

An
Bord
Pleanála

Inspector's Report ABP321276-24

Development	Protected Structures: Replacement of advertising poster with digital advertising display unit.
Location	Site at Nos. 3-4 Usher's Quay, Dublin 8 (D08VOF9 and D08N9YV).
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3695/24.
Applicant(s)	PZ Digital Limited.
Type of Application	Permission.
Planning Authority Decision	Grant permission with conditions.
Type of Appeal	First & Third Party
Appellant(s)	(1) Hazelmere Enterprizes Limited (2) PZ Digital Limited.
Observer(s)	None.
Date of Site Inspection	20/02/2025.
Inspector	Anthony Abbott King.

1.0 Site Location and Description

- 1.1. The applicant site comprises a twentieth-century 3-storey 4-bay apartment building (Circa. 1920) with a commercial ground floor located on the south quays in Dublin city centre at the junction of Usher's Quay and Bridge Street Lower – Nos. 3 & 4 Usher's Quay are protected structures.
- 1.2. The subject building has a centrally located entrance to the upper floors and a commercial shop frontage on either side of the upper floor entrance. Nos. 3 & 4 Usher's Quay are vacant and at present unkempt with lowered roller shutters exhibiting graffiti to the street frontage.
- 1.3. The streetscape on Usher's Quay has been truncated by demolition at the interface of Usher's Quay and Bridge Street Lower circa.1970. No. 3 Usher's Quay bookends the riverside streetscape between St. Augustine Street to the west and the residual space left by an earlier road widening scheme onto Bridge Street Upper (demarcated nos. 1 & 2 Usher's Quay).
- 1.4. Nos. 3 & 4 Ushers Quay share a property boundary to the south and east with 'Hicken Lighting', a commercial premises on Bridge Street Lower, which has a front curtilage car park to the east of the commercial premises, in part bounding the east gable of no.3 Ushers Quay.
- 1.5. The eastern blank gable of no. 3 Usher's Quay articulates the corner of the Bridge Street Lower junction and is publicly visible. The gable accommodates an existing large bill board sign and lighting located above the public pavement and above the in-curtilage car parking area of Hicken Lighting.
- 1.6. The existing signage is in the line of vision of west bound traffic moving along the city quays egressing the city centre toward Heuston Station.
- 1.7. The east gable of no.3 Usher's Quay is visible from Father Mathew Bridge, which links the south and north quays between Bridge Street Lower and Church Street.
- 1.8. The site are is given as 220 sqm.

2.0 Proposed Development

- 2.1. The development proposal comprises the following works to protected structures at nos. 3-4 Usher's Quay (RPS Ref: Nos. 9199 & 8200):

Replacement of a 6.6m x 7.7m conventional advertising poster (including a 150mm wide frame and 1.25m apron) (i.e. 50.82 sqm.) with overhead lights having an overall height of 10.95m off the ground, by the erection of a 5m x 7m digital advertising display unit (including 100mm wide frame) (i.e. 35 sqm.) without overhead lights, and an overall height of 11.5m off the ground, on the side (east) elevation of no. 3 Usher's Quay.

The permission would, if granted, be on the basis of removing and decommissioning the 2 number 48-sheet advertising displays on the gable wall of No. 145 Parnell Street, Dublin 1 (a protected structure RPS No. 6433) (18.58 sqm. each), together with 1 number advertising display at no. 1A Fairview Strand, Fairview, Dublin 3 (13.01 sqm.) in accordance with Section 1.0 of Appendix 17 (i.e. the Outdoor Advertising Strategy 'bartering' system).

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 11 conditions.

Condition No. 2 is relevant and states:

This planning permission is granted for a limited period of a maximum of 5 years from the date of this grant at which date the permission shall cease and the structure shall be removed and the land returned to its former state unless a further permission has been granted before the expiry of that date.

Reason: To define the terms of the permission and to cater for orderly development of the area. To permit the planning authority to reassess the situation in light of the circumstances at this time.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the CEO of Dublin City Council reflects the recommendation of the planning case officer.

Further Information was requested on the 11/07/24

Further Information Response was received on the 26/09/24

3.2.2. Other Technical Reports

The Transport Planning Division (TPD) do not object to the proposal.

The Division do not object to the proposal subject to condition. TPD note that the application is largely a resubmission of Register Reference 4067/22 addressing reasons for refusal including a reduced size digital advertising display unit.

The Conservation Officer (CO)

The conservation officer recommends that permission should be refused for the proposed development.

The CO notes that the proposal is very similar to the previous proposal that was refused permission (DCC reg. ref 4076/22, ABP ref. 314336-22) and the concerns previously expressed by the CO remain with the current proposal.

The planning report submitted by the applicant has not adequately assessed the impact of the proposal on the special character of the protected structure and the surrounding area, which includes the Four Courts (NIAH ref. 50070269, Rating: international).

The CO acknowledges that the area of the proposed signage would be smaller. However, when considered relative to the gable of the structure on which it is located the scale of the proposed board is large, overly dominant and would conceal a large section of the historic brick gable wall of no. 3 Usher's Quay.

The CO concludes that the placement of any advertising boards on the façade of any protected structure is wholly inappropriate and causes serious injury to the character and legibility of the protected structure. The replacement of the paper advertising

board with a digital board would have a serious injurious impact on the protected structure, its setting and the wider setting of the city quays.

4.0 Planning History

The following planning history is relevant.

Under ABP314336-22 (Reg. Ref: 4076-22) planning permission for (Protected Structure) replacement of advertising poster with a digital sign and associated site works was refused for the following reason:

- 1. The proposed digital advertising display structure, by reason of its scale and proportions, appearance and location on the elevation of this Protected Structure, would have an adverse visual impact on and would seriously detract from and injure the special architectural character and legibility of both the Protected Structure and its setting within a Conservation Area, which includes an 'Internationally' significant Protected Structure and which forms part of a significant vista and prospect within the city. The proposed development would be contrary to Policies BHA2, BHA9 and CCUV45 of the Dublin City Development Plan, 2022-2028.*
- 2. The Board is not satisfied on the basis of the information submitted that the advertising displays proposed for removal represent a sufficient planning gain with regard to the rationalisation of external media advertising within the public realm. Therefore, the proposal is not considered to be in accordance with Appendix 17 of the Dublin City Development Plan 2022-2028.*

5.0 Policy and Context

5.1. Development Plan

The relevant local planning policy document is the Dublin City Development Plan 2022-2028.

- Zoning

The zoning objective is 'City Centre' (Map E): *To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.*

Chapter 14 (Land-use Zoning), Section 14.7.5 is relevant and *inter alia* states:

The primary purpose of this use 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.

Advertisement and advertising structures are open for consideration uses.

- Protected Structure

Nos. 3 & 4 Usher's Quay is a protected structure

Chapter 15 (Development Standards), Section 15.15.2.3 (Protected Structures) of the Dublin City Development Plan 2022-2028 notes that the inclusion of a structure in the Record of Protected Structures does not prevent a change of use of the structure, and/or development of, and/or extension to the structure, provided that the impact of any proposed development does not adversely affect the character of the Protected Structure and its setting.

Policy BHA2 provides a list of criteria that need to be satisfied in the development of a protected structure in order *inter alia* to protected the character of the structure and its curtilage.

- Conservation Area Designation

The proposed development is located within the conservation zone red hatching (River Liffey Conservation Area).

Chapter 11 (Archaeology & Built Heritage) Policy Objective BHA9 of the Dublin City Development Plan 2022-2028 *inter alia* states:

To protect the special interest and character of all Dublin's Conservation Areas – identified under Z8 and Z2 zoning objectives..... Development within or affecting a Conservation Area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

Chapter 11, Policy BHA7 (Architectural Conservation Areas) is relevant and states:

(a) To protect the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA). 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. Please refer to Appendix 6 for a full list of ACAs in Dublin City.

(b) Ensure that all development proposals within an ACA contribute positively to the character and distinctiveness of the area and have full regard to the guidance set out in the Character Appraisals and Framework for each ACA.

(c) Ensure that any new development or alteration of a building within an ACA, or immediately adjoining an ACA, is complementary and/or sympathetic to their context, sensitively designed and appropriate in terms of scale, height, mass, density, building lines and materials, and that it protects and enhances the ACA. Contemporary design which is in harmony with the area will be encouraged.

(d) Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving and street furniture.

(e) Promote sensitive hard and soft landscaping works that contribute to the character and quality of the ACA.

(f) Promote best conservation practice and encourage the use of appropriately qualified professional advisors, tradesmen and craftsmen, with recognised conservation expertise, for works to buildings of historic significance within ACAs.....

- Chapter 7 (Urban) Policy CCUV45 (Advertising Structures) is relevant

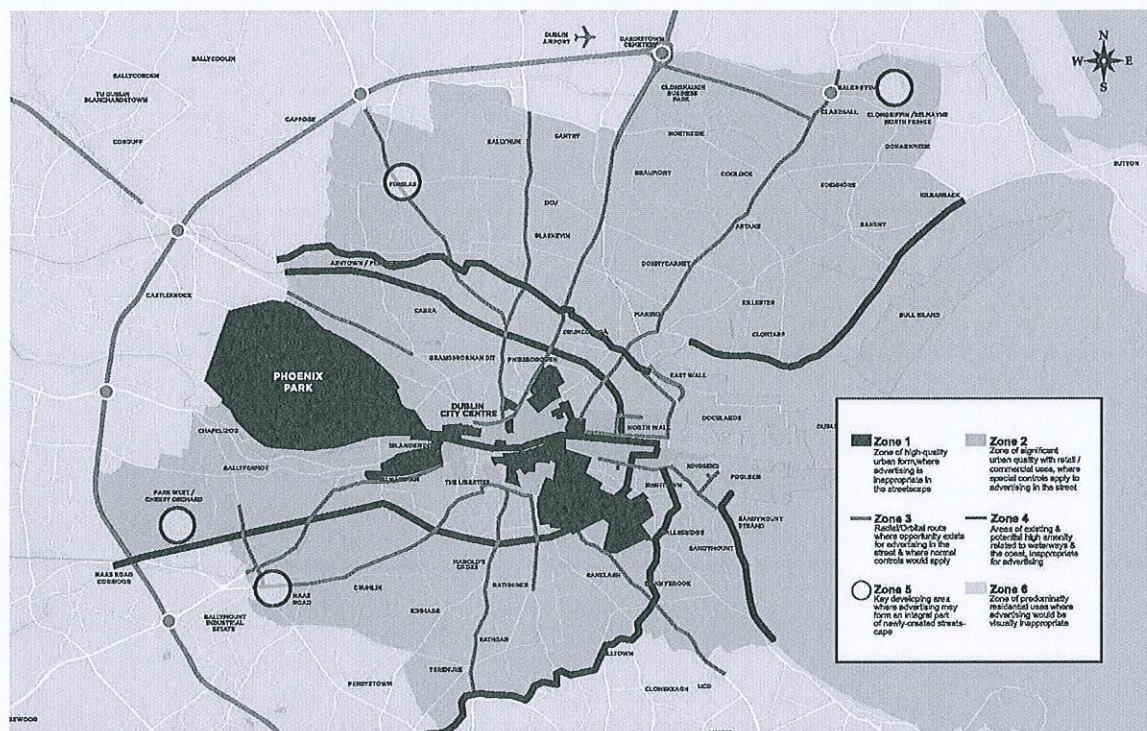
It states:

To consider appropriately designed and located advertising structures primarily with reference to the zoning objectives and permitted advertising uses and of the outdoor advertising strategy (Appendix 17). In all such cases, the structures must be of high-quality design and materials, and must not obstruct or endanger road users or pedestrians, nor impede free pedestrian movement and accessibility of the footpath or roadway.

- Appendix 17 (Advertising & Signage Strategy) is relevant.

The outdoor advertising strategy seeks to set out guidance for the provision of various types of signage within certain locations in the city. In order to manage an effective programme of outdoor advertising, the City Council has developed a policy based on geographical zones.

Figure 1: Zones of Advertising Control



In respect of replacement signage Appendix 17 states the following:

Any upgrading and/ or replacement of existing outdoor advertising (e.g. television, scrolling, electronic, digital) will only be permitted if it is acceptable in amenity/ safety terms and an agreement is made to decommission at least one other display panel in the city and to extinguish the licence for that panel. The purpose of this measure is to ensure that other operators do not use the site. Where such an arrangement is not feasible, consideration may be given to replacement signage which would be of a significantly smaller scale; sensitive to the setting; and, of high quality, robust design and materials.

Appendix 17, Section 2 (Digital Signage) is relevant and states:

The use of digital signage is becoming more prevalent in the city and is beginning to replace the more traditional paper advertising signs. In this

regard, the design and location of digital signage will be controlled as to prevent any adverse impact to road users and pedestrians.

5.2. EIA Screening

The proposed development is not within a class where EIA would apply.

6.0 The Appeal

6.1. Grounds of Appeal

First Party Appeal

The grounds of appeal, prepared by Tom Philips Associates on behalf of the applicant, are summarised below:

- The appellant welcomes the planning authority grant of planning permission, which it is claimed will make a positive visual enhancement to this area of the city. However, the appellant considers that the imposition of a condition that limits the permission to a period of 5 years to be disproportionate.
- This first party appeal is against the temporal Condition No. 2 of the notification to grant permission, which provides authorisation of the sign for a limited period of a maximum of 5 years after which the permission shall cease and the structure shall be removed unless a further permission is granted before the expiry date.
- The imposition of temporal condition elsewhere (a review of similar types of development in Dublin City is included in the Further Information Response) have been aimed at the protection of residential amenity where the condition purpose is the assessment of any potential impacts to residential amenity at a future date. However, in the context of the subject site there is no such concern to monitor against residential amenity this emerging technology. The

area around Usher's Quay has long been characterised by a commercial / retail context.

- The proposed development is to be carried out under the supervision of a qualified conservation architect (Condition No. 6) providing the opportunity to upgrade the building façade. The revised proposal has taken into account the heritage significance of nos. 3 & 4 Usher's Quay and has integrated conservation concerns into the design. The replacement of the existing sign which is extant since the 1970's with a digital sign of significantly lesser scale is unlikely to produce any undue impacts.
- The temporal condition with a 5 year restriction creates unnecessary uncertainty for the appellant with regard to investing in the permitted digital signage development. The appellant proposes the removal of the time limit of the permission or an extended permission period, which would provide a more feasible development prospect for the applicant given the financial outlay and the additional signage removal works elsewhere.
- The appellant clarifies that an estimated period of 6 months or more may elapse before the new signage would be ordered and delivered, an ESB meter connection is in place and the sign is up and running, which represents a significant proportion of the proposed 5-year permission limit.
- Furthermore, given the location of the signage along the south quays, it is claimed there are significant public service gains to be derived from an information strategy to be agreed with the planning authority. A 5-year horizon is unnecessarily limiting for this public gain trade-off.
- The appellant claims that given the stringent heritage conservation context (protected structure and conservation area designation) policies *inter alia* reflected in the conditions attached to the permission there is limited potential

for significant change to the building façade or evolution of context within a 5 year window.

- The appellant considers that if the Board concur with the planning authority and impose a temporal condition that the terms of the permission should be limited to a period greater than 5 years. The appellant suggests an amended 10 year time limit on the permission.

Third Party Appeal

The grounds of appeal, prepared by Feargall Kenny Registered Architect & Planning Consultant on behalf of Hazelmere Enterprises Ltd., trading as Hicken Lighting, 17 Lower Bridge Street, Dublin 8 are summarised below:

- The appellant respectfully requests the Bord to refuse permission reinstating the reasons and considerations cited in the previous refusal of planning permission for digital signage under register reference ABP314336-22.
- Interest in the subject development proposal relates to the fact that the application site projects into the property of the third party appellant. The appellant respectfully requests the Bord to refuse permission for the reason that the applicant do not have a legal interest in the totality of the development site.
- The third party appellant appends as part of the appeal statement, the submission made to the planning authority objecting to the planning application including the fact that they did not give written consent for the application.
- The red line boundary as clearly shown on the application site plan and location map includes a portion of the third party appellant's property. The copy of the site plan appended to the appeal statement highlights the specified portion of the site area in the third-party appellant's ownership in green (Figure 1).
- The appellant disputes the clarification provided by the applicant on pages 10-11 of the Planning Report submitted with the application (dated 15th May

2024) in the matter of the overlap of the red line boundary with the third-party appellants property that the land is in the ownership of Dublin City Council.

- The appellant claims that Dublin City Council is in error to ascertain that an area of ground of 6.8sqm. within the boundary fence of Hicken Lighting is within the ownership of the local authority. The boundary between the third-party appellant's property and the land retained by the local authority is visibly demarcated by a metal fence (Figure 4).
- The third party appellants strongly contend that they are the legal owners of the portion of land into which the proposal intrudes. The land was ceded to Hicken Lighting by the local authority and has been used as their property with unbroken and undisputed possession over 40 years.
- The land was acquired in 1983 by the third party appellants from the local authority as part of a land swap agreement. It is claimed the evidence of ownership is detailed in the assurances of Mr Dermot Baker, who was managing director of Hicken Lighting Ltd. in 1983, and in a land transfer map (dated 21/11/83), illustrated within the appeal statement (Figure 3 & 5), which is noted as in poor quality.
- Furthermore, if the portion of ground is genuinely within the ownership of Dublin City Council why did it not provide the applicant with a letter of consent to make the application, as provided for under Article 22(2)(g)(i) of the Planning and Development Regulations 2001 (as amended). The omission of a letter of consent should have resulted in the rejection of the application.
- It is claimed the applicants continue to trespass regularly over the lands inside (land in the ownership of the third party appellant) and outside (lands in local authority ownership) demarcated by the metal fence. Figure 6 claims to illustrate unauthorised bill-posting being carried out over the subject land at no. 1 & 2 Usher's Quay to the east of no. 3 & 4 Usher's Quay not in the applicant's ownership.
- The planning authority previously refused planning permission for two reasons, subsequently endorsed by An Bord Pleanála, for a digital advertising structure at nos. 3 & 4 Usher's Quay, under register reference 4076/22 (ABP314336-22) as inappropriate development.

- One of the reasons for refusal cites adverse visual impacts, which would seriously detract from the and injure the special architectural character and legibility of the protected structure and its setting within a conservation area.
- An Taisce in the matter of the previous application commented on the planning status of the existing billboard signage including that the signage had no positive planning status and the fact that two 48 sheet hoardings were amalgamated into one. These comments warrant further investigation.
- The Bord must consider whether the fundamental question of whether a digital advertising structure is an appropriate development in this historic area and whether it should make a decision to refuse permission for the subject proposal consistent with the previous decision.
- The vacant site at no. 1 & 2 Usher's Quay has development potential given its location in the heart of Viking Dublin. It is claimed that the grant of permission would adversely affect this potential for a landmark building, which is supported by the planning assessment under ABP314336-22.

6.2. Applicant Response

The first party response, prepared by Tom Philips Associates on behalf of the applicant, is summarised below:

- The applicant and first party appellant, PZ Digital Ltd., is frustrated that the third party appellant, Hazelmere Enterprises Ltd. (owners of the Hicken Lighting premises, adjacent to nos. 3 & 4 Usher's Quay) have opted to appeal the decision of the planning authority to grant planning permission for new digital signage primarily due to a disputed claim of ownership of a small portion of land.
- This is a civil matter previously recognised by Dublin City Council and An Bord Pleanála as outside the planning process. The applicant does not consider that the third party appellant has presented conclusive evidence of land ownership. However, notwithstanding Section 34 (13) is cited in the

matter of disputed ownership and the Board is invited to assess the proposal on its own merits.

- The applicant has sought further clarifications on land ownership from the local authority since the lodgement of the third party appeal and have appointed Amoss LLP Solicitors to advise on this matter.
- The applicants have carried out additional research in the matter of disputed land ownership. Amoss Solicitors claim that the third party appellant's have failed to evidence that they hold good title to the disputed lands or to disprove that Dublin City Council holds title (Appendix 1).
- The applicant notes that the existing advertising boards were in place prior to the date on which the appellant claims to have acquired title to the disputed land (40 years ago). Furthermore, the signage has been regularly accessed, maintained and updated subsequent to erection.
- Therefore, any claim of title based on adverse possession is not capable of success on the grounds that the disputed land has not been in the exclusive possession of the appellant for 40 years (Appendix 1).
- The submission also includes an appended email from Simon Durham to pzazzmedia on Amoss headed paper, previously working for a company called OAS (Outdoor Advertising Services), who states that the subject advertising site was built as two 48 sheets in 1982 by Jim Coffey of Adsites (Annex 2)
- The applicant requests the Board to dismiss the principal grounds of appeal in the matter of land ownership. The proposed development being attached to the gable wall of nos. 3 & 4 Usher's Quay primarily relates to that structure for which the applicant has the consent of the owner to make an application.
- The applicant acknowledges that the proposal will result in a minor overhang of what the applicant considers public land. However, the proposed overhang given the reduced dimension of the digital sign will be less than the existing bill board sign overhang.
- The applicant claims that the remaining grounds of appeal are poorly substantiated, are based on a previous proposal the reasons for refusal

having been addressed by the applicant in terms of planning gain, design and scale, and highlights that the original objection (lodged with the planning authority 13/06/24) to the current development proposal solely relates to disputed land ownership.

- It is claimed that the remaining grounds were raised post decision only to add validity to the third party appeal.
- The applicant highlights the planning gain (as addressed at further information stage) arising from the provision of a degree of public information related advertising space and the bartering arrangements for the removal of 3 number signage panels elsewhere (Parnell Street & Fairview Strand).
- In the matter of the claim that the proposed development is inappropriate with regard to the special architectural character of the protected structure and its setting within a conservation area, the applicant proposes a reduced scale of signage with a reduced signage area of approximately 31%, the application includes a conservation method statement (the applicant notes that existing signage provides the sole income stream for the maintenance / repair of the existing building given that the ground floor units are vacant) and would be in compliance with Policy BHA2 of the development plan.
- In the matter of the comments made by An Taisce in relation to the planning status of the existing signage, the applicant points out that these are observations on a previous application and that the Board inspector addressed these matters.
- In the matter of the replacement advertising sign is considered to be detrimental to the potential future redevelopment of nos.1 & 2 Usher's Quay, the applicant disputes that the proposal would sterilise these lands for future infill development.
- The applicant acknowledges that in light of the third party appeal that the Board will now consider the appeal de novo notwithstanding that the first party appeal is solely against Condition No. 2 (temporal condition) of the notification of decision.

- The applicants are concerned that there may be a period of legal proceedings in relation to the disputed plot of land. In this regard it is requested that if the Board are to uphold the decision of the planning authority that the time limit on the lifetime of the permission is tied to the date of commencement rather than the date of the final grant as required by Condition No. 2.

6.3. Planning Authority Response

The planning authority have not responded to date.

6.4. Observations

None

6.5. Further Responses

The third party appellant response, by Feargall Kenny Registered Architect & Planning Consultant on behalf of Hazelmere Enterprises Ltd, to the first party appeal is summarised below:

- The first party may not have been aware of the existence of the third party appeal against the decision of the planning authority. The first party appeal refers only to Condition No. 2 of the decision to grant and requests consideration in accordance with Section 139 of the Planning and Development Acts 2000 (as amended).
- The third party has appealed the totality of the decision. The third party appellant respectfully points out that the entire application as if it had been made to the Board in the first instance must be determined.

7.0 Assessment

- 7.1. The first party appeal is against Condition No. 2 of the planning authority grant of permission for the replacement of an advertising bill board (existing poster sign with overhead lights) with a new digital sign (display 5000mm x 7000mm / 500mm deep) attached to a protected structure.

- 7.2. The first party acknowledges in the letter of response to the third party appeal that a comprehensive planning assessment is required given the nature of the third party appeal.
- 7.3. The third party in response to the first party appeal respectfully points out that the entire application as if it had been made to the Board in the first instance must form part of the planning assessment including the previous reasons for the refusal of replacement digital signage under register reference ABP314336-22 (Reg. Ref: 4076-22).
- 7.4. The following assessment covers the points made in the appeal submissions and is my *de novo* consideration of the application. It is noted there are no new matters for consideration.
- 7.5. Having reviewed the application, the appeals and conducted a site visit, I consider the relevant planning matters are as follows:
- Zoning
 - Development plan policy
 - Planning gain
 - Impact on road users
 - Land ownership matters
 - Condition No. 2
 - Appropriate Assessment

Zoning

- 7.6. The proposed development is located at Usher's Quay on a corner site at the junction of Usher's Quay and Bridge Street Lower. The site is zoned 'City Centre' (Z5) for the purposes of sustaining life within the centre of the city through intensive mixed-use development.
- 7.7. Advertisement and advertising structures are open for consideration within this mixed use zone.

An open for consideration use may be permitted where the planning authority is satisfied that the proposed development would be compatible with the overall

policies and objectives of the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.

Development plan policy

- 7.8. The proposed development is located in an area characterised by commercial development on the gable wall of a protected structure within a conservation area
- 7.9. The third party appellant claims that the fundamental question is whether a digital advertising structure is an appropriate development in this historic area and whether a decision to refuse permission for the subject proposal consistent with a previous decision to refuse replacement digital signage is the appropriate determination.
- 7.10. The third party appellant cites the previous reasons for the refusal of digital signage on site including adverse visual impacts. It is claimed the proposal would seriously detract from and injure the special architectural character and legibility of the protected structure and its setting within a conservation area.
- 7.11. The applicant / first party appellant claims that the proposed development is a distinctly different planning application in terms of the scale and design of the replacement digital sign and the planning gain associated with the proposal.
- 7.12. The proposed development is assessed below within the relevant policy framework of the Dublin City Development Plan 2022-2028 including:
- The guidance provided for outdoor advertising and digital signage in Policy CCUV45 (Advertising Structures) & Appendix 17 (Advertising & Signage Strategy) of the plan.
 - The policy framework provided for works to protected structures including Policy Objective Policy BHA2.
 - The policies and objectives regulating development within conservation areas, including Policy Objective BHA9 (Conservation Areas).

Policy CCUV45 (Advertising Structures) & Appendix 17 (Advertising & Signage Strategy)

- 7.13. Policy CCUV45 (Advertising Structures) & Appendix 17 (Advertising & Signage Strategy) of the Dublin City Development Plan 2022-2028 provide a framework for

the assessment of advertising signage providing guidance *inter alia* on outdoor advertising signage.

- 7.14. The proposed digital sign would be attached to the blank east gable of no. 3 Usher's Quay, which bookends the river streetscape between Bridge Street Lower and St. Augustine Street.
- 7.15. The existing signage on site is in the line of vision of west bound traffic moving along the city quays egressing from the city centre toward Heuston Station and the proposed signage would enjoy the same prominent location.

Geographic advertising control zones

- 7.16. The planning authority has developed an outdoor advertising strategy based on geographical zones. This strategy forms the basis of policy implementation applied to all proposals for outdoor advertising in the public domain.
- 7.17. Appendix 17, Figure 1 (Zones of Advertising Control) of the Dublin City Development Plan 2022-2028 would appear to designate the Bridge Street Lower / Usher's Quay corner within Zone 6.
- 7.18. Control Zone 6 includes areas that are predominantly residential in character where advertising would be visually inappropriate. However, there are also large tracks of commercial land use that have a more robust character within the zone where outdoor advertising may be accommodated.
- 7.19. I also note that the proposed development is within the visual corridor of the River Liffey (control zone 4). Please see photographic record attached.
- 7.20. Appendix 17, Section 1.0 (Advertising & Signage) *inter alia* provides that consideration will be given to the need for sensitive treatment and an appropriate transition at the interface between control zones.
- 7.21. I note the proximity of control Zone 4 (represented by the River Liffey corridor), which consists of radial routes leading into and out of the city where there are areas of existing and potential high amenity relating to water ways and the coast, which are inappropriate for advertising.

Digital signage

- 7.22. I note that the application is for a replacement digital sign with a display measuring 5000mm x 7000mm and 500mm deep (including 100mm frame). The overall size of the sign is given as 35 sqm. The replacement sign would be located 4500mm above street level.
- 7.23. The digital signage will only display static imagery and it will not display moving images.
- 7.24. I note that the replacement digital sign is both in concept, design and operation a distinct form of outdoor advertising from the existing bill board sign on site.
- 7.25. The existing bill board sign on site measures 7700mm x 6600mm (including a 150mm wide frame and 1250mm apron). The overall size of the sign is given as 50.82 sqm. The sign is presently illuminated by overhead lights
- 7.26. I note planning policy preference for smaller types of advertising panels. The applicant claims that the replacement digital sign would be 31% smaller in area than the existing poster sign it is proposed to replace.
- 7.27. I note that the proposed digital sign would still be large in scale in terms of its advertising area and overall physicality (35 sqm in area with a dept of 500mm) and would cover a substantial part of the gable elevation to which it would be attached.
- 7.28. The digital replacement signage notwithstanding the reduction in advertised area is effectively a large-scale permanently illuminated light box and has the capacity to change its advertising display at high frequency.
- 7.29. It is noted that the proposal will only display static images with no greater than 6 times a minute rotation. The digital signage will not exceed 300 candelas per sqm.
- 7.30. *Summation of out-door advertising proposal*
- 7.31. In summation Control Zone 6, Appendix 17 of the Dublin City Development Plan 2022-2028, excludes out-door signage in areas that have a predominantly residential character but acknowledges that commercial land uses provide a more robust area character that may accommodate outdoor advertising signage.
- 7.32. I note the mixed-use character of the receiving environment characterised by commercial development. However, I also note the proximity of the proposal to control Zone 4 (Liffey River corridor where outdoor signage is inappropriate) and the open aspect of the site to the Liffey waterfrontage.

- 7.33. I consider that the receiving environment is a highly sensitive location for out-door advertising signage given the potential visibility of the large-scale replacement digital signage (7m x 5m) along the river corridor and the location of the signage attached to the gable (projecting 500mm) of a protected structure within a conservation area.
- 7.34. I consider that the proposed digital sign would represent a more visually incongruous advertisement on site given the scale, box projection and nature of the advertising medium in a visually sensitive area.

Works to the protected structure(s) at nos. 3 & 4 Usher's Quay

- 7.35. Nos. 3 & 4 Usher's Quay are protected structures ((RPS Ref: Nos. 9199 & 8200). The National Inventory of Architectural Heritage (NIAH) consider nos. 3 & 4 Usher's Quay are of architectural, social and cultural importance and are of regional importance.
- 7.36. Section 15.15.2.3 (works effecting the character of the protected structure and its setting) of the Dublin City Development Plan 2022-2028 notes inclusion of a structure in the RPS does not prevent a change of use of the structure, and/or development of, and/or extension to the structure, provided that the impact of any proposed development does not adversely affect the character of the protected structure and its setting.
- 7.37. Policy BHA2 (development will conserve and enhance protected structures and their curtilage) of the Dublin City Development Plan 2022-2028 provides a list of criteria that need to be satisfied in the development of a protected structure in order *inter alia* to protect the character of the structure and its curtilage.
- 7.38. The planning application is accompanied by a planning report dated 15 May, 2024, which has regard to Architectural Heritage Protection Guidelines for Planning Authorities (2011). The report cites Cathal O'Neill Architects and indicates that all works will be carried out in accordance with the conservation method statement previously prepared.
- 7.39. The planning report considers that the proposed works would have a minimal impact on the character of the protected structure and its setting respecting the architectural integrity of the structure. The works would provide for an enhancement of the side elevation of no. 3 Usher's Quay rendering the architectural details visible.

Conservation officer

- 7.40. The conservation officer recommends refusal of planning permission and notes the similarity of the current proposal with the development previously refused for the replacement digital signage under register reference DCC Reg. Ref: 4076-22 (ABP314336-22).
- 7.41. The conservation officer concludes that the placement of any advertising boards on the façade of any protected structure is wholly inappropriate and causes serious injury to the character and legibility of the protected structure.
- 7.42. The conservation officer acknowledges that the area of the proposed signage would be smaller. However, the scale of the proposed board is large, when considered relative to the gable of the receiving structure, would be overly dominant and would conceal a large section of the historic brick gable wall of No. 3 Usher's Quay.
- 7.43. Furthermore, the conservation officer considers the proposed digital sign would be visually intrusive to the special character of the protected structure and the wider setting along Lower Bridge Street and the Liffey Quays. The proposal would have a seriously injurious impact on the protected structure and its setting.

Visual impact on protected structure(s)

- 7.44. I note that the proposed digital sign would not be located on the principal riverside façade of the protected structure. I note that the location of the sign is a blank gable elevation with no distinguishing architectural features.
- 7.45. I also note that the location of the proposed sign is in a highly visible location at the corner of Bridge Street Lower and Usher's Quay.
- 7.46. I consider that the installation of a large-scale digital display box measuring 7m x 5m, located 4500mm above the level of the street, projecting 500mm from the east gable of no. 3 Usher's Quay, would be incompatible with the protected structure status of no. 3 Usher's Quay by reason of the prominent gable location, scale, dominant proportions relative to the existing gable elevation and visibility of the advertising structure.
- 7.47. I would concur with the conservation officer that the replacement of the paper advertising bill board sign with a digital box sign would have a serious injurious impact on the protected structure at no.3 Usher's Quay and the setting of the

protected structure inconsistent with Policy BHA2 of the Dublin City Development Plan 2022-2028.

Visual impacts on the conservation area

- 7.48. The receiving environment comprises the River Liffey conservation area, which is demarcated by red hatching on the relevant zoning map (Map E). Policy BHA9 (Conservation Areas) seeks to protect the special interest and character of all Dublin's conservation areas.
- 7.49. Policy BHA9 (Conservation Areas) of the Dublin City Development Plan 2022-2028 *inter alia* requires development within or affecting a conservation area to contribute positively to its character and distinctiveness.
- 7.50. The applicant acknowledges that the site is located within a conservation area. The applicant notes the sparsity of advertising structures in the immediate vicinity and in the broader environs and argues that the proposal would protect the special interest of the conservation area.
- 7.51. The applicant *inter alia* considers that reduced visual impacts would result within the conservation area by reason of the replacement of the existing traditional poster sign on site by a digital sign of reduced advertising area.
- 7.52. I would concur with the conservation officer that the proposed digital sign would be visually intrusive within the wider setting along Lower Bridge Street and the Liffey Quays.
- 7.53. I consider that the proposed 7m x 5m digital sign, located 4500mm above street level, projecting 500mm from the blank gable of no. 3 Usher's Quay, a protected structure, would represent an incongruous feature in the streetscape by reason of its prominent gable location, scale, dominance and visibility.
- 7.54. I have previously acknowledged the sensitivity of the location with reference to the outdoor advertising signage strategy (Appendix 17) given the interface of control Zone 6 and Zone 4 (represented by the River Liffey corridor).
- 7.55. No. 3 Usher's Quay bookends the streetscape between Bridge Street Lower and St. Augustine Street. The blank east gable of no. 3 Usher's Quay is exposed, subsequent to earlier road widening works conducted in the late twentieth century, and is visible from the city quays and Father Mathew Bridge.

- 7.56. Notwithstanding the commercial character and fragmented nature of the streetscape on this section of Bridge Street Lower, I consider that the proposed digital sign would, by reason of its prominent and sensitive location on the exposed gable of the protected structure at no. 3 Usher's Quay, be inconsistent with the conservation area designation, which seeks to protect the special interest and character of the Liffey Quays conservation area.

Planning gain

- 7.57. The applicant / first party appellant justifies the development by reason of the planning gain that would arise from the replacement of the existing signage on site by a smaller digital sign and the decommissioning off-site of signage elsewhere in the city in accordance with the bartering provisions provided in Appendix 17 of the Dublin City Council Development Plan 2022-2028.

Bartering System

- 7.58. Appendix 17 provides that any upgrade and/ or replacement of existing outdoor advertising signage will only be permitted if it is acceptable in amenity / safety terms and an agreement is made to decommission at least one other display panel in the city and to extinguish the licence for that panel.
- 7.59. The applicant proposes the decommissioning of 2 number 48-sheet advertising displays on the gable wall of No. 145 Parnell Street, Dublin 1 (a protected structure RPS No. 6433) (18.58 sqm. each), together with 1 number advertising display at no. 1A Fairview Strand, Fairview, Dublin 3 (13.01 sqm.) in accordance with Section 1.0 of Appendix 17 (i.e. the Outdoor Advertising Strategy 'bartering' system).
- 7.60. The applicant juxtaposes the planning gain that would arise against the 'do not scenario' where the existing signage on the gable elevation of no. 3 Usher's Quay (protected structure) and the off-site signs at no.145 Parnell Street (protected structure) and no.1A Fairview Strand would remain in situ.

Further information request

- 7.61. The planning authority requested further Information on the 11/07/24 in the matter of the proposed decommissioning of off-site signage.
- 7.62. It is noted that the planning case officer considered that the applicant had not overcome the second reason for refusal, issued by An Bord Pleanála in relation to

the provision of replacement signage on site, under ABP314336-22 (DCC Reg. Ref: 4076-22).

- 7.63. The Board in its second reason for refusal considered that the advertising panels proposed for removal at no.145 Parnell Street and no.1A Fairview Strand did not represent sufficient planning gain with regard to the rationalisation of external media advertising within the public domain (ABP314336-22).
- 7.64. The planning authority requested the applicant to put forward proposals for the removal of existing advertising structures across the city to contribute to the decluttering of advertisements and to increase the planning gain associated with the proposal.
- 7.65. The applicant by further information response dated 26/09/24, argued that a significant trade-off in terms of delivering digital upgrade at Usher's Quay was represented by both the reduction in the size of the replacement sign and the decommissioning of 3 number signs at two number off-site locations citing equivalent examples of such trade-offs agreed by the planning authority.
- 7.66. I acknowledge that the reduction in the size of the proposed replacement digital sign (35 sqm.) would represent an approximate 30% reduction in area of the existing billboard advertising sign. I also note that the digital sign (40 sqm.) refused permission under ABP314336-22 represented an approximate 20% reduction on the existing billboard sign (51 sqm.).

Public information system & other planning gain options

- 7.67. The applicant by way of clarification of further information suggested the provision of a public information display (city centre initiatives, weather warnings) as part of the operation of the new digital signage. I note this fact.
- 7.68. Furthermore, the applicant as part of the further information response considers that there are several options that can be explored to achieve the planning gain requirements of the planning authority and that the matter can be dealt with through detailed compliance related arrangements.
- 7.69. The planning case officer on balance recommended a grant of planning permission acknowledging the concerns of the conservation officer and the sensitive setting of

the proposal while providing for a review of the impacts of the development on the protected structure and its setting by providing for a temporary 5 year permission.

Conservation and other considerations in signage de-commissioning

- 7.70. The conservation officer states that the bartering proposal would result in an overall greater conservation loss than a conservation gain given the prominent and sensitive corner location of the proposed digital signage and the visual presence of the sign within the line of vision of the River Liffey corridor.
- 7.71. The conservation officer considers that the sites for the proposed removals and the application site are not comparable locations. I would on balance concur with the conservation officer given the strategic location of the proposed digital sign prominently located along one of the principal egress arteries from the city centre.
- 7.72. I acknowledge that the signage to be removed at no.145 Parnell Street is attached to a protected structure located within the O'Connell Street Architectural Conservation Area (ACA) and that the signage is prominently located at the entrance to the urban set piece of North Great George's Street.
- 7.73. However, I do not consider that no.145 Parnell Street and no.1A Fairview Strand are comparable locations to the applicant site, which is located along one of the principal radial routes in the city.
- 7.74. I would also note on the day of my site visit that the gable mounted bill board signage at no.145 Parnell Street was not displaying an advertisement. I consider that the billboard(s) may have been decommissioned de facto. I refer the Board to the accompanying photographic record.

Planning status of the existing advertising structure on site

- 7.75. The third party appellant has *inter alia* questioned the planning status of the existing billboard signage at no.3 Usher's Quay. The applicant has clarified by way of the appeal response that the a double billboard sign was erected in 1982 (Annex 2: email from Simon Durham to pzazzmedia on Amoss solicitors headed paper). I note this fact.
- 7.76. I consider that the proposed development for a digital replacement sign should be assessed on its own merits.

Summary of planning gain

- 7.77. I consider that the planning gain associated with the proposed development is substantively transparent combining an approximate 30% reduction in the size of the existing billboard sign, the decommissioning of 3 off-site billboard signs, the provision of public information space in the rotation of the new digital sign and other unspecified planning gain(s), which it is claimed can be agreed at compliance stage.
- 7.78. However, this must be balanced with the provision of a new form of outdoor signage on site comprising a digital signage box distinct in operation and physicality from the existing billboard sign and the merit of the off-site decommissions relative to the authorisation of a new large-scale digital sign in a prominent strategic location.
- 7.79. I consider that the applicant has not sufficiently addressed the Board's second reason for refusal under register reference ABP ABP314336-22 notwithstanding the reduction in the advertising signage area by approximately 30%.

Impact on road users

- 7.80. The Transport Planning Division (TPD) of the planning authority note that the speed limit on Usher's Quay is 30 Kmph. The TPD conclude that the proposed digital sign would not impact on the safety of pedestrians, the accessibility of the footpath / roadway or the flow of traffic. The Division note that the display is visible from the traffic lanes and express a preference for a reduced maximum 250 candelas per sqm. (dusk to dawn).
- 7.81. The recommendation of the TPD can be dealt with by way of condition if the Board are to record a positive decision.

Landownership matters

- 7.82. The substantive ground of the third party appeal relates to landownership and the validity of the planning application made to the planning authority without the consent of the third party appellant.
- 7.83. The third party appellant claims that a portion of the development site is in their ownership and that the proposed digital sign would overhang part of their property.
- 7.84. I note that the proposed sign is 500mm deep and would project from the east gable of no. 3 Usher's Quay in part oversailing the car park of Hicken Lighting the adjoining property to the east.

- 7.85. The third party appellant evidences the fact of ownership with reference to a land swap agreement in 1983 when the land was acquired by the third party appellants from the local authority (Dublin Corporation).
- 7.86. The applicant / first party appellant counter claims that the disputed land is in the ownership of the local authority (Dublin City Council) and that landownership disputes are a civil matter previously recognised in planning assessment by Dublin City Council and An Bord Pleanála as outside the planning process.
- 7.87. Finally, the applicant does not consider that the third party appellant has presented conclusive evidence of land ownership (response to third party appeal dated 16/12/24).
- 7.88. Furthermore, the applicant claims that title by the third party appellant based on adverse possession is not capable of success on the grounds that the disputed land has not been in the exclusive possession of the appellant for 40 years.
- 7.89. The Development Management Guidelines for Planning Authorities (June 2007), Section 5.13 (Issues relating to title to land) states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land. These are ultimately matters to be dealt with and resolved by the Courts.
- 7.90. I consider that the issue of disputed land ownership is a civil matter, which will be resolved independent of the planning process.
- 7.91. I also note that Section 34 (13) of the Planning and Development Act 2000 (as amended) applies : *a person shall not be entitled solely by reason of a permission under this section to carry out any development.*

Potential redevelopment of the adjoining site at nos. 1 & 2 Usher's Quay

- 7.92. The third party appellant has highlighted that the authorisation of replacement signage may militate against the redevelopment of the hard-surfaced area to the east of nos. 3 & 4 Usher's Quay, denoted as nos. 1 & 2 Usher's Quay, at the junction of Usher's Quay and Bridge Street Lower presently comprising the extension of the public footpath and the in-curtilage parking area to the east of the commercial premises at Hicken Lighting on Bridge Street Lower.

- 7.93. The twentieth-century road widening at this location has resulted in a fractured streetscape resulting in an unresolved corner at the junction of Usher's Quay and Bridge Street Lower presenting poorly to the street.
- 7.94. I acknowledge that the redevelopment of the corner would be a significant planning gain in urban design terms. However, I do not consider that the proposed replacement signage would represent a significant inhibitor in this regard given that there are potentially other more significant considerations in the successful activation of this marginal infill site.
- 7.95. I also note that the notification to grant permission by the planning authority included a temporal Condition No. 2, which restricted the development to a five year time-frame.

Condition No. 2

- 7.96. The first party appeal is solely against Condition No. 2 of the notification to grant providing a 5 year permission. The subject condition provides that the signage would be removed after 5 years or retained subject to a further grant of planning permission.
- 7.97. The grounds of appeal argue that a condition that limits the permission to a period of 5 years is disproportionate given the location of the development within a commercial area, the significant planning gain associated with the proposal, the stringent heritage designation of the building and its setting (conservation area) and the unnecessary uncertainty for the appellant with regard to investing in the permitted digital signage.
- 7.98. The applicant / first party appellant requests the Board to remove the temporal condition or to change the timeframe from 5 years to 10 years.
- 7.99. I do not consider a temporary 5 year permission, with a temporal monitoring condition attached, appropriate given the scale, dominance and visibility of the digital advertising box in a prominent and sensitive location visible from the city quays and father Mathew Bridge where advertising control Zone 6 and advertising control Zone 4 (River Liffey corridor where outdoor signage is inappropriate) interface, as provided for in Appendix 17 (Advertising & Signage Strategy).

7.100. The applicant response to the third party appeal (dated 16/12/24) requests the Board to reconsider the wording of Condition No. 2 which *inter alia* states: *This permission is granted for a limited period of a maximum of 5 years from the date of this grant at which date the permission shall cease and the structure shall be removed and the land returned to its former state...*

7.101. The applicant requests the Board to amend Condition No. 2 to provide for a time limit on the lifetime of the permission tied to the date of commencement rather than the date of the final grant given *inter alia* that there may be a period of legal proceedings in relation to landownership matters.

7.102. This matter can be dealt with by way of condition if the Board were to record a positive decision.

7.103. Appropriate Assessment Screening

The proposed development comprises advertisement signage located within / on an existing building in an established urban area.

Having regard to the nature and scale of the proposed development it is possible to screen out the requirement for the submission of an NIS.

Conclusion

7.104. I conclude on balance that the proposed development for the replacement of the existing top lit billboard sign with digital signage would have an adverse impact on the special architectural character and appearance of the protected structures at no. 3 & 4 Usher's Quay and the Liffey Quays conservation area.

7.105. The development of a large-scale digital display box measuring 7m x 5m, located 4.5m above the level of the street, projecting 500mm from the east gable of no.3 Usher's Quay, a protected structure, by reason of location, scale, dominant proportions relative to the existing gable elevation and visibility would be inconsistent with Section 15.15.2.3 (works effecting the character of the protected structure and its setting), Policy Objective BHA2 (development will conserve and enhance protected structures and their curtilage) and, Policy BHA9 (conservation areas) of the Dublin City Development Plan 2022-2028.

7.106. Furthermore, the planning gain proposed by the applicant must be balance with the provision of a new form of outdoor signage un this prominent location comprising a

digital signage box distinct in operation and physicality from the existing bill board sign on site and the merit of the off-site decommissions relative to the authorisation of a new large-scale digital sign in a strategic location.

7.107. I conclude that that the applicant has not addressed the Board's second reason for refusal under register reference ABP ABP314336-22 to provide sufficient planning gain with regard to the rationalisation of external media advertising within the public realm notwithstanding the reduction in the size of the sign from 50 sqm (existing) to 35 sqm (proposed).

7.108. Finally, I conclude that I do not consider a temporary 5 year permission, with a temporal monitoring condition attached, appropriate given the location, scale, dominance and visibility of the digital advertising box in a prominent and sensitive location visible from the city quays and father Mathew Bridge where advertising control Zone 6 and advertising control Zone 4 (River Liffey corridor where outdoor signage is inappropriate) interface, as provided for in Appendix 17 (Advertising & Signage Strategy).

8.0 Recommendation

8.1. I recommend that permission should be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

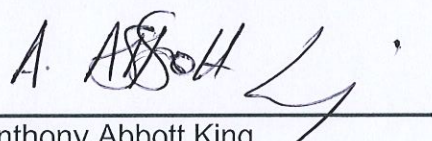
Having regard to the grounds of appeal, the responses of the first appellant and the third party appellant, the city centre mixed-use zoning objective and the policy framework provided by the Dublin City Development Plan 2022-2028, it is considered that the proposed replacement digital sign by reason of its location, scale, dominant proportions and visibility would be inconsistent with Section 15.15.2.3 (works effecting the character of the protected structure and its setting), Policy Objective BHA2 (development will conserve and enhance protected structures and their curtilage), and Policy BHA9 (conservation areas) of the Dublin City Development Plan 2022-2028 and would in general be inconsistent with Policy CCUV45 (Advertising Structures) & Appendix 17 (Advertising & Signage Strategy) of

the Dublin City Development Plan 2022-2028 and, as such would be consistent with the proper planning and development of the Liffey Quays conservation area.

10.0 Refusal

1.	The proposed digital advertising display structure by reason of its sensitive location and visibility, comprising a large-scale digital display box measuring 7m x 5m located 4.5m above the level of the street projecting 500mm from the east gable of a protected structure, at the junction of Bridge Street Lower and Usher's Quay, where outdoor advertising signage development management control zone 6 and zone 4 (Liffey River corridor where outdoor signage is inappropriate) interface, dominant proportions and scale relative to the existing gable elevation of no. 3 Usher's Quay, a protected structure, would adversely visually impact the special architectural character and appearance of the protected structures at no. 3 & 4 Usher's Quay and the River Liffey conservation area inconsistent with Policy Objective BHA2, Policy BHA9, Policy CCUV45 (Advertising Structures) and Appendix 17 (Advertising & Signage Strategy) of the Dublin City Development Plan 2022-2028.
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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.



Anthony Abbott King
Planning Inspector

27 February 2025