



**SIMON CLEAR & ASSOCIATES  
PLANNING AND DEVELOPMENT  
CONSULTANTS**

The Secretary  
An Bord Pleanála  
64 Marlborough St  
Dublin 1

**AN BORD PLEANÁLA**  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_  
13 DEC 2018  
Fee: € 220 Type: Chyene  
Time: 14.59 By: hw

13<sup>th</sup> December 2018

**Re: Declaration by Dublin City Council in respect of the 58 Grand Canal Street Upper, Dublin 4**

Dear Secretary,

On behalf of Paul James and Barry McNerney, Paulie's Pizza, 58 Grand Canal Street Upper, Dublin 4, I wish to refer the decision of Dublin City Council to declare that the proposed development at 58 Grand Canal Street Upper is 'not exempt' to An Bord Pleanála (ABP) for review and determination. The Planning Authority's reference number is 0430/18 and the decision was made on 16<sup>th</sup> November 2018.

My clients, as applicants, were issued with the Declaration and accordingly may, on payment of the described fee, refer the declaration for review by ABP within 4 weeks of the notification of declaration.

I enclose the Planning Authority notification of Declaration and the requisite fee in the sum of €220 (cheque).



Simon Clear B.A. Dip. T.P. MIPI  
Darran Quaille B.A. MRUP MSc BLUP MIPI

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## 1. The Question

The question that is subject to this referral is:-

*Whether the replacement of a permitted structure on private land located to the front of No. 58 Grand Canal Street Upper, comprising an umbrella type structure and glazed side panels is or is not development and is or is not exempted development.*

## 2. Planning History

The following section provides a summary of the relevant planning history of the premises. There are two relevant permissions – the parent permission for change of use to restaurant, and permission for retention of elements including an external umbrella structure.

### a) Parent Permission for Restaurant Use

Under ref. 4216/09 (PL29S.235955) permission was granted by An Bord Pleanala (ABP) on 31 March 2010 for the following development as described in the statutory notices:-

- (a) *Change of use of the existing ground floor from shop to restaurant*
- (b) *The erection of an extract fan and associated duct work to the rear elevation oversailing part of the rear of no. 60 Grand Canal St. Upper also known as No. 2 South Lotts Rd. Dublin 4.*
- (c) *A new shopfront at ground floor level with mounted awning over*
- (d) *Wheelchair access from front pavement*

Under Condition 2, the awning was omitted.

### b) Permission for Retention of Works

Under planning Reg. Ref. 3256/11 (PL29S.239883) retention permission was sought for:-

*Minor changes to restaurant as permitted under 4216/09 / PL29S.235955 including external front shutters, revised wheelchair accessible ramp and railing, external retractable umbrella and associated works.*

By Order dated 13 June 2012 ABP issued a split decision to:-

- Grant permission for retention of a revised wheelchair ramp, railing and retractable umbrella;
- Refuse permission for retention of the external front shutters located on the front of the building.

### 3. The Structure

The original umbrella structure was erected in June 2010 ahead of the opening of the restaurant in July 2010. The umbrella extended over a plinth and side screens were also erected at that time. The photographs below were taken around the time of the opening of the restaurant. Note the trees in the foreground are newly planted.

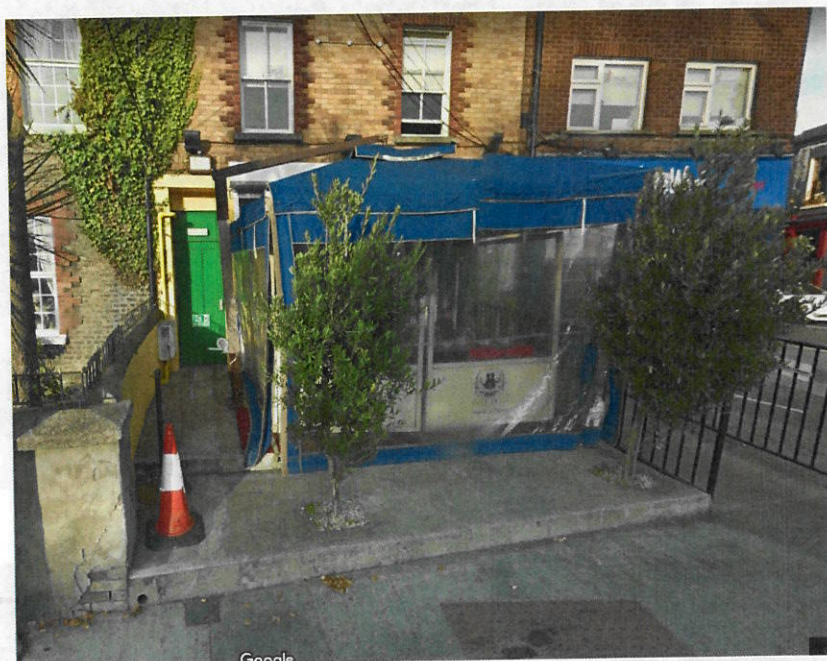


13 DEC 2018	
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Photographs of original structure from 2010 (Source: Applicant)

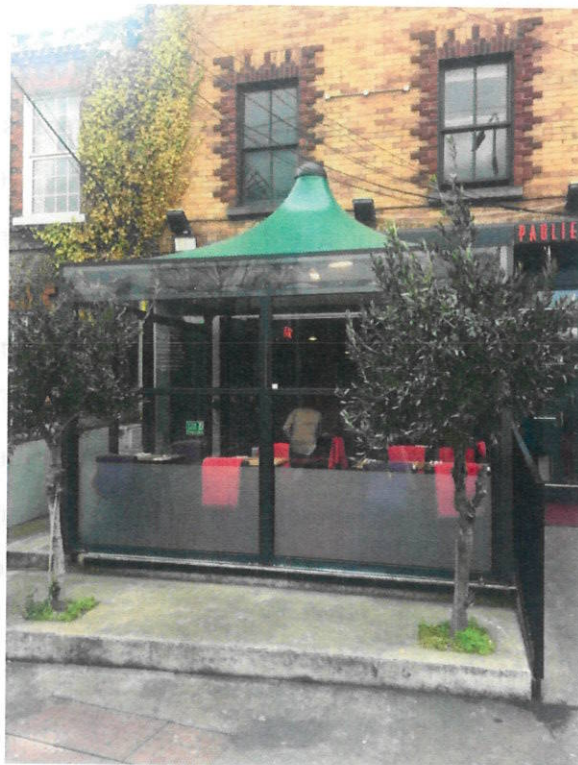
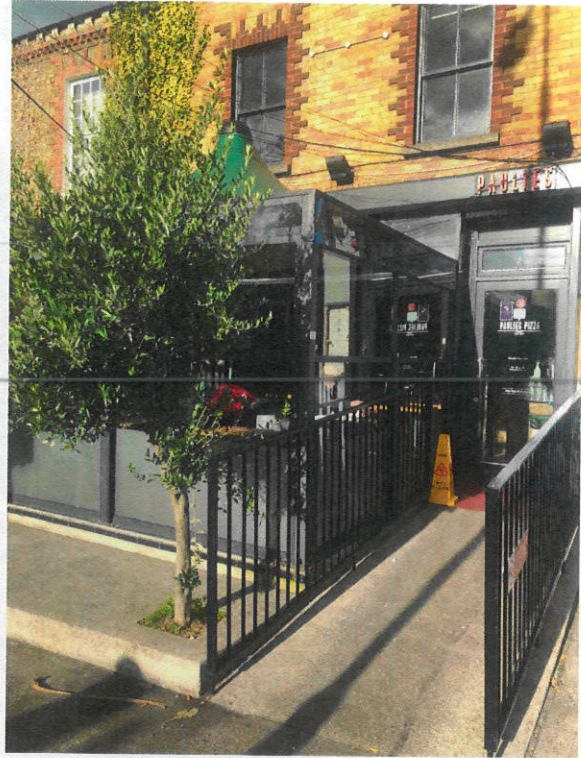


Over time since 2010, the permitted umbrella became damaged by weather and was replaced twice as exempted development under Section 4(1)(h) of the Planning & Development Act, 2000 (as amended). There were no objections to these replacements and the structures were an accepted element in the street scene in this vicinity. The image below shows the structure in 2016, by which time it had deteriorated again and required replacement. At that time, the restaurant operators decided that a more durable and weather resistant structure was needed to maintain the visual amenity of the property in the longer term.

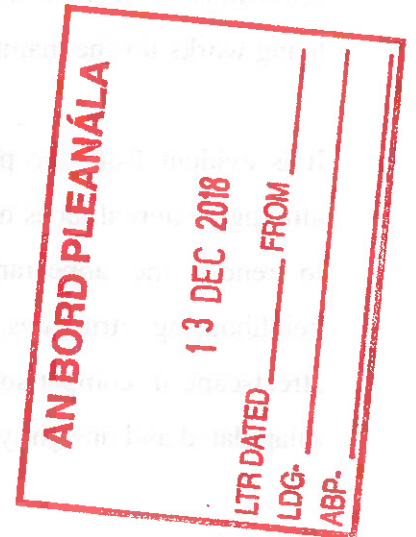


Previous Structure circa 2016 (Source: Google Streetview)

In 2017 the current structure was erected as shown in the photographs below. It was carefully designed to retain the appearance of an umbrella. The side panels were also replaced.



Current Structure



The image below shows the structure in the streetscape in June 2018. The current replacement structure occupies the same plinth as originally and is not obtrusive in the general street view.





Street Context June 2018 (Source: Google Streetview)

#### **4. Purpose of the Referral**

This Referral is sought as it is considered that the current structure is exempt under the provisions of Section 4(1)(h) of the Planning & Development Act, 2000 (as amended), being works for the maintenance, improvement and alteration of the permitted structure.

It is evident from the photographic history of the premises that the current structure, although external, does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. The current structure is a significant improvement to the streetscape in comparison to previous permitted and replacement structures that became dilapidated and unsightly over time.

#### **5. Grounds of Referral**

In setting out the 'relevant' Statutory Provisions, the Planning Officer's Report references Article 6(1) of the Planning and Development Regulations, 2001 (as amended), which

states:- *Subject to Article 9 development of a class specified in Column 1 and Part 1 of Schedule 2 shall be exempted development for the purposes of the Act.*

The Report goes on to state that Article 9(1)(a)(i) is relevant to the referral. This article provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act, *if the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.*

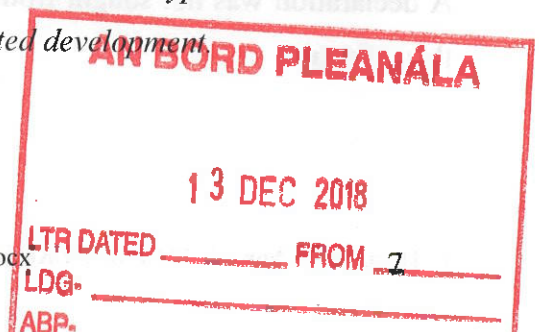
2 no. conditions attached to Ref. PL29S.239883 (3256/11) are quoted in the Report:-

**Condition 1:** *The development shall be retained in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. Reason: In the interest of clarity.*

**Condition 3:** *This permission does not grant permission for the use of the external area for the purposes of restaurant use. Reason: In the interest of clarity.*

The Planning Officer assesses the implications of these Conditions as follows:-

*The current structure in place which is the subject of this declaration is considered to be materially different to that permitted under PL29S.239883 (3256/11) and does not retain the development in accordance with Condition 1 of PL29S.239883 (3256/11). In addition, the unauthorised outdoor seating area has been formalised and sheltered with the current enclosure and would contravene Condition 3 of PL29S.239883 (3256/11). There is no exemption in Article 6 of the Planning and Development Regulations which would apply to the development. Overall having regard to the works authorised under PL29S.239883 (3256/11), the replacement of the permitted structure with an umbrella type structure and glazed side panels is development and is not exempted development.*



It is submitted that the Planning Officer's assessment is fundamentally flawed, as the Article 9 restrictions on exemption apply only to exemptions under Article 6 of the Regulations. No case has been made by the applicant for an exemption under Article 6. The above commentary that "*there is no exemption in Article of the Planning & Development Regulations which would apply to the development*" is not disputed. It must follow that Article 9(1)(a)(i) is not relevant to the assessment.

The claim for exemption arises under Section 4(1)(h) of the Primary legislation and is not subject to the restrictions on exemption in the Planning & Development Regulations, which apply to regulated exemptions.

Notwithstanding the fact that the Article 9 restrictions do not apply, it must be clarified that the replacement of the structure does not in any way contravene either Condition 1 or Condition 3.

Condition 1 is a standard condition, which is not intended as a restriction on exempted development. In Ref. PL29S.RL.2020 Dublin City Council sought to apply Condition 1 in that manner. As noted by the ABP Inspector, *if the City Council's restricted interpretation of the condition is correct, it would preclude the applicant of all exempted development provisions*. Clearly that is not the purpose of Condition 1.

In relation to Condition 3, ABP did not refuse outdoor dining. The Board did not deal with it as it was not part of the application and this is explained in the condition. There is nothing to support the Planning Authority's conclusion that the current structure contravenes this condition by formalising and sheltering an *unauthorised outdoor seating area*. As can be seen from the images of the original structure, the external area has always been screened and sheltered. Condition 3 does not control the use of the external area but rather is a type of clarifying condition that is commonly included by ABP in cases where the scope of a planning permission might be uncertain.

A declaration was not sought from DCC in relation to use, and it is beyond the scope of this referral.

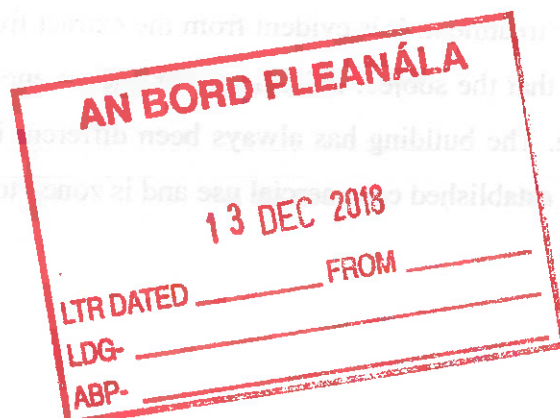


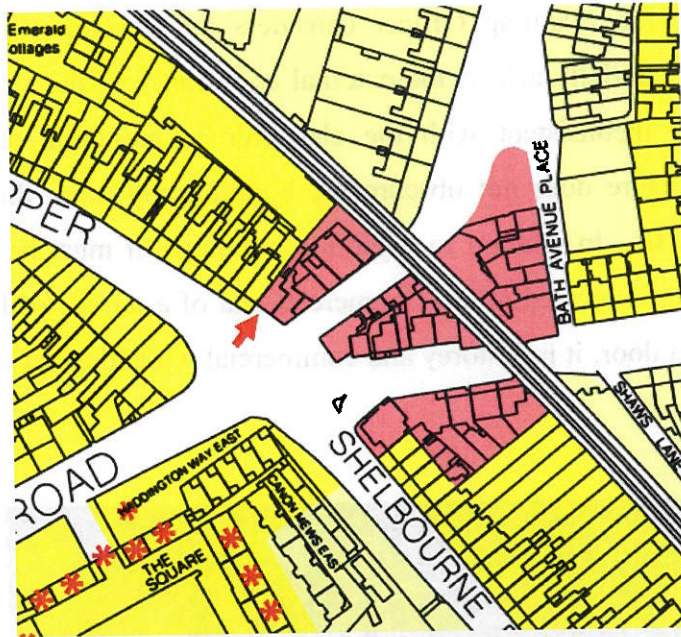
In relation to 4(1)(h), the Planning Officer considers the development obscures the existing building and materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of adjoining structures. It is submitted that the structure does not obscure the building any more than the original structure granted by ABP. In relation to adjoining buildings, it must be acknowledged that the subject building is located at the commercial end of a terrace of buildings. Like the corner building next door, it is 3-storey and commercial while the rest of the terrace is 2-storey residential.



**Street Context**

This is reflected in the zoning objective. The building is located within the designated District Centre that is located around the junction. Many of the commercial buildings in the District Centre, including Slattery's, Junior's and the Chophouse, have sheltered external spaces. The subject structure is entirely consistent with the commercial character of the junction.





Zoning Map



Street Context

The Planning Officer's commentary that *the adjacent terrace has a defined front building line with low front boundary walls and railings*, assumes that the subject site once had a similar treatment. It is evident from the extract from the historic 25 inch map (1888-1913) below that the subject building never had an enclosed front garden, unlike the rest of the terrace. The building has always been different in scale and presentation to the street. It has an established commercial use and is zoned to reflect the historic use.





Historic Map extract

### Request for Referral

It is submitted that the Planning Authority's assessment is flawed. An exemption is not sought under Article 6 and accordingly Article 9 cannot be applied. It is submitted that the structure is consistent with the character of the area.

It is requested ABP declares that the replacement of a permitted structure on private land located to the front of No. 58 Grand Canal Street Upper, comprising an umbrella type structure and glazed side panels is exempted development.

Should you have any queries please do not hesitate to contact the undersigned.

Yours sincerely,

*Darran Quaile*  
Darran Quaile

<b>AN BORD PLEANÁLA</b>	
13 DEC 2013	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	





Planning Registry & Decisions, Planning Department  
Civic Offices, Wood Quay, Dublin 8

Clárlann / Cinntí Pleanála  
An Roinn Pleanála agus Forbartha, Clárlann / Cinntí  
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20-Nov-2018

Simon Clear & Associates  
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Dublin 6w

Application Number	0430/18
Application Type	Section 5
Registration Date	22-Oct-2018
Decision Date	16-Nov-2018
Decision Order Number	P4549
Location	58, Grand Canal Street Upper, Dublin 4
Proposal	EXPP: Whether the replacement of a permitted structure on private land located to the front of No. 58 Grand Canal Street Upper, comprising an umbrella type structure and glazed side panels is or is not development and is or is not exempted development.
Applicant Details	Paul James & Barry McNerney

#### NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

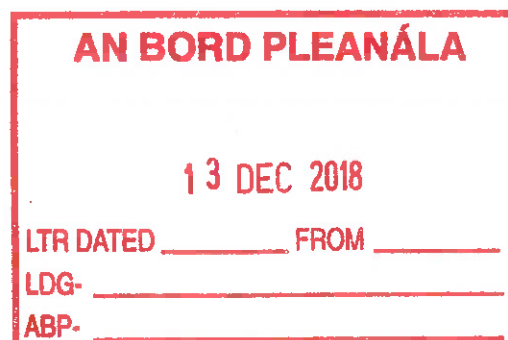
In pursuance of its functions under the Planning & Development Acts 2000 - 2013, Dublin City Council has by order dated 16-Nov-2018 decided to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Act 2000-2013.

Signed on behalf of Dublin City Council

\_\_\_\_\_  
For Assistant Chief Executive

**Note:**

Any person issued with a declaration on development and exempted development, may on payment of the prescribed fee, refer a declaration for review by An Bord Pleanála within four weeks of the date of the issuing of the declaration.



NOT1section5(Refuse Exemption)

