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COIMISIÚN PLEANÁLA
0X6316-26
23 JAN 2026
€220 Ty: CHQ
10:59 By: Clem

Friday, 23rd January 2026

Dear Sir/Madam,

RE: APPEAL IN RESPECT OF A SECTION 5 DECLARATION IN RELATION TO WORKS AT SHAMROCK CHAMBERS, Nos. 59-61 DAME STREET, DUBLIN 2

DCC REGISTER REFERENCE 0533/25

1.0 INTRODUCTION

1.1 Section 5 Declaration Sought

Chambers Properties Limited.[1] has retained Thornton O'Connor Town Planning[2] to appeal the decision of Dublin City Council, dated 19th December 2025 declaring that some works are not exempted development in respect of a premises at Nos. 59-61 Dame Street, Dublin 2.

This Declaration seeks to establish whether proposed 'works' are or are not 'development' or are or are not 'exempted development' within the meaning of the *Planning and Development Acts, 2000 (as amended)*, principally having regard to:

(i) Exempted development provisions as prescribed in Section 4(1)(h) of the *Planning and Development Act 2000 (as amended)*.

This appeal is lodged in accordance with Section 5(3)(a) of the *Planning and Development Act, 2000, as amended* which states the following:

> *'Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration'.*

A cheque in the sum of €220 representing the appeal fee is enclosed.

[1] 18 Upper Mount Street, Dublin 2
[2] No. 1 Kilmacud Road Upper, Dundrum, Dublin 14, D14 EA89

The original Section 5 decision from DCC issued a split decision:

1. The Section 5 decision determined the change of use from Restaurant from Retail is 'development' and is 'exempted development' in accordance with *Schedule 2, Part 1, Class 14(c) of the Planning and Development Regulations, 2001*.

Thus, this element of the original Declaration is not the subject of this appeal. The remaining two elements of work are thus the subject of this Appeal as detailed below.

1.2 Summary of Outcome Sought in this Appeal

In summary, we are seeking a Declaration in respect of the following questions which DCC determined were not exempted development:

1. Whether the removal of the internal partition wall between two units, for the purpose of amalgamating the units into a singular unit is or is not 'development' and is or is not 'exempted development' in accordance with *Section 4(1)(h) of the Planning and Development, 2000 (as amended)?*

2. Whether works to the shopfront is or is not 'development' and is or is not 'exempted development' in accordance with *Section 4(1)(h) of the Planning and Development, 2000 (as amended)?*

Key Point: It is our professional planning opinion that the works detailed above are defined as 'development', in accordance with Section 2 and 3(1) of the *Planning and Development Act, 2000* (as amended), and are 'exempted development', in accordance with *Section 4(1)(h) of the Planning and Development Act 2000 (as amended)* and *Schedule 2, Part 1, Class 14(c) of the Planning and Development Regulations, 2001*.

The rationale for this Opinion is set out below.

2.0 SITE LOCATION, DESCRIPTION AND ZONING

2.1 Site Location and Description

This appeal relates to a site at Nos. 59, 60 and 61 Dame Street and Nos. 1 and 2 Eustace Street (a Protected Structure), Dublin 2. The property is also known as 'Shamrock Chambers'. The site area measures approximately 0.0396 Ha / 396 sq m and is principally bound as follows: to the east by Eustace Street; to the south by Dame Street; to the west by No. 63A Dame Street; and to the north by No. 3 Eustace Street (Figure 2.1).

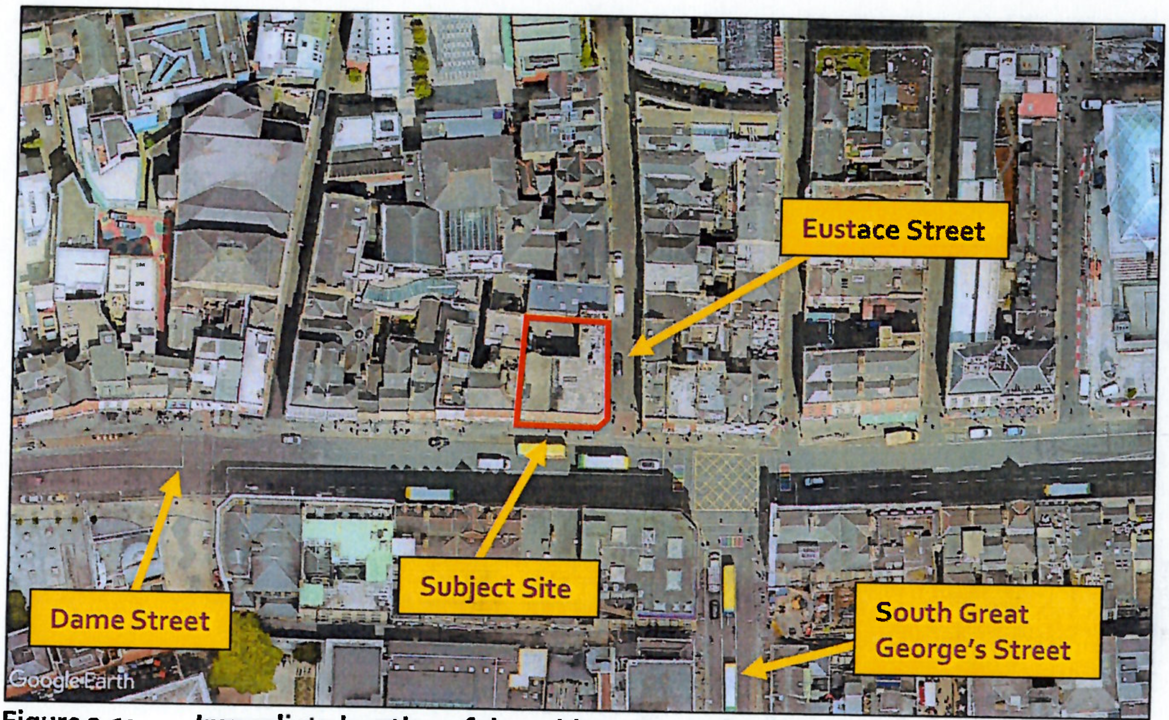

Figure 2.1: Immediate location of the subject site, indicatively outlined in red

Source: Google Earth (2023), annotated by Thornton O'Connor Town Planning (2025)

2.2 Zoning Objective

The *Dublin City Development Plan 2022-2028* ('Development Plan') is the statutory plan for the area and guides development relating to the subject site. As shown in Figure 2.2, the subject site is zoned as 'Z5 – City Centre', with an objective *"To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity."*

Figure 2.2: 'Z5 City Centre' land-use zoning designation of the subject site (indicatively outlined in yellow)

Source: *Dublin City Development Plan 2022–2028*, annotated by Thornton O'Connor Town Planning (2023)

2.3 Nos. 59-61 Dame Street not identified as a Protected Structure

Key Point: Nos. 1 and 2 Eustace Street are listed as protected structures under Record of Protected Structures (RPS) Ref. No. 2691. <u>However, the RPS states that the protection extends to the following specific elements: *"Shamrock Chambers: stucco pedimented entrance door and flanking windows and cage lift".*</u>

<u>Nos. 59, 60 and 61 Dame Street are not identified as protected structures.</u>

2691	1-2	Eustace Street, Dublin 2	Dublin 2	Shamrock Chambers: stucco pedimented entrance door and flanking windows and cage lift

3.0 PLANNING HISTORY

3.1 Current Live Application

On 6th November 2025, under Planning Application Reg. Ref. WEB5614/25, permission was sought for the following works at the subject site:

'Change of use of the existing 5-storey over basement building from retail, restaurant and office uses to retail/café and hotel uses; and the provision of an additional setback fifth floor level (260 sq m), providing a 6-storey over basement building comprising 43 No. en-suite bedrooms with ancillary hotel facilities and ground floor retail/café floor space (172 sq m). The total gross floor area of the development is 2,097 sq m. The change of use to hotel pertains to part of the ground floor previously in use as restaurant and first to fourth floor levels previously in use as office.

The development also proposes: internal alterations, reconfigurations and refurbishments to facilitate the development; alterations at basement level including the provision of toilets, bin store, storage, staff facilities, management/operational rooms and cycle parking; alterations at ground floor level and the provision of hotel reception and back of house support / kitchen space; alterations at first floor level including demolition and extension works and the provision of a landscaped courtyard, breakfast/bar area and 9 No. en-suite bedrooms; alterations and extensions at second, third and fourth floor levels and the provision of 25 No. en-suite bedrooms; and new mansard-style fifth floor level and the provision of 9 No. en-suite bedrooms (increasing the building height to 6 No. storeys over basement).

Also proposed as part of the development are the following: alterations to all façades, including refurbishment and upgrade to the ground floor and first floor level 'shopfronts' at Dame Street and Eustace Street; change of 1 No. existing entrance to 1 No. window and 1 No. existing window to 1 No. entrance at ground floor level at Eustace Street; refurbishment and upgrade of the existing lift car and cage, including an extension of the lift to basement level and the proposed fifth floor level; new internal lift to operate from basement up to first floor level and new internal stairs; repair/renewal of elevational brickwork as required; signage on Dame Street and Eustace Street façades; north-facing bedroom balconies; green roofs; rooftop plant and lift overrun; and all associated works above and below ground'.

A Further Information request issued on 9th January 2026. Item No. 1 related to drainage matters, whilst Item No. 2 stated the following:

The Applicant is requested to submit the following information to address the following conservation concerns of the Planning Authority:

a) Revised drawings to show the full retention of the historic chimneybreast and chimneystack to No. 61 Dame Street throughout each floor of the building. At proposed fifth floor and roof level, the upper part of the chimneystack shall be built-up in brick and lime mortar with lead flashings, as required, so it may remain externally expressed.

b) Revised drawings and photographic samples of materials for a high-quality natural slate finish in Bangor Blue slate. The applicant may consider the provision of a high-quality metal finish (such as copper) to the surrounds of dormer windows. The applicant is guided to a precedent example of a suitable approach on a structure on the corner of 51-53 Stephens Street Lower and 41-46 South Great Georges Street (Premier Inn), (DCC Ref: 4387/18).

c) Section and plan drawings showing the dimensions of the lift shaft over-run. The structure shall be kept to a minimum height. Photographic examples of proposed external materials of the lift over-run shall be submitted. The CGI drawings shall be updated to show the lift over-run and shall ensure that it would not be visible from the streetscape.

3.2 Other Recent Planning History

According to the Dublin City Council online planning database, there have been 2 other No. valid Planning Applications lodged at the subject site. These are identified as Reg. Refs. 3867/17 and 4249/23. The latter Planning Application was similar to that of the former, within differences including an increase in bedroom numbers from 39 No. to 47 No. and a different design to the additional storey.

3.1.1 Reg. Ref. 3867/17 – Change of Use to 39-Bed Hotel with Additional Storey

Reg. Ref.	**3867/17**
Location	Nos. 59, 60, 61 Dame Street and Nos. 1 & 2 Eustace Street (a Protected Structure), Dublin 2.
Application Date	15th September 2017
Development Description	Provision of a **39 No. bedroom hotel**, (approximately 1,976 sq m, including plant of approximately 145 sq m), extending to a height of six storeys over basement (overall height approximately 20.18m (approximately 27.225 AOD)). The **proposed development comprises the change of use of the existing restaurant, shop and office building to provide hotel use.** The development will consist of: (1) Internal modifications, reconfigurations, refurbishment and change of use of the property from retail/restaurant/office use to provide a hotel and all associated ancillary facilities as follows: i. Basement level - male, female and disabled toilets, plant room, comms room, bar store and M&E room. ii. Ground Floor - hotel reception (approximately 45 sq m) accessed from the corner of Eustace Street and Dame Street. Bar/Restaurant area (approximately 150 sq m); kitchen, storage and circulation space. iii. First to fourth floors - hotel accommodation including bedrooms, ensuites, storage areas and circulation space. iv. Fifth floor - hotel accommodation including bedrooms, ensuites and circulation space within a new roof extension. (2) A minor extension of the second, third and fourth floors within the void to the rear of the building to provide approximately 15sq m additional floor area at each floor for circulation. (3) A **new roof extension (approximately 185 sq m) at fifth floor to provide six bedrooms** (to a height of approx. 26.375m OD). The proposed roof extension will comprise a proprietary aluminium framed curtain walling system and glass. (4) External works to comprise the provision of a new ground and first floor facade onto Dame Street including a new double height shopfront. (5) Alterations to the existing lift (PROTECTED STRUCTURE) to facilitate the provision of a new lift car as well as the extension of the existing lift to basement level and the proposed fifth floor level. The existing lift and

	machinery will be retained on site. The proposed extension of the lift shaft will be approximately 27.225m AOD. (6) The repair and renewal of brickwork where required. (7) The replacement of existing windows as necessary only and doors and reinstatement or opening of new windows and doors at Eustace Street, Dame Street and the corner facade. (8) The proposed development will also comprise signage areas on Dame Street (approx. 15.08sq m), the corner of Dame Street and Eustace Street (approx. 1.98 sq m) and Eustace Street (approx. 3.65 sq m). (9) Drainage works and all site development works.
DCC Decision Date	23rd February 2018
DCC Decision	Grant Planning Permission subject to 16 No. conditions.

Reg. Reg. 3867/17 sought the change of use of Nos. 59, 60 and 61 Dame Street and Nos. 1 and 2 Eustace Street from a restaurant and retail at ground floor and offices at upper floors to hotel use and the reconfiguration and refurbishment of the existing building. An additional floor was also proposed at roof level.

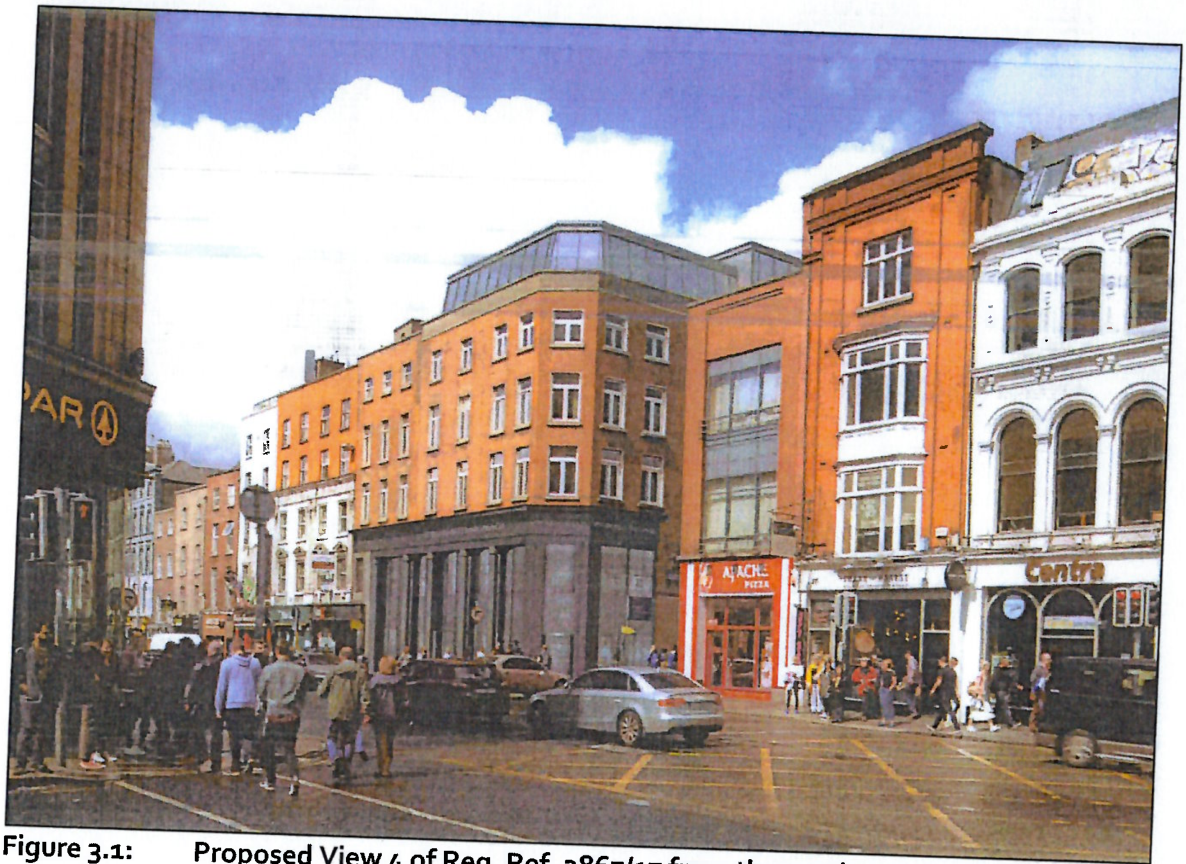

Figure 3.1: **Proposed View 4 of Reg. Ref. 3867/17 from the south-east at the junction of Dame Street and South Great George's Street**

Source: **James Horan Architectural Illustration (2017)**

The principle of the proposed development was supported by the Council's assessment, which acknowledged its role in supporting Dublin as a tourism destination and as a generator of employment. The development was also confirmed as being permissible on Z5 (City Centre) zoned lands.

In relation to the provision of an additional storey, the Case Planner remarked that "*...the design approach for the proposed additional floor at roof level is taken from the adjacent former*

Burton Building and the Sunlight Chambers building on Parliament St which are architecturally effective corner buildings." However, whilst they acknowledged that the height would be within the range allowed by the *Dublin City Development Plan 2016–2022*, they cited the need to "*...protect conservation areas and the architectural character of existing buildings, streets and spaces of artistic, civic or historic importance..."* Consequently, a visual impact assessment was sought by way of a Request for Further Information (RFI). Upon receipt of same, the Planner concluded, "*...the proposed extension will not be overly visible and unlikely to negatively detract from the protected structures and Conservation Area. The works to restoring the shopfront and façade upgrades will be positive and improve the visual amenity of the area."*

The development also proposed the removal of the existing lift car due to the need to upgrade this element of infrastructure. In order to comply with its protected designation, it was proposed to reuse the lift car as a feature element within the hotel's restaurant/bar.

No car or cycle parking were proposed in the development, and this was considered acceptable to the Council due to the site's central location.

Ultimately, Planning Permission for Reg. Reg. 3867/17 was Granted by Dublin City Council on 23rd February 2018 subject to 16 No. conditions. It has expired. However, our Client has purchased the site and would like to 'reinstate' a Permission for hotel development thereat given its appropriateness and suitability for same.

3.1.2 Reg. Ref. 4249/23 – Change of Use to 47-Bed Hotel with Additional Storey

Reg. Ref.	4243/23
Location	Nos. 59, 60, 61 Dame Street and Nos. 1 & 2 Eustace Street (a Protected Structure), Dublin 2.
Application Date	2nd August 2023
Development Description	The proposed development will principally consist of: -a change of use of the existing 5 no. storey over basement building from vacant restaurant, shop and vacant office uses to a hotel; - and the provision of an additional setback fifth floor level (260 sq m), providing a 6 no. storey over basement building comprising 47 no. en-suite bedrooms and ancillary hotel facilities (2,102 sq m). The application principally replicate the recently expired permission for a hotel with the provision of an additional storey as granted under DCC Reg. Ref: 3867/17. The development also proposes: -internal alterations, reconfigurations and refurbishments to facilitate the development; -alterations at basement level including the lowering of the floor level and the provision of toilets, kitchen, staff facilities, hotel management/operational rooms and cycle parking; -alterations at ground floor level and the provision of hotel reception and hotel restaurant/bar; -alterations at first floor level including demolition and extension works and the provision of a landscaped courtyard and 11 no. en-suite bedrooms; -alterations and extensions at second, third and fourth floor levels and the provision of 27 no. en-suite bedrooms;

	-and new setback fifth floor level and the provision of 9 no. en-suite bedrooms (increasing the building height to 6 no. storeys over basement). Also proposed as part of the development are the following: -alterations to all facades, including provision of new ground floor and first floor level 'shopfronts', change of an existing doorway to window and change of 2 no. existing windows to 2 no. entrances; -removal of existing lift car cage (to facilitate provision of new lift system, which will extend to basement and new fifth floor levels) and its reuse as a feature in the restaurant/bar; -repair/ renewal of brickworks as required; -signage on Dame Street and Eustace Street facades; -north-facing bedroom balconies; -blue/green roofs; -rooftop plant and lift overrun; and all associated works above and below ground.
DCC Decision Date	26th September 2023
DCC Decision	Refuse Planning Permission
ABP Ref.	318298
ABP Decision Date	23rd September 2024
ABP Decision	Refuse Planning Permission

Most recently, the Applicant sought Planning Permission for a change of use from vacant restaurant, shop and vacant office uses to a hotel with ancillary bar/restaurant, with the provision of an additional setback fifth floor level. This was initially Refused Planning Permission by DCC for the following reasons:

1. *"The proposed works include excessive fabric removal to the interior and exterior of the Protected Structures and adjacent historic buildings, causing serious injury to their special architectural character, including their original historic floor plans and original building plots, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials. The proposed new roof extension over the Protected Structure and historic buildings is not considered to be sensitively sited nor designed and would adversely impact the setting and the special character of the Protected Structure. Furthermore, the proposal does not adequately demonstrate conservation gain for the amalgamated structures known as the Shamrock Chambers. Therefore, the proposed development would seriously injure the character of the Protected Structures at 1-2 Eustace Street and would be contrary to Policy BHA2 of the Dublin City Council Development Plan 2022-2028, would set an undesirable precedent for similar type development and would be contrary to the proper planning and sustainable development of the area."*

2. *"It is considered that the proposed change of use to hotel, with restaurant/bar at ground floor level, could lead to an overconcentration of hotel and apart hotels in the local area and a lack of variety of uses in the vicinity. As such the proposal is contrary to policy SC3 and objective CUO18 of the 2022-2028 Dublin City Development Plan which seeks to promote a mixed-use land policy in the city centre including the provision of high quality, sustainable residential development and maintain the mixed use cultural role of Temple Bar. The proposed development would, therefore, be contrary to policy SC3, and Objective CUO18 of the 2022 Dublin City Development Plan, would set an undesirable precedent for similar development and would be contrary to the proper planning and sustainable development of the area."*

A detailed First-Party Appeal was made to An Bord Pleanála, which featured a robust assessment of hotel and aparthotel concentrations in the environs of the subject site and comparing same with other developments permitted in the City Centre.

The Inspector recommended that the Board Refuse Planning Permission; however, only due to the design and perceived impact associated with proposed additional storey. They did not find issue with internal and external fabrics removals (including shopfront, chimney breast, Eustace Street façade, etc.), relocation of the lift car cage, hotel/aparthotel concentrations, proposed uses, etc. The insights and opinions of the Inspector feature as context in the Sections below.

The Board's ultimate, single reason for refusal related to (1) the design and perceived impact associated with the proposed additional storey, and (2) the removal of the Dame Street shopfront and alterations.

The current live application seeks to address the reason for refusal.

4.0 EXTENT OF WORKS SUBJECT TO THIS APPEAL

4.1 Amalgamation of Unit 59 with Units 60/61

Units Nos. 60/61 was most recently occupied as a restaurant, 'Crackbird', with trade ceasing in December 2018. It has remained vacant since then until its recent occupation as a retail unit.

No. 59 has been occupied as a retail unit, selling souvenirs.

Figure 4.1 below shows the ground floor plan before any works were undertaken with the relevant area outlined in purple.

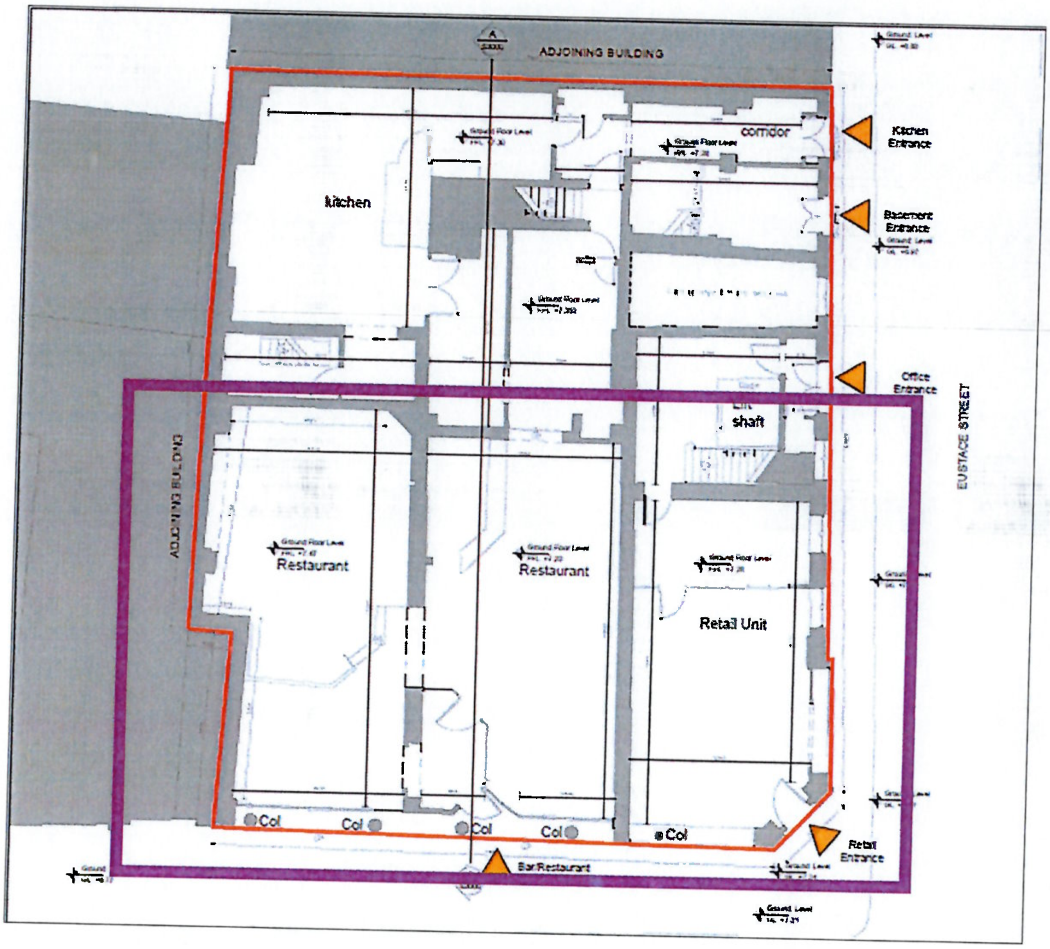

Figure 4.1: **Ground Floor Plan prior to Works Taking Place**

Source: **Cantrell & Crowley Architects**

Figure 4.2 shows the ground floor plan as currently provided with the green box highlighting a small piece of internal wall removed to facilitate cross-movement through the units.

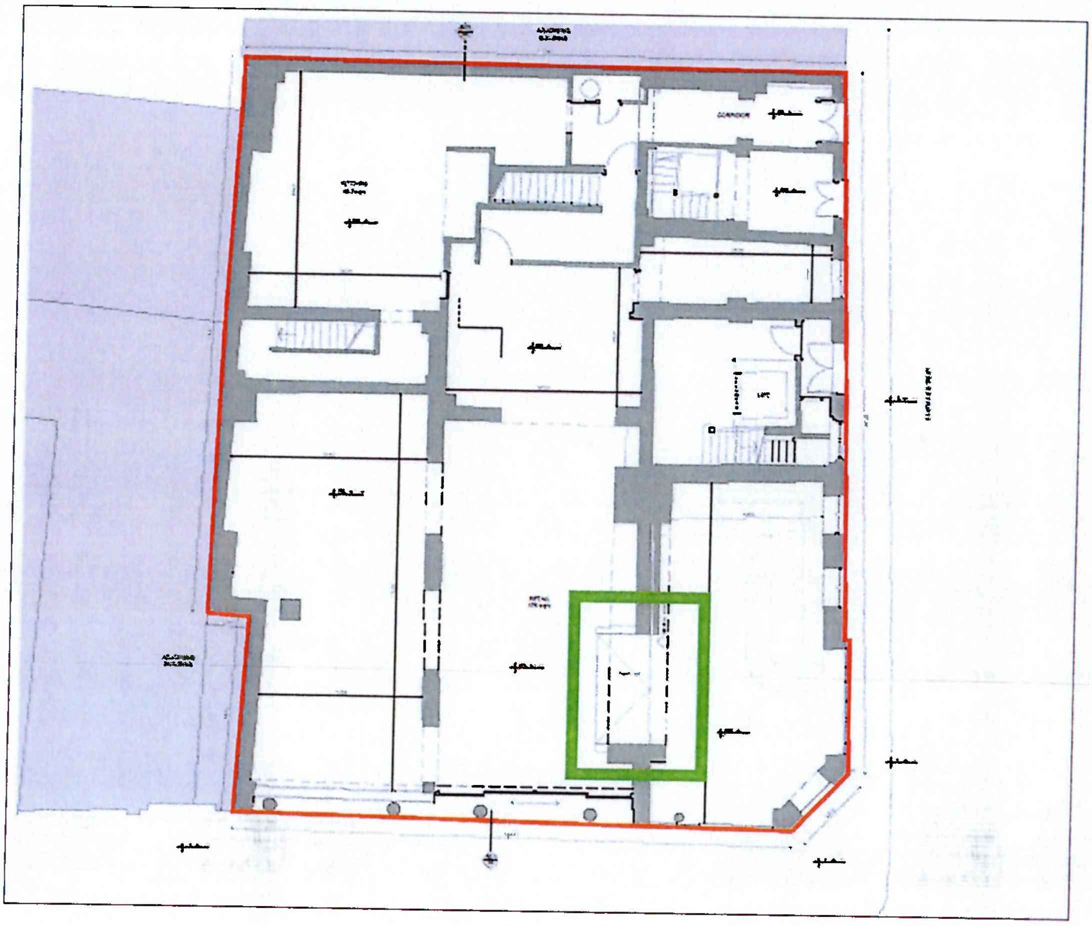

Figure 4.2: **Existing Ground Floor Plan after Internal Works Carried out**

Source: **Cantrell & Crowley Architects**

No Change to Gross Floor Space

Article 3(3) of the *Planning and Development Regulations, 2001* (as amended) defines 'gross floor space' as "*the area ascertained by the internal measurement of the floor space on each floor of a building* ***(including internal walls and partitions)***" **[Our Emphasis].** The amalgamation of the units did not alter the gross floor space of the building as the very small portion internal partition wall that previously separated the two units would have been counted within the overall gross floor space of the building regardless of its removal.

No Material Intensification of Use

The amalgamation works did not give rise to any material intensification of the building's use, given that the units were permitted to operate as a restaurant and a retail unit prior to their amalgamation. In this regard, each unit would have generated its own levels of footfall, refuse, foul wastewater, water supply, etc., and their amalgamation simply combined these previous functional demands and outputs into a single, consolidated unit. In fact, there is a strong argument that the amalgamation and resultant retail use across the entire unit is a much less intensive use than the previous restaurant use in Units Nos. 60/61 in terms of its demand on infrastructure and services.

4.2 Change of Use from Restaurant to Retail

Whilst not pertinent to this appeal, for information, we note that as detailed above, Units Nos. 60/61 were previously utilised as a restaurant whilst Unit No. 59 has been in retail use.

Units Nos. 60/61 has changed its use from restaurant to retail, with Nos. 59-61 now trading as a singular retail unit as identified in Figure 4.2 above.

4.3 Works to the Shopfront

The previous shopfront was perhaps one of the worst shopfronts in Dublin City as demonstrated in Figure 4.3.

Figure 4.3: Previous Shopfront before Improvement Work Carried Out

Source: Google Street View (Picture dated October 2024)

Whilst the application was being prepared for the current Hotel proposal, the owners have maintained and improved the shopfront to remove the above unsightly eyesore, providing an uplift to the shopfront whilst they await a decision on the Hotel application.

Figure 4.3: Shopfront after Maintenance and Improvement Works Carried out

Source: Historic Buildings Consultants

Ultimately, our Client would like to advise that after purchasing the property, their intention has been to significantly improve a unit and shopfront on Dame Street that has been unsightly for years on this key thoroughfare of Dame Street.

They have done this within the exemptions allowed in the Planning Acts in their opinion, going to significant expense, whilst they await a decision on their Hotel application, which will change the shopfront as per the proposed planning application. In this regard, all the works has been done in the best interest of the presentation of Dublin City to both residents and tourists.

5.0 DECLARATION QUESTIONS

1. Whether the removal of the internal partition wall between two units, for the purpose of amalgamating the units into a singular unit is or is not 'development' and is or is not 'exempted development' in accordance with Section 4(1)(h) of the Planning and Development, 2000 (as amended)?

2. Whether works to the shopfront is or is not 'development' and is or is not 'exempted development' in accordance with Section 4(1)(h) of the Planning and Development, 2000 (as amended)?

5.1 Question 1

'Whether the removal of the internal partition wall between two units, for the purpose of amalgamating the units into a singular unit is or is not 'development' and is or is not 'exempted development' in accordance with Section 4(1)(h) of the Planning and Development, 2000 (as amended)'?

5.1.1 Definition of 'Works' and 'Development'

Section 2 of the *Planning and Development Act, 2000* (as amended), defines 'works' as follows:

> *"'Works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation, involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure."*

Section 3(1) of the *Planning and Development Act, 2000* (as amended), defines 'development' as follows:

> *"In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."*

On this basis, the removal of internal walls constitutes 'works', and thus constitutes 'development' for the purposes of the *Planning and Development Act, 2000* (as amended).

As such, the question arises as to whether the development qualifies as 'exempted development'?

5.1.2 Example of Amalgamation Deemed Exempted Development

There are many examples of amalgamation of commercial units that have been deemed as exempted development through the Referral process. We have set out an example below.

Dún Laoghaire-Rathdown County Council Ref. 10218 – Section 5 Declaration of Exempted Development, Comprising the Amalgamation of 2 No. Units to Provide 1 No. Combined Retail Unit

This Section 5 case concerned the amalgamation of 2 No. existing retail units into 1 No. larger retail unit at Frascati Shopping Centre, Frascati Road, Blackrock, Co. Dublin.

In reviewing the proposal, the Planning Officer noted in respect of the use that:

> *"The existing units i.e. Unit No's G11 & G12, are considered to fall within the definition of 'shop'. It is considered that the proposal which seeks to amalgamate Unit No's G11 & G12 does not fall within the provisions of any of the Classes of Development, deemed to be exempt as set out under Schedule 2, Part 1 or 2 of the Planning and Development Regulations, 2001 (as amended).*
>
> ***In this regard, it is considered that the proposed amalgamation can only be assessed under the provisions of Section 4 (1) (h) of Part I of the Planning and Development Act, 2000 (as amended)."*** **[Our Emphasis]**

In considering the nature and extent of the proposed works, the Planning Officer further observed that:

> ***"The proposal which relates to the amalgamation of the 2 no. existing units into 1 no. retail unit would involve internal works only and is therefore considered to be exempt under the provisions of Section 4(1)(h).*** *It is noted that the amalgamation of the units will result in a stated increase in floor area of c. 7.6sq.m. as a result of the removal of the internal wall which currently divides the two retail units. This is considered to be a negligible increase in retail floorspace and does not constitute an intensification of the existing use."* [Our Emphasis]

On this basis, Dún Laoghaire-Rathdown County Council concluded that the proposed amalgamation constituted exempted development and accordingly issued a Declaration of Exemption on 9th October 2018.

5.1.2 'Works' Exempt in Accordance with Section 4(1)(h)

Section 4(1)(h) of the *Planning and Development Act, 2000* (as amended) states that the following development shall be classed 'as exempted development':

> *"(h) development consisting of the carrying out of works for the maintenance, improvement or other* ***alteration of any structure, being works which affect only the interior of the structure or which do 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."* **[Our Emphasis]**

The works carried out at Units 59 and 60/61 involved the <u>alteration</u> of an existing building through the removal of an internal partition wall at ground floor level to facilitate the amalgamation of two units to provide a singular unit.

These minor alteration works were confined entirely to the <u>interior of the structure</u>.

Therefore, it is our professional planning opinion that the works fall within the scope of exempted development, in accordance with Section 4(1)(h) of the *Planning and Development Act 2000* (as amended).

5.1.3 Planning Authority's Determination

The Planning Authority determined the following in their adjudication on this matter:

Whether the removal of the internal partition wall between two units, for the purpose of amalgamating the units into a singular unit is or is not `development and is or is not 'exempted development' in accordance with Section 4(a)(h) of the Planning and Development, 2000 (as amended)? The drawings submitted with the application indicate that a section of an internal wall running north-south between No. 59 and No. 60 Dame Street has been removed. While the building was significantly altered in the 19th and 20th centuries an assessment of historic Ordnance Survey maps of the site indicates that the section of internal wall removed between the two units, may run along the north-south party wall between No. 59 and No. 60 to its west and it is possible that it contains historic fabric. The Department of Housing, Local Government and Heritage's '*Architectural Heritage Protection Guidelines for Planning Authorities*' (DHLGH 2011, Section 4.12.4, p.64) state that '*alterations to the internal layout, including ... alterations that would affect the original or early surviving plan form or section; ....the breaking out of new openings between rooms or spaces would materially alter the character of the protected structure*'. Therefore, the removal of part of the internal partition wall between the buildings would not be considered exempted development and **would require planning permission.**

The key issue in assessing the nature and extent of these works is that the Planning Authority continue to treat this building as if all parts of it are protected. As set out above, and as clearly detailed in the *Dublin City Development Plan 2022-2028*, there are two very specific features of the building that are protected, a lift cage and stucco pedimented entrance door and flanking windows on the Eustace Street façade.

The removal of part of an internal wall does not relate to any element that is protected. The entire building has not been deemed worthy of protection, just the two elements outlined above. As such, it is unreasonable, in our opinion, for the Planning Authority to determine that these works '*materially alter the character of the Protected Structure*'. The removal of a small portion of internal wall neither effects the lift cage, nor the stucco pedimented entrance door and flanking windows on the Eustace Street façade. In protecting two very specific elements of the building, the Planning Authority have by determined by default that the remaining elements of the building are not worthy of protection.

Thus, the last sentence above in the extract from the DCC Planner's Report as outlined in red states that because the building is protected, 'therefore' the removal of part of the internal wall would not be considered exempted. In our opinion, this implies that the works are only not exempt because they are referring to them being undertaken to a Protected Structure. It is our strong contention that only two specific features of this building are protected, these are not the wall where the works have been carried out and thus the minor works are exempted development in accordance with Section 4(1)(h) as detailed. We invite the Coimisiún to reach the same rational conclusion in this regard.

5.2 Question 2

Whether works to the shopfront is or is not 'development' and is or is not 'exempted development' in accordance with Section 4(1)(h) of the Planning and Development, 2000 (as amended)?

In seeking to remove the previous eyesore from Dame Street, our Client has carried out maintenance and improvement works to the façade of the building as permitted under

Section 4(1)(h) of the *Planning and Development Act, 2000 as amended*, which states the following is exempted development:

> *'development consisting of the carrying out of works for the* ***maintenance, improvement*** *or other alteration of any structure, being works which affect only the interior of the structure or* ***which do 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'.***

It is our professional planning opinion that the proposed works which simply seek to **maintain** and **improve** the previously very poor quality shopfront do not materially affect the external appearance of the structure **so as to render the appearance inconsistent with the character of the structure or neighbouring structures**. The current shopfront is clearly more consistent with the character of the existing structure and neighbouring structures and thus is in our opinion, exempt in accordance with Section 4(1)(h). The signage replaces the signage that was on the building, noting there would have been 'Crackbird' signage on the building which is covered over in the below image with a blank panel.

In their decision, the Planning authority again base their decision around a characterisation of the entire building as a Protected Structure:

> **Whether works to the shopfront is or is not `development and is or is not `exempted development' in accordance with Section 4(1)(h) of the Planning and Development 2000 (as amended)? -** While only limited information on the shopfront works has been supplied with the submission, it is evident that changes to the shopfront may have a material impact on the protected structure. The Section 5 Declaration process is principally intended for modest works, maintenance and repairs, which would not materially affect the character of the protected structure, having regard to the provisions of the Planning and Development Act 2000 (as amended) and the *Architectural Heritage Protection Guidelines for Planning Authorities* (2011).
> It is considered that proposed alteration of the shopfront would not come within the meaning of exempted development under Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) and **would therefore require planning permission.**

As noted above, the building (Nos. 59-61) is **not** a Protected Structure. There are two protected elements in Nos. 1-2 Eustace Steeet, an internal lift cage and two windows and a door on Eustace Street, none of which are affected by the maintenance and improvement works in Nos. 59-61.

We further note that whilst the building is in a Conservation Area, it is not in an Architectural Conservation Area (ACA). As such, in our opinion, the Applicant can carry out works for the maintenance and improvement of the structure in accordance with Section 4(1)(h) and they are exempt.

Whilst the application was being prepared for the current Hotel proposal, the owners have maintained and improved the shopfront to remove the above unsightly eyesore, providing an uplift to the shopfront whilst they await a decision on the Hotel application.

Based on the above, it is our opinion that the works to the shopfront is exempted development.

6.0 CONCLUSION

Having regard to the above, it is our professional planning opinion that the two elements of work outlined are exempted development in accordance with Section 4(1)(h) of the *Planning and Development Act, 2000 as amended*.

We look forward to receiving your consideration

Yours faithfully,

Patricia Thornton

Patricia Thornton
Director
Thornton O'Connor Town Planning