



An
Bord
Pleanála

Inspector's Report

ABP-319394-24

Development

Retention (protected structure): The development consists of retention of an extension to The Church Bar and Restaurant (formerly called Saint Mary's Church), which is a protected structure (RPS no. 5056) for a temporary period of three years.

Location

The Church Bar and Restaurant, Mary Street, Dublin 1

Planning Authority

Dublin City Council North

Planning Authority Reg. Ref.

3049/24

Applicant(s)

Pegaso Ltd Trading as The Church

Type of Application

Temporary Retention Permission

Planning Authority Decision

Refuse Temporary Retention

Type of Appeal

First Party

Appellant(s)

Pegaso Ltd Trading as The Church

Observer(s)

None

Date of Site Inspection

12th June 2024

Inspector

Joe Bonner

Contents

1.0 Site Location and Description.....	3
2.0 Proposed Development.....	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports.....	4
3.3. Prescribed Bodies.....	6
3.4. Third Party Observations.....	6
4.0 Planning History.....	7
5.0 Policy Context	8
6.0 The Appeal.....	14
6.1. Grounds of Appeal.....	14
6.2. Planning Authority Response	18
6.3. Observations.....	19
6.4. Further Responses	19
7.0 Assessment.....	19
8.0 AA Screening	28
9.0 Recommendation.....	29
10.0 Reasons and Considerations	29
Form 2.....	32
EIA Preliminary Examination.....	32
Appendix 1 – Form 1: EIA Pre-Screening	

1.0 Site Location and Description

- 1.1. The site of the development seeking temporary retention is located at the southern side of The Church Bar and Restaurant, Mary Street, Dublin 1. The church premises is bounded by Mary Street to the north, Jervis Street to the east, Wolf Tone Street to the west and Wolfe Tone Square to the south. The site is bound on three sides by metal railings.

2.0 Proposed Development

- 2.1. The application comprises retention permission for a single storey glazed extension abutting the southern elevation of The Church Bar/Restaurant, formerly St Mary's Church, which is a Protected Structure RPS No. 5056, for a temporary period of three years.
- 2.2. The application was accompanied by the following documents:
- Planning Report
 - Archaeological Assessment Report
 - Conservation Report and Heritage Impact Assessment

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Dublin City Council issued a decision to refuse permission on the 8th of March 2024, for one reason, which stated:
- The Church, Mary Street, a protected structure, is recorded as a National Significant building by the NIAH where the structure's highly significant contribution to the conservation area and to Dublin's overall architectural fabric is recognised. The retention of the extension, albeit for a temporary 3 year period, would seriously injure the special architectural character and setting of this nationally significant protected structure by reason of its substandard design and quality which is inconsistent with conservation best practice. The retention of the extension would therefore be contrary to Policy BHA2 (a), (b), (c), (d), (e) of Chapter 11 of the Dublin

City Council Development Plan 2022 – 2028, and would undermine the protection of the architectural heritage of the city. The retention of unauthorised works of this nature would set an undesirable precedent for similar unauthorised works, and would therefore be contrary to the proper planning and sustainable development of the conservation area.

3.2. Planning Authority Reports

Planning Report

3.2.1. The planning officer's report is the basis for the decision to refuse permission and addressed the following:

- It notes that a sensitively designed and complementary extension to the protected structure was granted permission under P.A. Reg. Ref. 3476/19 at the same location on the southern elevation.
- The current unauthorised structure seeking retention is a modern standard conservative type of structure which lacks the careful detailing of the permitted design and is not considered to be an appropriate conservation-led solution.
- Given the protected structure status of the building, any additions or works to the exterior facade need to be sensitively designed and compatible with the special character of the structure. The conservation officer's report notes that serious concerns were raised in the pre planning consultation meeting regarding the retention of the unauthorised works and although only on a temporary basis, they do not meet the high standard of design required for works on nationally significant protected structures and would seriously injure its special architectural character and setting.
- The conservation officer considered that retention would set an unacceptable precedent, contrary to policies BHA2 and BHA9 of the development plan.
- Referencing the existing grant of permission (P.A Reg. Ref. 3476/19), the conservation officer is generally supportive of improvements to the external area of the former church, but careful design, appropriate materials and workmanship are important, and the permitted extension was the subject of a

long consultation process, including the use of high quality materials and light touch glazing.

- It is acknowledged that the structure is below and detached from the historic stone building and no mechanical fixings were attached to the existing masonry walls of the church, and that the ground level was not reduced or excavated beneath the level that was already disturbed during the main redevelopment of the site.
- The conservation report and heritage impact assessment noted that no original or significant architectural fabric was altered, damaged or removed, that no archaeological deposits were impacted by the construction of the shallow concrete slab and foundations, and that the overall dimensions are similar to those permitted under 3476/19.
- A number of details are unclear, including definitive dimensions for the depth of the concrete floor slab, or the depth of the foundations for the pillar foundations, while the route of or impact of electrical cabling is not clear.
- Details of how rainwater from the building would be disposed of should be detailed.
- Notwithstanding that the visual impact is partly mitigated by the mature trees in Wolfe Tone Park and that the enclosure is partly reversable and that the permission is proposed for a temporary period of 3 years, the conservation officer does not support its retention.

3.2.2. Other Technical Reports

- Drainage Division – Recommend further information. The developer to outline how surface water is managed from this extension and what SUDS are being provided.
- EHO – If permission is granted, a condition is recommended prohibiting amplified music in the glazed area and that music played within the premises shall not be audible at the perimeter of the premises.
- Archaeology Section – 29th February 2024 – No objection subject to conditions.

- Conservation Officer – 1st March 2024 – Recommends a refusal of permission for a reason similar to the reason for refusal issued by the planning authority. The report also set out the conservation requirements that would be required to be complied with, if temporary permission was to be granted.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland (TII) – If permission is granted and the development is not exempt from the provisions of the Section 49 Levy scheme for light rail, a Section 49 condition should be attached.
- Submissions were also invited but not received from 1) An Taisce, 2) Department of Housing, Local Government and Heritage, 3) The Heritage Council, 4) Irish Water, 5) National Transport Authority (NTA), 6) Failte Ireland and 7) An Chomhairle Ealaíon.

3.4. Third Party Observations

- 3.4.1. One third party observation was received in respect of the application, from Patrick Coyne, with an address at 7 Arran Street East Dublin 7, c270m southwest of the site. The grounds of the observation related to the structure are:

- Is the application an attempt to delay enforcement proceedings regarding violations of conditions on P.A. Reg. Ref. 3476/19.
- The outdoor seating which is currently obstructing some of the intricate craftsmanship of this protected structure should be removed without delay.
- The proposed expansion of the public house would not contribute positively to the sensitive restoration and architectural revival of Wolfe Tone Park/Graveyard.
- Objective SIO23 and SIO29 were not considered by the applicants agent as there is no report by an acoustic engineer included with the application.
- Objectives SIO26 and SIO24 relating to noise are particularly relevant.
- Section 16.32 referring to 'Night Clubs/Licensed Premises/Casinos/Private Members Clubs' should be addressed.

- Other matters were raised relating to criminal and anti-social behaviour in the adjoining park, drug taking, the consumption of alcohol and smoking.

4.0 Planning History

4.1.1. The planning history of the site since permission was granted in 1998 for a change of use from retrain to bar/restaurant is set out below.

- **P.A. Reg. Ref. 4655/22:** Permission refused on the 5th of October 2021 for (a) the removal of a stainless steel grille from the exterior of the existing stained glass window, and (b) the installation of removable, ventilated protective secondary glazing to the exterior of the east stained glass window.

The refusal reason stated:

1. The proposed works have the potential to cause serious injury to the amenity and special architectural character of the Protected Structure and are considered contrary to best conservation practice with regard to the protection of stained glass windows. Accordingly, the proposed development would contravene National best practice guidance in relation to such works to protected structures and Policy CHC2 (a and b) of Section 11.1.5.3 of the Dublin City Development Plan 2016-2022. The works would set an undesirable precedent for similar works to other historic buildings and protected structures in the area and would therefore be contrary to the proper planning and sustainable development of the area.

- **P.A. Reg. Ref. 3476/19:** Permission granted on the 30th of June 2020 for:
 - (a) to the north of the existing building facing Mary Street; removal of existing fencing, ..., provision of a new single storey, zinc flat-roofed, glazed extension abutting the former church building.
 - (b) to the west of the existing building, facing Wolfe Tone Street; trellis fencing with planting and two new stone pillars with lighting fixtures.
 - (c) to the south of the existing building, facing Wolfe Tone Park; removal of a portion of existing fencing and the provision of a new single storey, zinc flat-roofed, glazed extension abutting the former church building. To facilitate this, the relocating of an external air pavement grille intake to the existing

basement crypt to the adjoining basement existing crypt with a new stainless-steel pavement grille, and to create a ventilation opening between the crypts.

(d) no new drainage is proposed.

- **P.A. Reg. Ref. 2388/13:** Permission refused on the 2nd of July 2013 for the re-plastering and painting of the glass stair tower at all levels, a new frameless internal glass lobby to the ground floor door on the south east corner. Temporary retention planning permission was also granted for use of the external area enclosed by railings for bar/cafe use.
- **P.A. Reg. Ref. 2305/12:** Temporary retention permission granted on the 11th of June 2012 for use of the external space, tables and chairs.
- **P.A. Reg. Ref. 2581/10:** Permission refused on the 7th of April 2011 for continued use of beer garden, with mobile bar and barbecue / food counters, restoration of the church yard railings, outdoor furniture and internal works.
- **P.A. Reg. Ref. 2772/06:** 3 year permission granted on the 31st of July 2006 for use of external are for bar/café use.
- **P.A. Reg. Ref. 5549/05:** Permission granted on the 14th of February 2006 to erect railings along three sides of the church building.
- **PL29N.108009 (P.A. Reg. Ref. 0454/98):** Permission granted by the board on the 13th of January 1999 for a change of use from retail use as a book shop to restaurant and licensed bar.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

Zoning

- 5.1.1. The relevant Development Plan is the Dublin City Development Plan 2022-2028, which came into effect on 14th December 2022. The 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. Permissible uses in Z5 areas include 'public house' and 'restaurant'.

- 5.1.2. While the roads around the site are unzoned, the lands to the north, west and east are also zoned Z5 while Wolfe Tone Park, that lies immediately south of the structure subject to this application is zoned Z9 'Amenity / Open Space Lands / Green Network' the objective of which is 'to preserve, provide and improve recreational amenity, open space and ecosystem services'.

Protected Structure

- 5.1.3. 'The Church' is listed as 'former St Mary's Church' in the Record of Protected Structures (No 5056), with no additional description or information provided.
- 5.1.4. Policy BHA2 in 11.5.1, which is cited in the refusal reason refers to 'Development of Protected Structures' and sets out the criteria to be considered for developments affecting Protected Structures being:

- That development will conserve and enhance protected structures and their curtilage and will (Note: numbering is as per development Plan):
 - (a) Ensure that any development proposals to protected structures, their curtilage and setting shall have regard to the Architectural Heritage Protection Guidelines for Planning Authorities (2011) published by the Department of Culture, Heritage and the Gaeltacht.
 - (b) Protect structures included on the RPS 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 with expertise in architectural conservation.
 - (d) Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout and materials.
 - (c) Ensure that the form and structural integrity of the protected structure is retained in any redevelopment and ensure that new development does not adversely impact the curtilage or the special character of the protected structure.

(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.

e) Ensure that new and adapted uses are compatible with the architectural character and special interest(s) of the protected structure.

(f) Protect and retain important elements of built heritage including historic gardens, stone walls, entrance gates and piers and any other associated curtilage features.

Conservation Area

5.1.5. The site is located in a Conservation Area. Section 15.15.2.2 'Conservation Areas' provides that all planning applications for development in conservation areas shall:

- Respect the existing setting and character of the surrounding area.
- Be cognisant and/ or complementary to the existing scale, building height and massing of the surrounding context.
- Protect the amenities of the surrounding properties and spaces.
- Provide for an assessment of the visual impact of the development in the surrounding context.
- Ensure materials and finishes are in keeping with the existing built environment.
- Positively contribute to the existing streetscape.

5.1.6. Policy BHA9 provides that development within a 'Conservation Area' must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible. Enhancement opportunities may include:

- 1. Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting.
- 4. Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area.
- 6. Retention of buildings and features that contribute to the overall character and integrity of the Conservation Area.

Archaeological Heritage

- 5.1.7. The site lies within the boundary of the Zone of Archaeological Interest for the Recorded Monument DU018-020 (Historic City) and Section 11.5.5 and Policy BHA 26 of the Development Plan protect zones of archaeological interest and protected structures from any works that would negatively impact their special character and appearance.

Under Policy BHA26 It is the Policy of Dublin City Council

- 1. To protect and preserve Monuments and Places listed on the statutory Record of Monuments and Places (RMP) as established under Section 12 of the National Monuments (Amendment) Act 1994 which have been identified in the Record of Monuments and Places and the Historic Environment Viewer (www.archaeology.ie).
- 2. To protect archaeological material in situ by ensuring that only minimal impact on archaeological layers is allowed, by way of re-use of standing buildings, the construction of light buildings, low impact foundation design, or the omission of basements (except in exceptional circumstances) in the Monuments and Places listed on the statutory Record of Monuments and Places (RMP) as established under Section 12 of the National Monuments (Amendment) Act 1994.

Purpose of Z5 zoning

- 5.1.8. Section 14.7.5 of the Development Plan states that 'the primary purpose of the Z5 zone is to sustain life within the centre of the city through intensive mixed-use development. The strategy is to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night'. It continues by stating that 'as a balance, and in recognition of the growing residential communities in the city centre, adequate noise reduction measures must be incorporated into development, especially mixed-use development, and regard should be given to the hours of operation'.

Noise

- 5.1.9. Section 7.5.7 Evening and Night Time Economy states that 'Evening and night-time economy uses contribute to the vitality and vibrancy of the city centre and contributes positively to the visitor experience and local economy.' It includes the following policies:

- CCUV35 - Night Time Economy
- CCUV36 - New Development

5.1.10. Section 9.5.8 'Noise Pollution' includes the following objectives: -

- SIO23 - Dublin Agglomeration Environmental Noise Action Plan
- SIO24 - Noise Monitoring and Enforcement

Culture/ Public Houses

5.1.11. Section 12.5.3 'Supporting Cultural Vibrancy in the City' provides that 'a wide range of cultural facilities is the lifeblood of a city', and this includes public houses.

5.1.12. Section 15.14.12 referring to licensed premises states that there is a need to strike an appropriate balance between the role of entertainment users and the economy of the city and protect the amenities of residents from an over concentration of late-night venues and that noise emanating from that the boundaries of these establishment are issues which need to be addressed in planning applications for such establishments.

City Economy and Enterprise

5.1.13. Chapter 6 City Economy and Enterprise contains the following policies:

- It is the Policy of Dublin City Council

CEE14 Quality of Place

To recognise that 'quality of place', 'clean, green and safe', is crucial to the economic success of the city, in attracting foreign and domestic investment, and in attracting and retaining key scarce talent, residents and tourists.

CEE26 Tourism in Dublin

- (i) To promote and facilitate tourism as one of the key economic pillars of the city's economy and a major generator of employment and to support the appropriate, balanced provision of tourism facilities and visitor attractions.
- (ii) To promote and enhance Dublin as a world class tourist destination for leisure, culture, business and student visitors and to promote Dublin as a setting for conventions and cultural events.

- (iii) To improve the accessibility of tourism infrastructure to recognise the access needs of all visitors to our city.

5.2. NIAH

- 5.2.1. As well as being a Protected Structure, Saint Mary's Church is listed in the National Inventory of Architectural Heritage (NIAH) which assigns it a 'National' rating, of Archaeological, Architectural, Artistic, Historical and Social interest.
- 5.2.2. References in the description to the southern façade of the building, where the structure seeking temporary retention is located include:
- West End of South elevation having stone panels, possibly headstones, inset to wall and rendered with limestone architraves and limestone lintel. Segmental-headed window openings to ground floor of north and south side elevations with granite cills and moulded Portland stone architraves with enlarged keystones late 19th century bipartite, y-treasury windows with four-over-two pane timber sliding sash windows and loop window over. The doorcases of main entrance are matched on the southern facade. Recent paving surrounding site... Recent cast iron railing enclosing site.
- 5.2.3. The appraisal states that ...Saint Mary's Church was begun c.1700 and was the first classical parish church in the city. ... The plan form adds further to the site's unique identity, ...Mary Street was laid out by Humphrey Jervis from the mid-1690s and in 1697 the parish of Saint Michan's was divided into three which precipitated the construction of Saint Mary's. Jervis Street was named for the developer himself and was once home to seventeenth and eighteenth-century buildings. The streets are much altered now and consist largely of Victorian buildings, leaving Saint Mary's to ground the district in its earlier historic milieu. As such, it makes a highly significant contribution to the streetscape and to Dublin's overall architectural fabric.

5.3. Recorded Monument

- 5.3.1. The site - St Mary's Church is a recorded monument, reference DU018-020322.

5.4. National Policy and Guidelines

- 5.4.1. Architectural Heritage Protection Guidelines (2011)

These guidelines outline the responsibilities of the Planning Authority in preserving the character of protected structures and conservation areas within their functional

area and where relevant, extracts from the Guidelines will be referred to in the assessment section of this report.

5.5. Natural Heritage Designations

- 5.5.1. The nearest Natura 2000 sites are South Dublin Bay and River Tolka Estuary SPA (Site Code:004024) which is c2.75km north east of the site and South Dublin Bay SAC (Site Code:000210) c 5.5km east of the site.

5.6. EIA Screening

- 5.6.1. See completed Form 1 in Appendix 1.
- 5.6.2. Having regard to the limited nature and scale of the development that is already in place in a serviced urban area and to the site area which is well below the threshold set out in Part 2 (10) of Schedule 5 to the Planning and Development Regulations 2001 (as amended) - Infrastructure projects - (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district), to the absence of any connectivity to any sensitive locations, to the limited impact of the building on the fabric of the existing protected structure on site and to a previous grant of permission for a similar development on the same part of the site as the building seeking retention, for which permission is still live and for which it was deemed that EIA was not required, I have concluded at preliminary examination stage that there is no real likelihood of significant effects on the environment arising from the proposed development having regard to the criteria set out in Schedule 7 to the Planning and Development Regulations 2001 (as amended).
- 5.6.1. I conclude that the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The first party grounds of appeal include a planning consultants cover letter, a letter from a structural engineer addressing drainage and a letter from a director of the applicant company.

- 6.1.2. Cover letter

- They refer the board to the planning officer's report which addresses the policy of the city development plan, and to the planning report submitted with the application which describes the site, its context, planning history and applicable policies, save where the context requires elaboration in support of the appeal.
- The justification for the erection of the temporary structure is a combination of circumstances including increased building costs that occurred following COVID and the war in Ukraine which impacted the decision not to carry out the development permitted under 3476/19, but instead to build a temporary lightweight structure on the footprint of the permitted development on the southern side of building.
- Detailed compliance submission will be lodged with DCC in respect of the permitted extensions in Q2 2024 and the applicant intends to submit a commencement notice in Q4 2024 in respect of the already permitted development under P.A Reg. Ref. 3476/19.

6.1.3. Development does not have negative impacts on protected structure.

- While the development is of a different style to that permitted, the Grade 1 Conservation Architect's and Archaeologist Assessments have not identified significant negative impacts on the protected structure, and both will be provided to the board, by the planning authority.
- The structure seeking retention is not offensive and does not interfere with any of the openings or notable features of the church. The horizontal supports and the glazing are imperceptible when viewed from the outside and the structure read as a simple lightweight glass addition to the building.
- The structure has a minimal visual impact when viewed from the wider area and the trees in the square considerably reduced the impact.
- The conservation report and refusal reason consider the temporary extension to be of substandard design and quality and while it is acknowledged that it the design and quality are different to the permitted development, having regard to its temporary nature and location, it is submitted that it causes no harm to the protected structure and is reversible.

- If permission, rather than temporary retention had been sought due to the severe and genuine circumstances that the hospitality section endured during Covid, it is reasonable to assume that same may have been permitted.
- The development is entirely reversible as per Section 7.2 of the Architectural Protection Guidelines 2011.

6.1.4. Passive Surveillance

- The development provides invaluable overlooking of Wolfe Tone Square.
- Much of the third party observation relates to security in Wolfe Tone Square, which is outside the scope of this application.
- The principle of a similar extension is already permitted under 3476/19.
- The removal of the glazed area would remove surveillance of Wolfe Tone Square and would be a retrograde step.
- The planning authority has not fully considered the loss of quality of place set out in Policy CEE14 of the development plan, that would result from removing the structure in advance of implementing the building permitted by 3476/19.
- Temporary retention would be consistent with policy CEE26 of the development Plan.

6.1.5. Development not contrary to Policy BHA2 (a), (b), (c), (d) or (e)

- While cited in the planning officer's report, the individual elements are not assessed in detail in the assessment and the applicant responded as follows:
 - (a) Regard to be had to Architectural Heritage Protection Guidelines – The proposal is temporary and removable and section 6.14 of the Guidelines consider retention of unauthorised extensions could be acceptable depending on individual circumstances, and that a planning authority should apply the same considerations that it would to a standard application, and should ensure that that works if granted, have the minimum possible impact on the character of the structure. In this regard, the board can impose a condition requiring removal of the structure by a certain date.
 - (b) Protect structures on the RPS from works that would negatively affect their special character – The building has been extensively altered over the decades and

the lightweight structure allows the original doors and windows to be clearly seen through the glazing and it sits below the historic string course. Refer to the conservation and archaeology reports.

- (c) Ensure works are in line with best conservation practice and advised by suitably qualified persons with expertise in architectural conservation – The works were carried out without the benefit of a conservation architect however; one has been appointed to support this application and to deal with compliance matters relating to the existing grant under P.A. Reg. Ref. 3476/19.
- (d) Ensure extensions are sensitively sited and designed and appropriate in terms of scale, mass, design, height, density, layout and materials – The extension is entirely sensitively sited, and has the benefit of scrutiny and approval from DCC on the same footprint. The simple lean-to design is not inappropriate in any way and modest in size at 50sqm. While the materials are not of the same quality as the permitted development that is to be commenced in January 2025, they are innocuous on a short term basis and can be considered a compromise.

6.1.6. Precedent

- There is no rationale for the refusal reason stating that it would set an undesirable precedent for similar unauthorised works as the site is unique and there are no comparable sites. Section 37(1)(b) of the Planning Act allows for retention applications and accordingly the refusal reason has not been reasoned.

6.1.7. Drainage

- While not a refusal reason, further information was recommended regarding drainage. A hidden gutter is located along the southern part of the sloped glazing roof feeding into two hidden down pipes within the vertical supports of the glazed structure. Prior to the structure being erected the area where it is situated was impermeable and therefore no additional or new hard surfacing has occurred. The crypt is located at the southern side of the church and permeable paving would not be appropriate. In the grant of permission issued under 3476/19, SUDS measures involved soft landscaping and water would flow to the existing drainage system, which will be implemented when the permitted development is developed in full in 2025.

Electricity Source

- Electricity to serve the area subject to the application is from an externally mounted electricity box.

Structural Engineer's Drainage Report

- The church is connected to the mains drainage waste system and any water that landed in the area where the extension has been built was expected to run off to the surrounding area and to Wolfe Tone Park, which has both permeable and non-permeable surfaces. There was no existing drainage in this area, which is located above the crypt.

Letter from applicant company director

- The letter sets out a series of incidents that occurred in the adjacent Wolfe Tone Park on dates between October and December 2023 that were observed from the glazed structure and reported to Gardai.
- They participate in regular local area meetings with various council departments, and other services including Gardai and homeless services.
- The Conservatory directly generates an increase in local employment in the amount of €105,000 in wages annually, facilitates additional capacity at peak times and keeps more spend in Dublin 1.
- The temporary conservatory is a positive addition and evolution of the already well established church business.
- The conservatory was built in April 2022 due to post covid restraints and while fully committed to building the permitted extensions to the north and south, they see no benefit in having to immediately demolish this present temporary structure and they consider a grant of retention for a period of 3 years in a very reasonable request.

6.2. Planning Authority Response

- Requests that the board uphold its decision to refuse permission, but that if permission is granted, that Section 48 and 49 (Luas Cross City) development contributions are attached.

6.3. **Observations**

- None

6.4. **Further Responses**

- None

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including information received in relation to the appeal, having inspected the site, and having regard to relevant planning policies, I am satisfied that the main issues in this appeal are can be dealt with under the following headings:

- Principle of Development
- Justification for Development
- P.A Reg. Ref. 3476/19
- Archaeological Assessment
- Passive Surveillance
- Impact on Protected Structures

7.2. **Principle of Development**

- 7.2.1. The extant grant of permission issued under P.A. 3476/19 is described in 4.1.1 above and included works to the area subject to the current appeal including removal of a portion of existing fencing and the provision of a new single storey, zinc flat-roofed, glazed extension abutting the former church building.
- 7.2.2. The fact that this grant of permission exists for a structure in the same location is a key element of the applicant's grounds of appeal and their justification for the retention of the current building for a temporary period of 3 years.
- 7.2.3. I also note that the applicant's basis for erecting the structure in April 2022 is stated to be related to post covid restrictions, meaning it is already in place for 2 years and two months at the time of this report, while the applicant is seeking that it be retained

for a period of 3 years, but does not clarify if that 3 years was from the date of the erection of the structure or from the date of the issuing of a grant of permission.

- 7.2.4. For comparison purposes, the floor area and dimensions of the building that is subject to the current application is 3.825m high, 3.705m wide and 13.39m long.
- 7.2.5. The development permitted under P.A. Reg. Ref. 3476/19 was 3.81m high, 4.15m wide and 14.47m long, while the roof was flat and would overhang the footprint of the building at each end and along the boundary with Wolfe Tone Park, where part of the existing railings would be removed.
- 7.3. Considering what has previously been permitted in this location, in the form of a still live grant of permission, and subject to all other considerations, I am satisfied that the principle of the development of a structure at this location would be acceptable.

7.4. Justification for Development

- 7.4.1. The applicant's justification for erecting this lightweight structure in April 2022, rather than building the development permitted under P.A. Reg. Ref. 3476/19 is set out in the appeal cover letter where they refer to post covid costs, the war in Ukraine and an increase in building costs. I consider that comments have been contradicted by a recent article in the Business Post from the 16th of June 2024 wherein the general manager of the Church stated that the premises has invested €1.5 million over an 18 month period on refurbishments to the entire premises, while a further €1m is to be invested in the near future in the next phase of development which at the north of the building, which is likely a reference to the extension permitted at the northern end of the church as part of the grant of permission under 3476/19. No reference was made in the Business Post article to the existing structure at the south of the building that is the subject of this application or to the construction of the permitted extension.
- 7.4.2. In addition, the grounds of appeal states that detailed compliance submission will be lodged with DCC in respect of the permitted extensions in Q2 2024. At the time of preparing this report in late June 2024, there was no evidence on the planning authority website that compliance documents had been submitted in respect of the grant of permission under P.A. Reg. Ref. 3476/19.
- 7.5. On the occasion of the site visit, I observed a sign immediately inside of the main door of the premises from the corner of Mary Street and Jervis Street indicating that

the interior capacity of the premises is 1,662 made up of 500 patrons at basement level, 852 patrons at ground floor level and 310 patrons at the gallery level.

- 7.6. Question ten of the planning application form indicates that the floor area of the existing building is 1,659sqm, which would equate to one patron per 0.998sqm of floor space. The area subject to the application for retention is 49.6sqm which would give an additional capacity of 49 patrons, giving a total of 1,711 or an increase of 2.95% in internal capacity, which I do not consider to be significant.
- 7.7. The above figures do not include the external seating capacity which is shown on the submitted floor plans to be 107, which would increase the existing capacity to 1,769. It was also noted that outdoor seating was placed in the area subject to this application, prior to the construction of the structure seeking temporary retention.
- 7.8. Having considered the scale and capacity of both the internal and external areas of the existing building and the small scale of the area subject to this application for retention, I am not satisfied that the applicant has justified the need to retain the existing structure, even for a temporary period.
- 7.9. **P.A. Reg. Ref. 3476/19**
- 7.9.1. The applicant indicated that they constructed the lightweight conservatory building in April 2022 and have sought temporary retention permission for a period of 3 years. They have also undertaken that they intend to carry out the permitted development which was granted permission on the 30th of June 2020. The grant of permission for 3479/19 was for a period of 5 years, meaning that under normal circumstances the duration of the permission would expire on the 29th of June 2025.
- 7.9.2. However, Section 251 of the Planning and Development Act provides that 9 days in every year are to be excluded meaning that 45 days must be added to the duration of the permission. In addition, measures introduced under Section 251A(4) of the Planning and Development Act during Covid, extended the duration of all relevant periods and timelines specified by an additional 56 days meaning that an aggregate of 101 days must be added to the duration of permission P.A. Reg. Ref. 3476/19. Therefore, the extant grant of permission will expire on the 7th of October 2025, just over 15 months from the time of writing this report.

7.9.3. To grant a three year retention permission would therefore be unnecessary and would be contrary to the applicant's commitment to carry out the development as permitted during the life of the permission. Taking into consideration that the existing structure would have to be removed and archaeological monitoring would have to be carried out both during the demolition of the existing structure and for the construction of the new development, I would not recommend that a grant of temporary retention permission be issued. However, if the board is minded to grant permission, the duration should be limited to a period of three years from the time that the structure was erected, which is stated to be April 2022, meaning that the permission would expire no later than the 30th of April 2025, and not 3 years from the date of the decision to grant permission.

7.9.4. If the board is minded to grant permission, I would also recommend that a bond condition be attached requiring the structure be removed by a particular date, regardless of any other applications submitted seeking retention of the structure for a longer duration, and specifying steps to be taken to ensure that archaeological and architectural heritage are protected to avoid any further unauthorised development or works being carried out.

7.10. Archaeological Assessment

7.10.1. I note that the archaeological assessment has been carried out by the same person who prepared the archaeological assessment in respect of P.A. Reg. Ref. 3476/19 and they state that they have examined photographs of the groundworks provided by the developer, that the foundations of the four supporting columns appear to be c300mm in depth and did not show any evidence that human remains were disturbed. They also stated that their 2019 archaeological impact assessment concluded the uppermost 300mm of ground along the southern side of the church was heavily disturbed and that given the minimal below ground impact of the development, and the disturbed layer of rubble that previous archaeological excavations have identified in this location, the impact of the development is unlikely to be significant.

7.10.2. The current assessment goes on to note that previous archaeological excavations have demonstrated that burials within the graveyard extended all the way to the South facade of the church structure itself the external entrances to the crypts were

also located along this façade, but that investigations demonstrated that the burial layers lay at a depth of one metre below the modern surface, beneath an upper layer of heavily disturbed rubble. They concluded that that the foundations are highly unlikely to have had a negative impact on subsurface archaeological remains, that the nature of any impact is likely to remain minimal and no further archaeological work is recommended for this development.

7.10.3. While they have referred to their own 2019 report and recommendations, as outlined above, no reference was made to condition No 10 of the grant of permission in 3476/19, on which the applicant is relying as a justification for carrying out this temporary development, which set out the requirements of the city archaeologists including that (c) The developer's archaeologist shall undertake licensed archaeological monitoring of all demolition and sub-surface works associated with the development including the breaking and removal of any floor slabs, levelling of ground etc.

7.10.4. While the applicant's archaeologists states that there may be no archaeological remains located beneath the footprint of the development, without appropriate investigations being carried out, and bearing in mind that this is not just a recorded monument but was also a cemetery, and while excavations were previously carried out adjacent to the footprint of this development no excavations were actually carried out in this location, they cannot be certain that no impact has arisen. I further note the report of the City Archaeologist in respect of this application, who cites an extract from the applicant's archaeologists 2019 report, where the said in respect of the southern glass extension that 'the upper 300mm of ground is unlikely to contain articulated human remains. However, as previous excavations have uncovered large quantities of disarticulated human remains, it is possible that disarticulated human remains and other items of archaeological interest ex site and may be found in the topsoil. It is also possible that the entrances to underground crypts may be uncovered. The 2019 report, is again quoted where it stated 'The area to the South of the church that falls within the proposed development has archaeological potential due to its proximity to the former cemetery and previous discoveries of human remains in the vicinity... All subsurface excavation works to the south of the church should be subject to monitoring by a qualified archaeologist. Should features of archaeological value be found they should be fully resolved. This should be placed

as a condition for planning permission in the event that it is granted for the proposed development and be carried out under license from the National Monument Service.

7.10.5. The archaeological section was of the opinion that the groundworks undertaken to build the extension should have been archaeologically monitored due to the potential to impact subsurface archaeological material within the recorded monument and were concerned about the manner in which the condition attached to the 2019 granted permission was ignored by the applicant. They also expressed concern that no conservation or archaeological specialists were involved in covering of the crypt entrance with glass. Notwithstanding the reservations expressed, the archaeological department had no objection to the temporary three-year retention permission being granted subject to a caveat that a licensed archaeologist monitors the removal of the extension in three months and provides a monitoring report. It is not clear if they are seeking that the structure is removed in 3 months from the date of the decision or 3 months after the duration of the 3-year temporary permission would expire.

7.10.6. While the applicant has indicated that the structure is lightweight, entirely removable and that no impact has been made in terms of the above ground protected structure, and that there may not have been any impact on subsurface archaeology, Archaeology is only one of a number of matters that require consideration in the assessment of this appeal. Although the applicant has used the same archaeological consultant in both applications, the applicant chose to ignore a previous condition requiring monitoring to be carried out. The purpose of monitoring is not always to find something but to ensure that if some historical artifacts or human remains are found, they are adequately and sensitively dealt with. Considering that the applicant has been permitted a development with a strict condition addressing the protection of archaeology and the recorded monument, yet carried out a development without any reference to the requirements of the specific condition, I am not satisfied that to permit the development would not be contrary to the provisions of Policy BHA26 of the Dublin City Development Plan, notwithstanding the proposal by the city archaeologist to attach a condition requiring monitoring of the demolition of the structures and in particular due to what is consider to be a lack of justification for the development being carried out in the first instance, due to its small size relative to the scale of the existing premises.

7.11. Passive Surveillance

- 7.11.1. The applicant is of the opinion that the structure provides for passive surveillance onto Wolfe Tone Square which they state is subject to ongoing anti-social behaviour and also includes a letter from the owner outlining incidents that were reported to Gardai. They consider that the temporary retention would be consistent with policies CEE26 of the development plan relating to the promotion and facilitation of tourism. Security and law and order in the adjoining public park is a function of the Gardai and other civil authorities and while patrons seated in this area may well witness incidents in the park, they would have an even better view of the park from the building that was permitted under P.A Reg. Ref. 3476/19, as the existing railings would be removed, and I do not consider this is a sustainable argument to allow retention of the unauthorised structure.

7.12. Precedent

- 7.12.1. The appellant argues that the development would not set an undesirable precedent for similar unauthorised works as the subject site is unique and there is no comparable situation, with each application falling to be considered having regard to its own circumstances and that the planning legislation allows for retention applications under section 37(1)(b) of the Planning and Development Act 2000 (as amended).
- 7.12.2. While planning legislation does allow for retention applications to be granted, each case must be considered on its merits and I note contradictions between the statement made in the grounds of appeal that the cost of development prevented the applicant from constructing the permitted development from P.A. Reg. Ref 3476/19, versus the costs of extensive renovations that are referred to in the Business Post.
- 7.12.3. The owners of protected structures are or should be aware of the obligations that come with being custodians of protected structures and in this case the building is both a protected structure and a recorded monument. Therefore, to allow the applicant to construct an unauthorised development of a standard, quality and of material finishes that they themselves have accepted are of a lesser quality and standard than the permitted structure that was subject to detailed consultations and agreement in respect of the extant grant of permission, would in my opinion set a precedent that could be cited by and followed by owners of other protected

structures in the city of which there are more than 8,900. Therefore, notwithstanding that a grant of permission exists for a structure of a similar size, I am satisfied that to permit temporary retention of this structure which is already in place for more than 2 years would set an undesirable precedent for persons to carry out similar unauthorised works to protected structures throughout the city and in my opinion would not be acceptable.

7.13. Impact on Protected Structure

- 7.13.1. Addressing the specific policy referred to in the refusal reason, the appellant specifically refers to subsections (a), (b), (c) and (d) of policy BHA2, and states that while referred to in the refusal reason, the individual subsections are not assessed in detail in the planning officer's assessment. I have previously outlined the grounds of appeal in this regard in section 6.1.5 above and refer the board to same.
- 7.13.2. **BHA2(a)** - Section 6.14 of the Architectural Heritage Protection Guidelines refer to 'Retention Permission' and make provision for cases where unauthorised extensions may be permitted to be retained depending on individual circumstances. While I am satisfied, having visited the site, that the structure has been built so as to not physically affect the integrity of the protected structure above ground level and the works could be easily reversed, the applicant has not justified the need for the additional floor space, given the significant capacity that the existing premises can accommodate both indoors (1,662) and outdoors (107) and where the additional floor space subject to this application represents only c2.75% of the existing permitted capacity.
- 7.13.3. Section 6.14.2 of the Guidelines also states that where an application for retention of unauthorised works to a protected structure is lodged, a planning authority should apply the same consideration to the works as for planning applications and should, if considering granting permission, seek to ensure that the works for which retention permission is granted have the minimum possible impact on the character of the structure. Section 6.14.3 goes on to state that where in a particular case inappropriate works have been carried out, and in the opinion of the planning authority it is possible to restore its character by the carrying out of works, the authority could also consider refusing permission and using the enforcement

provisions to require removal of the unauthorised works. Alternatively, the planning authority could consider issuing a notice to require restoration of character.

- 7.13.4. Leaving aside that it is in situ, if an application for a glazed PVC conservatory structure was submitted in the first instance, I would not be of the opinion that it would be an acceptable design quality or material finishes that would be complementary to the character of the existing protected structure and I would not recommend a grant of permission. For the same reasons, I would not recommend a grant of temporary retention permission and I am satisfied that temporary retention permission should be refused in this instance.
- 7.13.5. **BHA2 (b)** - The design of the temporary PVC building seeking retention is of a poor quality compared to the quality of the existing protected structure / national monument and I consider that it negatively impacts the character and appearance of the protected structure, contrary to Policy BHA2 of the development plan.
- 7.13.6. **BHA2(c)** – the conservatory was not carried out in line with best conservation practice and no evidence was provided that it was carried out on advisement from a suitably qualified person with expertise in architectural conservation, contrary to Policy BHA2(c). In fact, the application documentation indicated that no advice was sought before erecting the temporary structure.
- 7.13.7. **BHA2(d)** – while the scale, mass, height and density of the temporary structure is similar to the permitted extension to the south of the church, the layout and materials used are not of an acceptable quality and the retention of the structure, even for a temporary period of time, would signal to other property owners that it is acceptable to get permission for a well thought out and designed structure and build an inferior structure using lesser quality materials and I am satisfied that the current structure has not been sensitively designed and should not be permitted to be retained even temporarily.
- 7.13.8. Having regard to the foregoing, I consider that the proposed development would materially and adversely affect the character of the Church, which is both a protected structure and a recorded monument, and would conflict a number of provisions of Policy BHA2 of the Dublin City Development Plan 2022-2028. Therefore, I consider that the proposed development should be refused permission.

8.0 AA Screening

- 8.1.1. I have considered the proposed development to the protected structure consisting of the temporary retention of a glazed addition to the southern side of the building, in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.1.2. The subject site is located c2.75km west of the South Dublin Bay and River Tolka Estuary SPA at Eastpoint and c5.5km northeast of South Dublin Bay SAC.
- 8.1.3. The proposed development comprises the temporary retention of a lightweight glazed extension at the southern side of the existing pub/former church building extending to 49.6kmsqm.
- 8.1.4. No nature conservation concerns were raised in the planning appeal, while the planning authority considered that a Stage 2 AA would not be required.
- 8.1.5. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:
- The small scale and nature of the works already carried out on the site for which temporary retention is sought.
 - The distance from the nearest European site and lack of connections as the site connects to the existing public surface water drainage network.
 - The comments in the planning officer's report regarding Appropriate Assessment.
 - That permission has already been permitted for a permanent structure on this part of the existing site.
- 8.1.6. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 8.1.7. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

- 9.1. I recommend that temporary retention permission be **refused** for the reasons and considerations set out below.

10.0 Reasons and Considerations

It is considered that the proposed development seeking temporary retention permission on the southern elevation of The Church which is a nationally significant Protected Structure listed in the NIAH, by virtue of its design, appearance and material finishes, does not respect the historic significance of the structure, and negatively impacts on the visual amenity, injures the special architectural character and setting of the Protected Structure character and the distinctiveness of the building and the immediate area which is a Conservation Area as denoted on Map E of the Development Plan. Furthermore, the development was carried out without due regard to the sites status as a recorded monument and as an area of archaeological potential. The proposed development would be contrary to Policies BHA2 Development of Protected Structures, BHA9 Conservation Areas and BHA26 Archaeological Heritage of the Dublin City Development Plan 2022-2028 and to grant temporary retention permission would set an undesirable precedent for similar development. The proposed development would, therefore, be contrary to the provisions of the Dublin City Development Plan 2022-2028 and to the proper planning and sustainable development of the area.

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

Joe Bonner
Senior Planning Inspector

28th June 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-319394-24			
Proposed Development Summary	Retention permission for of a single storey glazed extension abutting the south elevation of The Church Bar and Restaurant formerly called St Mary's Church, which is a Protected Structure RPS No. 5056, for a temporary period of three years.			
Development Address	The Church Bar and Restaurant, Mary Street, Dublin 1.			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X	
		No	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes			EIA Mandatory EIAR required	
No	X		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No	X	N/A		No EIAR or Preliminary Examination required
Yes		Class 10. Infrastructure projects (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district	The site area is 0.1232ha	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-319394-24	
Proposed Development Summary	Retention permission for of a single storey glazed extension abutting the south elevation of The Church Bar and Restaurant formerly called St Mary's Church, which is a Protected Structure RPS No. 5056, for a temporary period of three years.	
Development Address	The Church Bar and Restaurant, Mary Street, Dublin 1.	
The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.		
	Examination	Yes/No/ Uncertain
Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment? Will the development result in the production of any significant waste, emissions or pollutants?	<p>The subject development comprises a small single storey glazed extension at the southern end of a commercial premises at a point where significantly larger building are located and at a part of the site which has a live grant of permissions in place for a larger extension In this way, the proposed development would not be exceptional in the context of the existing environment.</p> <p>The development is already in situ and as a light weight structure which consists of a metal support frame that sits on constructed pads and PVC and glazed structure, I do not consider that the level of waste generated during the construction phase would have resulted in the production of any significant waste, emissions or pollutants.</p> <p>Likewise, I do not consider that any significant waste, emissions or pollutants arise during the operational phase due to the nature of the proposed use associated with the existing public house/ restaurant premises.</p>	<p>No</p>

