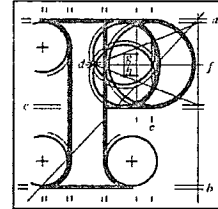


Our Case Number: ABP-313828-22

Planning Authority Reference Number: SD21A/0271



**An
Bord
Pleanála**

LAND USE, PLANNING
& TRANSPORTATION DEPT.
19 JAN 2024

Alan Hayes
South Dublin County Council
County Hall
Tallaght
Dublin 24

Date: 16 JAN 2024

Re: Demolition of existing building and construction of 5 storey over partial basement mixed use development comprising gastro pub/restaurant with off-licence, 2 retail units, 50 apartments, parking and associated site development works.
Lands at the Silver Granite pub, Palmerstown, Dublin 20

Dear Sir / Madam,

An order has been made by An Bord Pleanála determining the above-mentioned matter under the Planning and Development Acts 2000 to 2022. A copy of the order is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

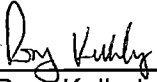
The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

Teil	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

A further enclosure contains information in relation to challenges by way of judicial review to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

Yours faithfully,



Rory Kelleedy
Executive Officer

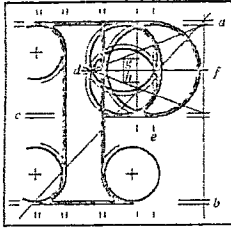
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An
Bord
Pleanála

Board Order
ABP-313828-22

Planning and Development Acts 2000 to 2022

Planning Authority: South Dublin County Council

Planning Register Reference Number: SD21A/0271

APPEAL by The Moriarty Group care of Hughes Planning and Development Consultants of 85 Merrion Square, Dublin, and by Others, against the decision made on the 23rd day of May, 2022 by South Dublin County Council to grant subject to conditions a permission to Hollyville Investments Limited care of Downey Planning of 29 Merrion Square, Dublin.

Proposed Development: Demolition of the existing building on site and the construction of a five-storey over partial basement, mixed-use development comprising a gastro pub/restaurant with off-licence, two retail units, associated bin stores, bike stores, one ESB sub-station, all at ground floor level; a small plant room at basement level; a total of 50 apartments (25 one-beds and 25 two-beds) on the upper floors, all provided with private balconies/terraces; communal roof gardens; car parking; motorcycle parking; bicycle parking; landscaping and upgrades to public realm including upgrades to existing pedestrian crossing on Kennelsfort Road Upper; and all associated engineering and site works necessary to facilitate the development on lands at The Silver Granite pub, junction of Kennelsfort Road Upper and Wheatfield Road, and at The Silver Granite car park adjoining Palmerstown Shopping

Centre car park (accessed from Kennelsfort Road Upper via Palmerstown Park), all at lands at The Silver Granite pub, Palmerstown, County Dublin.

Decision

REFUSE permission for the above proposed development in accordance with the reasons and considerations set out below.

Reasons and Considerations

1. The design and layout of the proposed car parking area would result in vehicles exiting the car park the wrong way onto a one-way system within the existing Palmerstown Shopping Centre car park. The car parking area would also remove an existing emergency vehicular access to the Shopping Centre from Kennelsfort Road Upper and would block access to an existing service area to the south of the Palmerstown Shopping Centre. It is considered that the design and layout of the car parking area would, therefore, negatively impact on the existing operation of the Palmerstown Shopping Centre and would endanger public safety by reason of a traffic hazard.

2. It is considered that the of 1.8-metre-high opaque screens to serve six number single aspect east facing units (numbers 9, 10, 23, 24, 37, 38), in addition to the provision of six number single aspect north facing units (numbers 6, 7, 20, 21, 34 and 35), would result in substandard residential amenity for future occupiers. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

msl

In deciding to accept the Inspector's recommendation to refuse permission, the Board concurred in part with the recommendation.

The Board concurred with the Inspector that the car parking arrangement was not satisfactorily addressed in the application, particularly the impact on the operation of the existing Palmerstown Shopping Centre and the vehicular movements proposed.

The Board also agreed with the Inspectors assessment that the residential amenity of the six east facing units would be negatively impacted by the 1.8 metre opaque balcony treatment proposed. The Board concluded that the single aspect north facing units in addition to the poor aspect from the east facing units detracted from the overall quality of the scheme proposed.

The Board did not concur with the Inspector on a number of design and layout details for the reasons and considerations that follow:

The Board, having had regard to South Dublin Development Plan, Policy H13, Objective 4 in relation to residential consolidation, considered that as this is a new build and not a proposal to provide accommodation over an existing structure the proposal was not, therefore, contrary to the Plan. The Board, noting the zoning and the location of the site, concurred with the planning authority that the mix of uses proposed is appropriate.


The Board did not consider the location of the car park at the opposite side of Kennelsfort Road Upper a reason for refusal, due to the proximity of the parking. Neither was the proximity of the private amenity space for units 11,12,13 and 14 considered an issue, due to the privacy strip proposed.

Wet

The Board noted the planning authority's assessment of public open space and the positive contribution being made by the proposed public realm. The Board agreed with the planning authority that at this corner site the approach to public open space is appropriate and a Section 48 contribution in lieu of open space as provided for in the development plan may be appropriate.

The Board considered in this instance the location of the Bin Store is acceptable, having regard to the report from the Environmental Health Officer, the corner site location and the limited size and access to the basement.

The Board noted Appendix 11, Section 6.7 of the development plan provides where the developer does not propose 30% three bed units, an opportunity is provided for sufficient justification to be made, this may have been given to the applicant if it was not for the substantive reasons for refusal set out above.



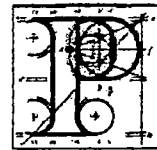
Mary Henchy

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this 18th day of January 2024.



An
Bord
Pleanála

Judicial Review Notice

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Acts (as amended).

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000, as amended, contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that any application for leave to apply for judicial review must be made within 8 weeks of the date of the decision of the Board, save for decisions made pursuant to a function transferred to the Board under Part XIV of the Planning and Development Act 2000, where any application for leave to apply for judicial review must, as set out in sub-section 50(7), be made within 8 weeks beginning on the date on which notice of the decision of the Board was first sent (or as may be the requirement under the relevant enactment, functions under which are transferred to the Board, was first published). These time periods are subject to any extension which may be allowed by the High Court in accordance with sub-section 50(8).

Section 50A(3) states that leave for judicial review shall not be granted unless the Court is satisfied that (a) there are substantial grounds for contending that the decision is invalid or ought to be quashed and (b) the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the costs of certain judicial review proceedings in the High Court; pursuant to Section 50B(1), Section 50B applies to the following proceedings:

(a) proceedings in the High Court by way of judicial review, or of seeking leave to apply for judicial review, of—

- (i) any decision or purported decision made or purportedly made,
- (ii) any action taken or purportedly taken,
- (iii) any failure to take any action, pursuant to a statutory provision that gives effect to
 - I. a provision of the EIA Directive 85/337/EEC as amended to which Article 10a (as inserted by Directive 2003/35/EC) of that Directive applies,
 - II. the SEA Directive 2001/42/EC, or
 - III. a provision of the IPPC Directive 2008/1/EC to which Article 16 of that Directive applies, or
 - IV. Article 6(3) or 6(4) of the Habitats Directive; or

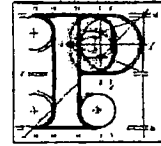
(b) an appeal (including an appeal by way of case stated) to the Supreme Court from a decision of the High Court in a proceeding referred to in paragraph (a);

(c) proceedings in the High Court or the Supreme Court for interim or interlocutory relief in relation to a proceeding referred to in paragraph (a) or (b).

The general provision contained in section 50B(2) is that in proceedings to which the section applies each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant, to the extent that the applicant succeeds in obtaining relief, against a respondent or notice party, or both, to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on www.citizeninformation.ie

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.



Fógra faoi Athbhreithniú Breithiúnach

Athbhreithniú breithiúnach ar chinntí an Bhoird Pleanála faoi fhorálacha na nAchtanna um Pleanáil agus Forbairt (arna leasú).

Ní fhéadfaidh duine ar mian leis nó léi agóid a dhéanamh in aghaidh bhailíocht chinneadh de chuid an Bhoird é sin a dhéanamh ach trí athbhreithniú breithiúnach. Tá forálacha in Alt 50, 50A agus 50B den Acht um Pleanáil agus Forbairt 2000, arna leasú, maidir le dúshláin i leith bhailíocht chinneadh an Bhoird.

Ní féidir bailíocht cinnidh arna ghlacadh ag an mBord a cheistiú ach amháin trí iarratas a dhéanamh ar athbhreithniú breithiúnach faoi Ordú 84 de Rialacha na nUaschúirteanna (S.I. Uimh. 15 de 1986). Ceanglaíonn fo-alt 50(6) den Acht um Pleanáil agus Forbairt 2000 go gcaithfear aon iarratas ar chead chun iarratas a dhéanamh ar athbhreithniú breithiúnach a dhéanamh laistigh de 8 seachtaine ó dháta chinneadh an Bhoird, seachas cinntí a dhéantar de bhun feidhme aistriú chuig an mBord faoi Chuid XIV den Acht um Pleanáil agus Forbairt 2000, i gcás nach mór aon iarratas ar chead chun iarratas a dhéanamh ar athbhreithniú breithiúnach, mar atá leagtha amach i bhfo-alt 50(7), a dhéanamh laistigh de 8 seachtaine ag tosú ar an dáta ar ar tugadh fógra faoi chinneadh an Bhoird ar dtús (nó mar a cheanglófar faoin achtú ábhartha, ar aistríodh feidhmeanna faoi chuig an mBord, a foilsíodh den chéad uair). Tá na tréimhsí ama seo faoi réir aon síneadh a fhéadfaidh an Ard-Chúirt a cheadú de réir fho-alt 50(8).

Sonraítear in alt 50A(3) nach ndeonófar cead d'athbhreithniú breithiúnach mura bhfuil an Chúirt sásta (a) go bhfuil forais shubstaintiúla ann chun a áitiú go bhfuil an cinneadh neamhbhailí nó gur chóir é a chur ar neamhni agus (b) go bhfuil leas leordhóthanach ag an iarratasóir san ábhar is ábhar don iarratas nó i gcásanna a bhaineann le measúnú tionchair timpeallachta ar comhlacht é a chomhlíonann critéir shonraithe.

Tá forálacha in alt 50B maidir le costais imeachtaí athbhreithnithe bhreithiúnaigh áirithe san Ard-Chúirt; de bhun Alt 50B(1), tá feidhm ag alt 50B maidir leis na himeachtaí seo a leanas:

(a) imeachtaí san Ard-Chúirt mar athbhreithniú breithiúnach, nó trí chead a lorg chun iarratas a dhéanamh ar athbhreithniú breithiúnach, ar—

- (i) aon chinneadh nó cinneadh airbheartaithe a rinneadh nó a airbheartaítear a rinneadh,
- (ii) aon ghníomh a rinneadh nó a airbheartaítear a rinneadh,
- (iii) aon mhaíneachtain aon ghníomh a dhéanamh, de bhun forála reachtúla a thugann éifeacht
 - I. d'fhoráil de Threoir EÍA 85/337/CEE arna leasú lena mbaineann Airteagal 10a (arna cur isteach le Treoir 2003/35/CE) den Treoir sin,
 - II. do Threoir SEA 2001/42/CE, nó
 - III. d'fhoráil de Threoir IPPC 2008/1/CE a bhfuil feidhm ag Airteagal 16 den Treoir sin maidir léi, nó
 - IV. d'Airteagal 6(3) nó 6(4) den Treoir maidir le Gnáthóga; nó

(b) achomharc (lena n-áirítear achomharc de chás ráite) chun na Cúirte Uachtaraí i gcoinne breithe ón Ard-Chúirt in imeacht dá dtagraítear i mír (a);

(c) imeachtaí san Ard-Chúirt nó sa Chúirt Uachtarach le haghaidh faoisimh eatramhach nó idirbhreitheach i ndáil le himeacht dá dtagraítear i mír (a) nó (b).

Is í an fhoráil ghinearálta atá in alt 50B(2) ná go n-íocfaidh gach páirtí in imeachtaí lena mbaineann an t-alt a chostais féin. Féadfaidh an Chúirt, áfach, costais a dhámhachtain in aghaidh aon pháirtí in imthosca sonraithe. Tá foráil ann freisin go ndéanfaidh an Chúirt costais imeachtaí nó cuid de chostais den sórt sin a dhámhachtain d'iarratasóir, a mhéid a éiríonn leis an iarratasóir faoiseamh a fháil, i gcoinne freagróra nó páirtí fógra, nó an dá cheann, a mhéid a chuir an chaingean nó an t-easnamh ar thaobh an fhreagróra nó an pháirtí fógra go páirteach leis an bhfaoiseamh atá á fháil.

Tá eolas ginearálta ar nósanna imeachta athbhreithnithe bhreithiúnaigh ar fáil anseo a leanas, www.citizensinformation.ie.

Séanadh: Mar eolas atá an méid thuas ceaptha. Ní airbheartaíonn sé a bheith ina léirmhíniú ceangailteach ó thaobh dlí ar na forálacha ábhartha agus bheadh sé inmholta do dhaoine atá ag smaoineamh ar chaingean dlí comhairle dlí a lorg.