



Proposed Addition of Buildings on Moore Street, Moore Lane and Henry Place, Dublin 1 to the Record of Protected Structures.

At the December meeting of the Council on 4 December 2017, the Lord Mayor proposed the following motion, which was approved by the City Council:

“That the process of adding No 10, 20 & 21, the O’Brien’s Mineral Water Works building, the White Cottage building, Henry Place and the Bottling Stores, Moore Lane, to the Record of Protected Structures be continued”.

On 15 December 2017, I wrote to Hammerson plc, as owner of the relevant properties, to advise them of the Council’s intent to resume the process of carrying out the assessment required under Sections 55-58 of the Planning Act, 2000 (as amended) in relation to these buildings, with a view to adding them in due course to the Record of Protected Structures. I also requested their co-operation in facilitating access to the relevant buildings to enable the required assessment to be carried out.

Dublin Central Limited Partnership responded by letter dated 24 January 2017. (A copy of all the correspondence is attached.)

In light of the response of Dublin Central Limited Partnership, I now propose, subject to the approval of the City Council, to get Counsel advice in relation to the options open to the City Council in seeking to give effect to the motion adopted on 4 December 2017.

Owen P Keegan
Chief Executive

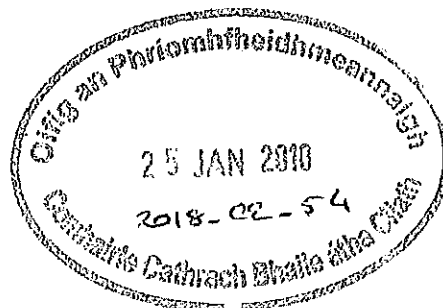
26 January 2018

DUBLIN CENTRAL LIMITED PARTNERSHIP

2 Grand Canal Square, Dublin 2, D02 A342

24 January 2018

Mr Owen P. Keegan
Chief Executive
Dublin City Council
Civic Offices
Wood Quay
D08 RS3F



Re: Moore Street, Moore Lane, Henry Place, Dublin 1

Dear Mr Keegan,

Thank you for your letter dated 15 December 2017, the contents of which are noted.

It might be useful in the first instance to refer you to the *Planning Permission Register* (Ref: PPRR 2479/08) and the subsequent *An Bord Pleanála* grant of permission (Ref: NO.PL29N.23234) (the "Permission"); which remains valid until 6 May 2022.

In the context of the Permission, it is important to note that should the proposed assessment ultimately result in the initiation of the procedure under Section 55 of the 2000 Act, any consequent decision to include the Properties on the Record of Protected Structures would be inconsistent with Section 58(3) of the 2000 Act.

As you may be aware, our position was respectfully set out in correspondence between our solicitors, William Fry and the DCC Law Agent (enclosed for ease of reference). I would make particular reference to the position of the DCC Law Agent (see letter of 6 October 2016) which provides that the initiation of the assessment process should, at the very least, be postponed, until the outcome of the related proceedings before the Court of Appeal is known.

In response to your request for an undertaking, the structures in question form part of the Permission and no undertaking can be given which would in any way contravene the obligations that arise under the Permission. In light of the above, the proposed course of action could be considered to be an oblique attack on the Permission. As you will understand, should it be progressed, DCLP would be compelled to take the necessary steps to protect our constitutional and property rights.

We look forward to maintaining a positive and productive relationship with DCC as we progress our thoughts for the regeneration of this important city centre site.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Dobbs".

Edward Dobbs (For and on behalf of Dublin Central Limited Partnership)



Cornhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

Oifig an Phríomhshleádhmeannalgh Oifig na Cathrach, An Ché Adhmaid, D08 RF3F
Oifigeach Poiblí Ainmnithe faoin Acht um Brístacadreacht a Rialáil 2015

Chief Executive's Office, Civic Offices, Wood Quay, D08 RF3F
Designated Public Official under the Regulation of Lobbying Act 2015

T. 01 222 2100 F. 01 222 2097 E. chiefexecutive@dublincity.ie

Mr Edward Dobbs,
Development Manager
Hammerson plc,
Pembroke District,
Dundrum Town Centre,
Dublin 14

15 December 2017

Re: Moore Street, Moore Lane, Henry Place, Dublin 1.

Dear Mr Dobbs,

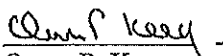
The issue of the above 2.17 Ha. site and the need to consider adding a number of buildings on the site to the Record of Protected Structures (RPS) was raised under Lord Mayor's Business at a meeting of the City Council on 4 December 2017. An extract from the unapproved minutes of the meeting is attached.

You will note that it was agreed that the Council would write to you, as owner of the relevant properties, to advise you of the Council's intent to resume the process of carrying out the assessment required under Sections 55-58 of the Planning Act, 2000 (as amended) in relation to these buildings, with a view to adding them in due course to the RPS.

As you are aware an assessment of the "special interest" of the structures will involve detailed internal inspections. In view of this I wish to request your co-operation in facilitating access to the relevant buildings.

The structures only become proposed protected structures under Section 55 of the Planning and Development Act, 2000 when the "special interest" of the structures, including particulars of the proposed addition has been identified and submissions made to inform the owner/occupier and indeed the general public of the reason(s), so that they can make informed submissions to the formal public consultation process. In view of this I would appreciate if, pending the completion of the proposed assessment, you would give a commitment that the buildings in question will not be demolished as provided for under the current planning permission.

I would be very grateful for an early reply to this letter, so that I can report back to the Elected Members of the City Council at the earliest opportunity.


Owen P. Keegan
Chief Executive

Ceannóifig, Oifig na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8, Éire
Head Office, Civic Offices, Wood Quay, Dublin 8, Ireland

Extract from Draft Minutes of City Council Meeting on 4th December 2017

The Lord Mayor then referred to Moore St and said that the addition of a number of buildings in the Moore Street Battlefield Site area to the Record of Protected Structures had been referred to a Planning & Development Strategic Policy Committee meeting, which was then postponed. He wished to make clear that this is a live issue and that their listing is under active consideration. The owners of the properties need to be notified accordingly. Mr John O'Hara cautioned against this for the following reasons:

- there is an active Court case involving the site,
- an Advisory/Oversight Group has been established with an Independent Chair to work with the developer and members of the original Consultative Group to find a way forward and
- there is an extant Planning Permission in place which allows for the demolition of these buildings.

However, given the clear will of the Members, Mr O'Hara undertook that the Council would write to the owners of these properties to inform them of the City Council's strong desire to proceed with the process of adding No 10, 20 & 21, the O'Brien's Mineral Water Works building and the White Cottage building, Henry Place and the Bottling Stores, Moore Lane, to the Record of Protected Structures.



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Bhaile Átha Cliath
Dublin City Council

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William Fry & Co.,
Solicitors,
2 Grand Canal Square
Dublin 2.
DX 23 DUBLIN



06 October 2016

My Ref: YK/105496

Your Ref:023984.0004.CDL/RJB

Re: Assessment of Structures at Henry Place, Moore St, Moore Lane Dublin 1
Your clients: Dublin Central Limited Partnership

Dear Sirs,

I refer to your letter of the 9th September which crossed with mine of even date.

You will be aware that the making of an addition to the record of protected structures is a function of the elected members of Dublin City Council and they are entitled to initiate that process notwithstanding the existence of a planning permission that may or may not be actionable. You will note however that the elected members will be advised that the initiation of the process of assessment of the structures at Henry Place, Moore Street and Moore Lane should be postponed until the outcome of the Judicial Review proceedings concerning the lands, has been determined by the appeal court.

You clients will be notified if it is intended to take any further steps in this process. I trust this is in order.

Yours faithfully,

Terence G. O'Keefe
Law Agent

When telephoning please ask for:

Yvonne Kelly

Direct Dial No T: 222 5392 \ F: 2222563

E-mail: yvonne.kelly@dublincity.ie

WILLIAM FRY III

Our Ref 023984.0004.CDL/RJB
Your Ref YK/105496

9 September 2016

By post & email (Yvonne.Kelly@dublincity.ie)

The Law Agent
Dublin City Council
Civic Offices
Wood Quay
Dublin 7

Assessment of Structures at Henry Place, Moore Street and Moore Lane Dublin 1 (the "Properties")
Our Client: Dublin Central Limited Partnership

Dear Sirs

We refer to your letter dated 23 August 2016.

We note your confirmation that the engagement of Kelly & Cogan Architects in any assessment of the Properties shall be discontinued. DCC's intention to appoint a replacement firm of architects to prepare a report for the elected members is however a matter of some surprise in light of the serious concerns identified in our letter of 11 August 2016.

In circumstances where the proposed assessment could result in the initiation of the procedure under Section 55 of the Planning and Development Act 2000 (the "2000 Act"), the first step for DCC must involve a consideration of Planning Permission Register Reference 2479/08, An Bord Pleanála Reference No.PL29N.23234 (the "Planning Permission"). As you are aware, the Planning Permission remains valid until 6 May 2022 and provides for the demolition of all of the Properties which DCC is now proposing to have assessed for inclusion on the Record of Protected Structures.

We fail to see how the Planning Permission can be reconciled with the process being proposed by DCC, some details of which were first outlined in your email to our client of 30 June 2016. This view has been strengthened by a review of documentation furnished to us, from which it plainly appears that the proposed process has no regard to the Planning Permission and seeks to proceed as if no such permission had been granted.

It further appears that the proposed assessment is limited to our client's properties only; DCC is not proposing to assess any third party properties for inclusion in the Record of Protected Structures as part of this proposed process.

As DCC will be aware, should the proposed assessment ultimately result in the initiation of the procedure under Section 55 of the 2000 Act, any consequent decision to include the Properties on the Record of Protected Structures would be of no effect in light of Section 58(3) of the 2000 Act. Notwithstanding this clear legal position,

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*Not a member of the Law Society

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WILLIAM FRY III

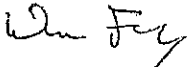
DCC appears intent on undertaking a costly assessment of the Properties to determine whether they should be identified as protected structures in the statutory Development Plan.

We have previously indicated that no assessment should proceed if it is established that there is a valid and subsisting planning permission for the demolition of the Properties. If, notwithstanding the Planning Permission and DCC's acceptance that it authorises the demolition of the Properties, DCC intend to continue the proposed assessment process, our client will have no alternative but to take whatever steps it deems necessary to protect *inter alia* its constitutional and proprietary rights.

Accordingly, please confirm within twenty-one (21) days of the date hereof that DCC acknowledges that the Properties have a valid and subsisting planning permission for their demolition and that DCC will take no further steps to continue the process of consideration of the Properties for inclusion in the Record of Protected Structures.

We await hearing from you.

Yours faithfully


William Fry

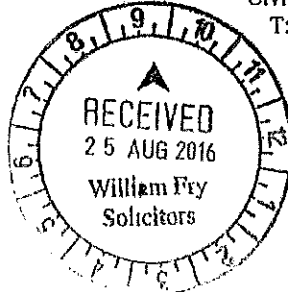
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William Fry & Co.,
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2 Grand Canal Square
Dublin 2.
DX 23 DUBLIN



23 August 2016

My Ref: YK/105496

Your Ref:023984.0004.CDL/RJB

Re: Assessment of Structures at Henry Place, Moore St, Moore Lane Dublin 1

Dear Sirs,

I refer to your letter dated 11 August 2016.

In light of the contents of your letter and in particular your assertion of the extensive involvement of Kelly & Coogan Architects in the High Court proceedings concerning the Moore Street area I have advised my client in the Planning and Development Section that the aforementioned firm's engagement should not continue. You will note that the Council was not involved in the High Court proceedings referred to in your letter.

The Council is preparing a Report for the elected members and that is why the Council proposes to conduct an assessment of the buildings. The assessment may or may not result in the initiation of the procedure under Section 55 of the Planning & Development Act 2000 Act for additions to the Record of Protected Structures. As you will be aware this is a function reserved to the elected members and your client will have an opportunity to make written submissions and or observations if that process is initiated.

As such the Council now intends to proceed to appoint another firm to do the required assessment. A member of staff from Planning & Development will write to your clients in this regard shortly. I trust this is in order.

Terence G. O'Keefe
Law Agent

When telephoning please ask for:
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WILLIAM FRY III

Our Ref 023984.0004.CDL/RJB

11 August 2016

The Law Agent
Dublin City Council
Civic Offices
Wood Quay
Dublin 7

Assessment of Structures at Henry Place, Moore Street and Moore Lane Dublin 1
Our Client: Dublin Central Limited Partnership

Dear Sir

We are instructed by Dublin Central Limited Partnership ("DCLP") in relation to the above.

Chartered Land Limited (CLL) was the successful applicant for planning permission Planning Register Reference 2479/08, An Bord Pleanála Reference No. PL29N.232347 (the "Planning Permission") which application is for a large mixed use development comprising retail, recreational, commercial and residential development and which comprises an area of 2.17 hectares within a block enclosed by Upper O'Connell Street, Henry Street, Moore Street, O'Rahilly Parade and Parnell St, Dublin 1 (otherwise known as the "Dublin Central Scheme").

As of 7 July 2016 DCLP is now the owner of the Dublin Central Scheme and therefore the party entitled to the benefit of the Planning Permission. An extension of duration of permission for the Planning Permission (to 6 May 2022) was granted by Dublin City Council ("DCC") on 21 July 2016.

We are instructed that our client has received a request from the Planning and Property Department of DCC for access to the following properties (hereinafter referred to as the "Properties"), which properties form part of the Dublin Central Scheme:

- (1) O'Brien's Mineral Water Building, Henry Place, Dublin 1;
- (2) The White House, Henry Place, Dublin 1;
- (3) No. 10 Moore Street, Dublin 1;
- (4) The Bottling Store rear 10 Moore Street and Moore Lane, Dublin 1; and
- (5) Hanlon's, 20/21 Moore Street, Dublin 1.

Our client has been informed that the purpose of the requested access is to enable DCC (and/or its agents) to carry out an assessment of the Properties in order to consider their proposed addition to DCC's Record of Protected Structures.

With regard to this initial request, DCC should note that the Properties form part of the Planning Permission which permission is valid and substituting and does not expire until 6 May 2022. In addition, DCC should note the obligations imposed by the Planning Permission which requires the carrying out of the development in accordance with the plans and particulars lodged. DCC should further note that Section 58(3) of the Planning and Development Act 2000 creates an exception in respect of the duty imposed on owners/occupiers with regard to protected structures on works carried out pursuant to a planning permission.

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On foot of additional queries raised by our client, it was informed that access to the Properties for the purposes of their assessment, was required to be provided to, and the assessment carried out by, Messrs. Kelly and Cogan Architects ("KCA"). For completeness, we enclose a copy of the exchange of email correspondence between Máire Igoe, (DCC) and our client's Mr. Andrew Diggins.

The Properties form part of a site the status of which was recently the subject of the following related sets of High Court proceedings:

- Colm Moore -v- Minister for the Arts, Heritage and the Gaeltacht and Chartered Land Limited: High Court Record No. 2015/698 JR (the "Judicial Review proceedings");
- Colm Moore -v- Minister for the Arts, Heritage and the Gaeltacht: High Court Record No. 2015/387 MCA; (the "2015 MCA proceedings") and
- Colm Moore -v- Minister for the Arts, Heritage and the Gaeltacht and Chartered Land Limited: High Court Record No. 2016/51 MCA (the "2016 MCA proceedings")

All three sets of proceedings were heard together before Mr Justice Barrett (in February/March 2016) as they concerned various interrelated issues of fact and of law and which *inter alia* related to the Properties.

CLL, was a Notice Party to the Judicial Review Proceedings and a Co-Respondent (with the Minister for Arts, Heritage and the Gaeltacht) in the 2016 MCA Proceedings.

Mr James Kelly, as principal of KCA, provided expert evidence on behalf of the Applicant in these proceedings. Furthermore, Mr Kelly was the deponent in five separate Affidavits submitted in the 2015 and 2016 MCA Proceedings which Affidavits *inter alia* referred to and/or reached conclusions in respect of the Properties. Each of the five Affidavits were in support of the Applicant's position in those proceedings.

In these circumstances, it is entirely inappropriate that either Mr. Kelly or KCA should have any involvement in any assessment of the Properties as part of the process now being considered by DCC.

The Judgment and Orders of Mr Justice Barrett in the proceedings are currently the subject of separate appeals to the Court of Appeal (by Order of which Court DCLP was substituted in the place of CLL on 29 July 2016).

In light of the circumstances outlined above, please confirm within **fourteen (14) days** of the date hereof that DCC will neither be proceeding with the assessment of the Properties nor seeking access to the Properties for the purpose of the proposed assessment by either Mr Kelly or KCA.

In the event that DCC fails to provide this confirmation, we reserve our client's entitlement to take whatever steps it deems necessary to protect *inter alia* its constitutional and proprietary interests.

We look forward to receipt of the requested confirmation.

Yours faithfully


William Fry

WF-17316219