further Information Request by the Planning Authority, revised drawings and details have been provided in response to issues raised by the Conservation Officer.
- In response to details in relation to opening hours, it is stated that the applicant would be satisfied with a similar condition attached to other restaurant operations in the vicinity as follows: - Monday to Sunday 12.00 to 23.30.
- It is envisaged that the kitchen will close at c. 21.30 to 22.00. The courtyard area could close at 22.00 in the interest of residential amenity, with the remainder of the dining area open till 23.30. A more formal dining area will be offered at the upper level which will be bookable by private parties.

## **2.2. Planning Authority Decision**

### **Decision**

The Planning Authority granted permission subject to 9 No. Conditions. Condition 3 required that all works and renovations shall be supervised by a suitably qualified professional with conservation experience and expertise, to be retained/ engaged to direct and monitor the works to the historic fabric of the building.

Condition 4 required that prior to commencement of development, a sample of the proposed timber sliding sash window shall be agreed on site with the Conservation Office. This is to ensure that the profile of the timber sash windows is to correct historic details.

Condition 5 required that within three months of the final grant of permission, the developer shall submit a copy of Drawing No. A085(p)-520 to an appropriate scale, for record purposes. I note that item 3 of the Conservation Officers report addresses this aspect. This drawing appears to have been inadvertently omitted from the Further Information Response but there is a smaller sized version of this drawing in

the Conservation Report dated 26<sup>th</sup> of January 2024 (details of wall junction between glazed structure and the external elevation of original house.)

All other conditions are of a standard nature for a development of this type.

## **2.3. Planning Authority Reports**

### **2.3.1. Planning Reports**

- The initial planner's report considered that the proposal was acceptable in principle. Further Information was requested on a number of issues including architectural heritage and business operational matters.
- The second planner's report considered that the Further Information Response was acceptable and recommended permission subject to conditions.

### **2.3.2. Other Technical Reports**

- Water Services: No objection subject to conditions.
- Transportation: Considered that proposed development is an intensification of use in terms of carparking demand. The existing development has no assigned car parking and there is no scope available to provide any. Owing to the nature and location of the proposed development in the centre of Malahide Village, there is no objection to the proposed development. There is a requirement for 14 spaces. The car parking demand for the existing office use is 4 spaces.
- Conservation Officer: First Report requires Further Information. Second report recommends permission subject to conditions.
- Parks and Landscape: Planner's report notes that verbal discussions took place in relation to the removal of a tree which was deemed to be acceptable.

## **2.4. Prescribed Bodies**

- None.

## 2.5. Third Party Observations

- Two third party observations were submitted to the Planning Authority. The issues raised were similar to those raised in the appeal generally. In addition, a matter was raised in relation to a long standing lease on the premises.

## 3.0 Planning History

### PA Reg. Ref. F01A/1173

Permission granted for change of use from residential to office use.

## 4.0 Policy Context

### 4.1. Development Plan

#### Fingal Development Plan 2023-2029

Zoning: The proposed development site is zoned TC - Town and District Centre. The Objective for this area is to protect and enhance the special physical and social character of town and district centres and provide and/ or improve urban facilities.

Restaurant/ Cafe Use is permitted in principle in this land use zoning objective.

Architectural Heritage Area: The site is in the Malahide Historic Core Architectural Conservation Area (ACA).

No. 12 James's Terrace is listed as a Protected Structure (RPS No. 419).

Section 10.3 of the Plan sets out policies and objectives relevant to Architectural Heritage including Protected Structures and Architectural Conservation Areas.

- 4.1.1. The site is located in Zone 1 for parking calculation standards as set out in Section 12.10. Table 12.8 outlines car parking requirements.

Table 12.10 outlines documentation to accompany Planning Applications for Protected Structures.

Table 12.11 provides direction for proposed development within Architectural Conservation Areas.

#### **4.2. National Planning Policy and Guidelines**

Architectural Heritage Protection Guidelines for Planning Authorities, 2004, as amended. This document provides guidance for the protection of structures, or parts of structures and the preservation of the character of architectural conservation areas.

#### **4.3. Fingal County Council Development Contribution Scheme 2021-2025**

Section 9 sets out the level of contribution to be paid. For commercial development the rate is €76.69 per m<sup>2</sup> as set out in the scheme. This is indexed to €103.61 per m<sup>2</sup> from 1st of January 2025.

Section 11 sets out exemptions and reductions including:

11 (r) Internal layout alterations where no additional floor area is created, and external walls are not being removed.

11 (t) Renovations to restore/refurbish structure deemed to be “Protected Structures” in the County Development Plan, where the Council is satisfied that works substantially contribute to the conservation or restoration of the structure, are exempt.

Extensions to Protected Structure for private residential purposes are also exempt (provided extension is subservient in scale).

Extensions to Protected Structures for commercial purposes are subject to a reduction of 50% of in the appropriate rate.

These exemptions do not generally extend to development on the site detached from the protected structure. However, development within the curtilage of a protected Structure may be considered for up to a 50% reduction in the rate for that part of the

development which is considered by the Council to be necessary to ensure the protection, conservation or restoration of the structure.

11(v) Change of use applications are exempt, unless the revised usage constitutes a substantial intensification of use of the building or service.

#### **4.4. Natural Heritage Designations**

- 4.4.1. The proposed development site is not within nor is it adjacent to any designated site. The Malahide Estuary designated as an SPA, SAC and pNHA, is located c.50m to the north of the subject site.

#### **4.5. EIA Screening**

See completed Forms 1 and 2 on file in Appendix 1. Having regard to the nature, size and location of the proposed development, and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, or EIA determination, therefore, is not required.

### **5.0 The Appeal**

#### **5.1. Grounds of Appeal**

- 5.1.1. A First Party and a Third Party Appeal have been submitted to the Board. The grounds of the First Party Appeal can be summarised as follows:

##### First Party Appeal

- It is not understood how the contribution was calculated.
- Applying the exemptions and reductions set out in the Development Contributions Scheme, the contribution should be as follows:
- The proposed development comprises the enclosing of an existing courtyard with architectural glazing to provide outdoor dining space. For the purposes of the statutory notices, and application form, the design team classifies this as



an 'extension' whereas in reality, this floorspace exists at present by way of a courtyard.

- If the Board takes the view that the conversion of the existing courtyard to provide a dining space constitutes an 'extension' then the reduction of 50% for protected structures should apply.
- The proposed change of use should not be considered as a substantial intensification as there is already a commercial use at this location.

5.1.2. The third party appeal is made on behalf of the owners of No. 10 James's Terrace. The grounds of the third party appeal can be summarised as follows:

#### Third Party Appeal

- The main concerns raised are in relation to impacts on residential amenity including noise, traffic and inadequate carparking, hours of operation and construction working hours, and odours.
- Increased crowds in the area may lead to increased problems including graffiti, littering, cracked pavements from heavy footfall, invitation to vandalism etc.
- Concern regarding removal of tree.
- It is considered that a residential use would be more suitable for the property.
- It is considered that a condition should be included binding the applicant to their stated opening hours.
- Insufficient car parking is available at this location.
- Concern regarding impact on protected structure including signage.
- The conversion of Rocket House - accessible from Townyard Lane into a 'back of house' operations for the restaurant adds to the misuse and visual pollution of this historic area.

## **5.2. Planning Authority Response**

- The Planning Authority Response has assessed the comments in the third party appeal and states that it remains of the opinion that the proposed development is consistent with the zoning objective and is compliant with Development Plan policy and the proposed use would integrate with the Architectural Conservation Area.
- A detailed response has been set out in relation to the Financial Contribution and the First Party Appeal. It is stated that Fingal County Council deemed the change of use to be a substantial intensification of the use of the building.

## **5.3. Observations**

- None submitted.

## **5.4. Further Responses**

5.4.1. A Further response has been submitted on behalf of the applicant which can be summarised as follows:

- The Boards attention is drawn to the Planning Authority response which supports the application.
- Refer to detailed submission previously submitted in relation to Financial Contribution.
- It is strongly disagreed that the proposal constitutes substantial intensification.
- Exemptions should therefore apply to the financial contribution.

## **6.0 Assessment**

I highlight to the Board that this is a First Party Appeal against a Development Contribution Condition and a Third Party Appeal. The main issues are as follows:

- Impact on Residential Amenities
- Impact on Architectural Conservation Area
- Loss of Biodiversity
- First Party Appeal against Condition

## **6.1. Impact on Residential Amenities**

- 6.1.1. Concerns are raised in the third party appeal regarding the impact of the proposed development on the residential property at No. 10 James's Terrace, Malahide.
- 6.1.2. It is considered that the proposed change of use would impact the current level of amenity enjoyed at this location by virtue of increased traffic and parking, increased noise levels, odours and late night movements.
- 6.1.3. At the outset, I note that the site is located in an area zoned as TC Town and District Centre under the current Development Plan which seeks to 'protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities.' I consider that the site is a town centre site and I concur with the planner's report which considers that the proposed change of use from office to restaurant is consistent with the zoning objective.
- 6.1.4. There are already a number of restaurants at this location within St. James's Terrace including 'Bon Appetit' and 'Jaipur' and I am of the view that restaurant use is an established use at this town centre site.
- 6.1.5. In terms of the concern regarding traffic and parking, there is on street parking available at this location and the site is within easy walking distance of the town centre and bus and dart services. The street is wide with pay and display parking on both sides and the posted speed limit is 50kph. I note that the report from the Transportation Section states that the site is located in the centre of Malahide Village and that the proposed development is an intensification of use. Further, it is stated that owing to the nature and location of the proposed development, in the centre of the village, the Transportation Section has no objection. I concur with this and am satisfied it is likely that customers will use a range of transport options to access the site and that sufficient car parking is available in the vicinity of the site.

- 6.1.6. In terms of odours, I note that the drawings indicate a mechanical kitchen extraction system which it is proposed to vent through the roof of the Rocket Shed (proposed kitchen at the rear of the premises). The location and direction of the extraction system is in the opposite direction to the Third Parties property. Whilst there is a possibility that a poorly functioning extraction system could give rise to odours, I am satisfied that any potential for negative impacts on residential amenity can be avoided by the proper installation, use and maintenance of the proposed plant. I note that waste disposal is proposed from the rear of the premises and bin storage has been provided for in the drawings submitted to the rear of the premises. The waste will be separated into recycling, compost and general waste and collected by licenced operators via Townyard Lane to the rear of the premises.
- 6.1.7. In terms of opening hours and noise, I note that the applicant detailed in the Further Information Response dated the 26<sup>th</sup> of January 2024 that the dining area would close at 23.30 with the courtyard area closing at 22.00. It was stated that opening hours of Monday to Sunday 12.00-23.30 had been attached as a condition to restaurants in the vicinity of the site and that the applicant would be happy for a similar condition in this case. The courtyard area is to be closed in by way of glazed roofing and walls. I note that the Planning Authority included a condition requiring the development to be in accordance with the details lodged with the application and on the 26<sup>th</sup> of January 2024. No specific condition is included in relation to restaurant opening hours however condition 8 relates to construction working hours as follows (a) the hours of operation on all construction sites shall be restricted to between 0800 hours to 1900 hours Monday to Friday and between 0800 hours to 1400 hours on Saturdays with no activities on Sundays or Bank Holidays. I consider that the condition regarding construction hours is in line with standard construction working hours.
- 6.1.8. In terms of operational noise, I consider that the opening hours outlined are in line with existing restaurants in the area. I consider that the enclosed courtyard does not constitute outdoor seating in the normal sense of the word, however the applicant is willing to vacate this area c. 30 minutes earlier than indoor seating within the existing building. The third party appellants have specially requested that in the event that permission is granted, a condition is included in relation to opening hours.

- 6.1.9. I am satisfied that if the Board is minded to grant permission, the hours of opening/ use can be controlled by way of condition with slightly shorter opening hours of c. 12.00-23.00 Sunday to Thursday and 12.00-23.30 on Fridays and Saturdays. Such a condition is reasonable, given the mixed use nature of the terrace and its location.
- 6.1.10. In conclusion, whilst I acknowledge that the proposed change of use from office to restaurant use will alter the impacts on the adjoining properties, I submit that the degree and scale of impacts arising are acceptable in this urban context and in allowing for the sustainable development of zoned and serviced lands. In my opinion the proposed development, subject to condition, would not adversely affect the use or enjoyment of neighbouring properties to a degree that would justify a refusal of permission.

## **6.2. Impact on Architectural Conservation**

- 6.2.1. The site is located within the Malahide Historic Core Architectural Conservation Area. Policy HCAP14 seeks to protect the special interest and character of ACA's and states that development within or affecting an ACA 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. Development shall not harm buildings, spaces, original street patterns, archaeological sites, historic boundaries or features, which contribute positively to the ACA. No. 12 St. James's Terrace is on the Record of Protected Structures No. 0419.
- 6.2.2. The main issues raised by the third parties in relation to architectural heritage is that the use of 'The Rocket Shed' to the rear of the premises into 'back of house' operations for the restaurant constitutes gross misuse and visual clutter at this location. Concerns are also raised in relation to signage.
- 6.2.3. In general, I note that the proposed use does not require significant internal alterations to the main rooms of the historic house. The report of the Conservation Officer was generally satisfied with the proposal and considered that the removal of existing signage which was unauthorised was welcomed. Further Information was required in relation to Conservation details including gutters, ironwork, windows and signage and the Conservation Officer was satisfied with this. It was conditioned that

details including timber sash windows be agreed with the Conservation Office prior to commencement of development, that all works were supervised by a qualified professional with conservation experience and that a drawing A085 (p) 520 to be submitted within three months of the final grant of permission. Item 3 of the Conservation Officers report addresses this aspect. This drawing appears to have been inadvertently omitted from the Further Information Response. (details of wall junction between glazed structure and the external elevation of original house.)

- 6.2.4. In relation to the use of 'The Rocket Shed' as a kitchen, firstly I note from this building has been significantly altered and modernised in the past. Secondly, I note that this constitutes a re-use of an existing building which is compatible with the proposed use and the town centre zoning at this location. The treatment of the rear elevation was altered in the drawings submitted to the Planning Authority dated the 26<sup>th</sup> of January 2024 and it is considered that the revised elevation is more in keeping with the protected structure at this location.
- 6.2.5. In relation to signage, I consider that the proposal to remove all signage is welcomed and will reduce existing visual clutter at this protected structure. At the time of inspection, a considerable amount of the signage had already been removed. No changes are proposed to the front elevation other than the removal of signage and replacement with new signage. This is shown on drawing No. A085(P-)519 in the Conservation Record submitted with the application. This was revised in the details submitted at Further Information so that the design and size of the sign was reduced to fit within one band of the lined/ channelled ground floor elevation rather than stretched over 2 bands as previously proposed. The size of the proposed sign was also reduced considerably in order to comply with the requirements of the Conservation Officer. I refer the Board to Page 2 of the Conservation Report and revised drawing of the front elevation submitted dated 26<sup>th</sup> of January 2024.
- 6.2.6. I am satisfied that the proposed development will not have a material effect on the character of the Architectural Conservation Area or the protected structure at this location. I consider that if the Board is minded to grant permission, Conditions 3, 4 and 5 of the Planning Authority should be included in the interests of the protection of architectural heritage in the area.

### **6.3. Loss of Biodiversity**

- 6.3.1. The third party appellants has raised concerns with regard to the removal of a mature tree in the rear garden of the premises. The planner's report states that verbal discussions took place with the Parks and Green Infrastructure Section which deemed that the loss of the tree was acceptable.
- 6.3.2. The site is in an urban location and I do not consider that it holds any significant ecological value. The tree is not generally visible from the public realm and is described in the applicant's response to the appeal as 'an isolated tree of little merit, remaining in an otherwise built-up urban village environment.'
- 6.3.3. I generally concur with the applicant in this regard and am satisfied that the proposal to remove the tree is acceptable having regard to the urban context of the site.

### **6.4. First Party Appeal Against Condition**

- 6.4.1. The first party appeal is against Condition 11 as applied, namely, the application of a condition under Section 48 of the Planning and Development Act 2000 (as amended).
- 6.4.2. Section 48(10)(b) of the Act states that an appeal may be brought to the Board where an applicant considers that the terms of the scheme have not been properly applied.
- 6.4.3. The grounds of appeal relate to the application of the adopted Development Contribution Scheme 2021-2025. Under the terms of the scheme, there are reductions and waivers available for specific categories of development type. The grounds of the First Party appeal considers that the following exemptions are relevant in this case:
  - 11(r) Internal layout alterations where no additional floor area is created, and external walls are not being removed.
  - 11(t) Renovations to restore/refurbish structure deemed to be "Protected Structures" in the County Development Plan, where the Council is satisfied that works substantially contribute to the conservation or restoration of the structure, are exempt.

Extensions to Protected Structure for private residential purposes are also exempt (provided extension is subservient in scale).

Extensions to Protected Structures for commercial purposes are subject to a reduction of 50% of in the appropriate rate.

These exemptions do not generally extend to development on the site detached from the protected structure. However, development within the curtilage of a protected Structure may be considered for up to a 50% reduction in the rate for that part of the development which is considered by the Council to be necessary to ensure the protection, conservation or restoration of the structure.

11(v) Change of use applications are exempt, unless the revised usage constitutes a substantial intensification of use of the building or service.

Section 9 of the Scheme sets out a charge of €76.69/sq.m for commercial development. This has been index-linked by Fingal County Council for commercial development for 2024 to €100.61/sq.m.

6.4.4. The applicant submits that exemptions/ reductions should apply to this development for the following reasons:

- Works within the internal layout where no additional floor area is created, and the external walls are not being removed. (11r)
- Restoration and refurbishment of Protected Structure. (11t)
- Extension to protected structure (50% reduction applicable) (11t)
- Change of use applications are exempt unless the revised usage constitutes a substantial intensification of use (11 v)

In conclusion, the applicant submits that the only development contribution that may be applicable may be for the extension of the protected structure for the 58.5m<sup>2</sup> of the covered courtyard. The applicant takes the view that this floorspace already exists and the use is merely changing, however the Board may take the view that this conversion of the existing courtyard to dining space may constitute an extension.

6.4.5. The Planning Authority response sets out the following:



The rate applicable is €100.61 per m<sup>2</sup> for commercial development (index linked 2024 rate)

The total area to be levied is 438.5m<sup>2</sup>

The change of use element = 380m<sup>2</sup> @100.61 = €38,231.80

The extension to the Protected Structure = 58.5m<sup>2</sup> @ 50% reduction = €2,939.92

Total Contribution = €41,171.72

Fingal County Council deemed the change of use as substantial intensification of the use of the building.

#### **6.5. Has the Development Contributions Scheme been appropriately applied?**

- 6.5.1. The main case made on behalf of the applicant is that under Section 48 of the Planning and Development Act (as amended), the Planning Authority has not properly applied the scheme. The case made is that the development should be exempted as it constitutes mainly of development within the internal walls of the existing premises, with the only additional works being the enclosure of a courtyard to the rear. The Board is requested to view whether the enclosure of the courtyard is 'merely changing the form of this existing floorspace' or whether it considers that the conversion of the floorspace to provide an internal dining area constitutes an extension for commercial purposes.
- 6.5.2. In the first instance, I consider that the closing in of the courtyard area with glazing does constitute an extension to the premises and it is to be used for commercial use as an indoor dining area. Under 11 (t) of the Development Contributions Scheme, extensions to Protected Structures for commercial purposes are subject to a reduction of 50% of the appropriate rate. The Planning Authority has applied a 50% reduction in this case and I am satisfied that the 2024 calculation provided in the Planning Authority response is correct. This can be index linked for 2025. From the 1<sup>st</sup> of January 2025, the applicable rate for commercial is 103.61/m<sup>2</sup>. A 50% reduction is €51.80. The area involved is 58.5m<sup>2</sup> so the total contribution for this element is €3,030.59.
- 6.5.3. The remainder of the development for which change of use from office to restaurant is 380m<sup>2</sup>. Section 4.5 of the First Party Appeal considers that an exemption applies

having regard to three different categories, internal alterations only, change of use application, protected structure application as set out in exemptions 11(r), 11 (t), and 11 (v).

- 6.5.4. The Planning Authority considers that the proposed development constitutes a substantial intensification of the use of the building.
- 6.5.5. I consider that 11 (r) is not applicable as the application is not simply for 'internal alterations only where no additional floor area is created'. The application is for a change of use of the building from office to restaurant use together with an extension to the building.
- 6.5.6. I consider that 11 (t) is applicable only for the extension to the protected structures as set out above. It does not apply to the change of use of the building. As such I consider that the Planning Authority have properly applied the scheme as set out above in terms of applying the scheme to the extension element of the proposal only.
- 6.5.7. I consider that 11(v) in relation to change of use is not applicable in this instance. In this regard, I concur with the view of the Planning Authority that the proposed development constitutes a substantial intensification of the building. I concur with the Planning Authority assessment that a change of use from office to restaurant with a capacity for c. 116 diners constitutes a substantial intensification of the building at this location by virtue of the number of people using the building for longer hours during the daytime and at weekends. This places greater demands on public infrastructure including transportation and parking facilities in the vicinity of the site.
- 6.5.8. The Planning Authority have applied the 2024 commercial levy to the change of use element of the application. The applicable contribution for 2025 is €103.61/m<sup>2</sup>. The rate of €103.61/m<sup>2</sup> applies to the change of use area only which is 380m<sup>2</sup>. The rate for this area is €39,371.80.
- 6.5.9. There has been no double charging as the full commercial rate is applicable only to the change of use element of the application, whilst the reduction rate for extensions to protected structures applies to 58.5m<sup>2</sup> as set out above.
- 6.5.10. Taken together, the total levy due based on the 2025 indexation is €42,402.39.

## 7.0 AA Screening

- 7.1. I have considered the project in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. The subject site is located approximately 50m metres south of Malahide Estuary SAC and SPA.
- 7.2. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.
- 7.3. The reason for this determination is as follows:
- To the scale and nature of the proposed change of use from office use to restaurant use.
  - To the location of the proposed development within a built-up urban area and to the built up nature of the surrounding area.
  - To the treatment of wastewater and surface water via the public mains.
  - To the distance from the nearest European sites regarding any other potential ecological pathways and intervening lands.
  - Taking into account the screening determination by the Planning Authority.

I consider that the 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. No measures intended to avoid or reduce harmful effects on European sites have been taken into account in reaching this determination.

## **8.0 Recommendation**

- 8.1. I recommend that permission is granted for the following reasons and considerations.

## **9.0 Reasons and Considerations**

- 9.1.1. Having regard to the location of the site in the town centre of Malahide, the 'TC' zoning objective of the site, and the relevant policies and objectives of the Fingal County Development Plan 2023-2028, it is considered that, subject to compliance with the conditions set out below, the proposed change of use from office to restaurant, would not seriously injure the residential amenities of the area or depreciate the value of property in the vicinity, would not negatively affect the character of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 6<sup>th</sup> of June 2023, as amended by the revised plans and particulars submitted on 26<sup>th</sup> of January 2024, 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.

**Reason:** In the interest of clarity

2. Public opening hours of the proposed development shall be confined to:

- (a) Sunday to Thursday 1200-2300
- (b) Friday and Saturday 1200-2330
- (c) Glazed courtyard area 1200-2200 in accordance with the revised details submitted to the Planning Authority on the 26<sup>th</sup> January 2024.

**Reason:** To protect the amenities of the area.

3. No external amplified music shall play within the curtilage of the site.

**Reason:** To protect the amenities of the area.

4. During the operational phase of the proposed development the noise level shall not exceed (a) 55 dB(A) rated sound level between the hours of 0700 to 2300, and (b) 45 dB(A) 15min and 60 dB LAfmax, 15min at all other times, (corrected for a tonal or impulsive component) as measured at the nearest dwelling.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

5. Drainage requirements, including surface water collection and disposal, shall comply with the requirements of the Planning Authority for such works and services.

**Reason:** In the interest of public health.

6. Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority confirmation that:

- (a) All works shall be carried out in accordance with best conservation practice.

- (b) The development will be monitored by a suitably qualified architect with conservation expertise and accreditation and
- (c) Competent site supervision, project management and crafts personnel will be engaged and will be suitably qualified and experienced in conservation works.

**Reason:** In the interest of the protection of architectural heritage in accordance with the provisions of the Architectural Heritage Protection Guidelines for Planning Authorities.

7. Prior to the commencement of development, the developer shall submit, for the written agreement of the planning authority, a detailed method statement covering all works proposed to be carried out, including:

- (a) 1:20 drawing of the revised signage proposed on the front elevation.
- (b) 1:20 drawing of the wall and roof junctions between the proposed glazed structure and the external elevation of the Protected Structure.
- (c) a sample of the proposed sliding sash windows to be agreed on site with the Conservation Officer.
- (d) a full specification, including details of materials and methods, to ensure the development is carried out in accordance with current Conservation Guidelines issued by the Department of Arts, Heritage & the Gaeltacht,
- (e) methodology for the recording and/or retention of concealed features or fabric exposed during the works,
- (f) details of features to be temporarily removed/relocated during construction works and their final re-instatement,
- (g) details of materials/features of architectural interest to be salvaged,
- (h) a detailed schedule and methodology of repairs to be carried out following inspection at close quarters.

**Reason:** In the interest of the protection of architectural heritage in accordance with the provisions of the Architectural Heritage Protection Guidelines for Planning Authorities.

8. Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

9. The construction of the proposed development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the proposed development, including noise management measures, traffic management and off-site disposal of construction/demolition waste.

**Reason:** In the interest of public safety and residential amenity.

10. Prior to the commencement of development the applicant shall submit to and agree in writing with the planning authority a detailed servicing management plan in respect of deliveries and the collection of wastes from the premises. The plan shall include delivery and collection times, locations parking for service vehicles and routes of movement of products and wastes to and from the premises.

Deliveries and collections are not permitted before until 8am Monday to Saturdays only, with no deliveries or collections permitted on Sundays.

**Reason:** In the interest of public safety and residential amenity.

11. The developer shall pay to the planning authority a financial contribution of €42,402.39 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.

**Reason:** 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.

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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Emer Doyle  
Planning Inspector

19<sup>th</sup> June 2025



## Appendix 1 Form 1 - EIA Pre-Screening

<b>Case Reference</b>	
<b>Proposed Development Summary</b>	Change of use and extension
<b>Development Address</b>	12 St. James Terrace Malahide
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.  
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

<p>development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></p>	Class 10, (b) (iv)

<b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b>	
Yes <input type="checkbox"/>	
No <input checked="" type="checkbox"/>	<b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b>

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

## Form 2 - EIA Preliminary Examination

<b>Case Reference</b>	
<b>Proposed Development Summary</b>	Change of use and extension
<b>Development Address</b>	12 St. James Terrace, Malahide.
<b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b>	
<b>Characteristics of proposed development</b>  (In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	<p>The proposed development comprises of a change of use of an existing office building to a restaurant together with an extension of 58m<sup>2</sup> to the rear of the premises.</p> <p>The site lies within the settlement boundary of Malahide within lands zoned as town centre and there is a wide range of existing uses at this location.</p> <p>There are no demolition works involved, and there is no identified risks of accidents or disasters, nor is there any obvious risks to human health that result from the proposed development.</p> <p>The proposed development will not give rise to the production of significant waste, emissions or pollutants.</p>
<b>Location of development</b>  (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	<b>Briefly comment on the location of the development, having regard to the criteria listed</b>  <p>The site is not located within any designated site. The subject site is located approximately 50m metres south of Malahide Estuary SAC and SPA. In relation to Natura 2000 sites, I refer to the conclusions of the Appropriate Assessment, where I have concluded that adverse effects on site integrity the Malahide Estuary SAC and SPA can be excluded in view of the conservation objectives of these sites and that no reasonable scientific doubt remains as to the absence of such effects.</p> <p>The site is within an Architectural Conservation Area and the existing building is a protected structure. There are no significant impacts on conservation or heritage having regard to the limited scale of works proposed.</p>

<p><b>Types and characteristics of potential impacts</b></p> <p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p><b>Having regard to the characteristics of the development and the sensitivity of its location, consider the potential for SIGNIFICANT effects, not just effects.</b></p> <p>During the construction phase noise, dust and vibration emissions are likely. However, any impacts would be local and temporary in nature and the implementation of standard construction practice measures would satisfactorily mitigate potential impacts. Impacts on the surrounding road network at construction stage can be mitigated by way of adherence to a Construction Management Plan.</p> <p>No significant impacts on the surrounding road network are considered likely at operational stage.</p>
<b>Conclusion</b>	
<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>
There is no real likelihood of significant effects on the environment.	EIA is not required.
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	N/A
There is a real likelihood of significant effects on the environment.	N/A

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