



An
Bord
Pleanála

Inspector's Report 306752-20

Development	Public seating and dining area ancillary to licensed premises
Location	119-121 Church Street Upper, D 7.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	4588/19
Applicant(s)	Dormist Ltd.
Type of Application	Retention Permission and Permission
Planning Authority Decision	Refuse Permission and Retention Permission
Type of Appeal	First Party
Appellant(s)	Dormist Ltd.
Observer(s)	None
Date of Site Inspection	3 rd June 2020
Inspector	Louise Treacy

1.0 Site Location and Description

- 1.1. The subject site is located at Nos. 119-121 Church Street Upper, Dublin 7. The site is located on the western side of Church Street Upper, a busy 4-lane thoroughfare which connects the north city quays with Phibsborough village further to the north.
- 1.2. The existing building is a 3-storey, mid-terrace property which is designated as a Protected Structure. The building is in use as a licensed-premises known as “Bonobo” at the ground floor level, with residential uses on the upper floors. A book-makers premises adjoins the site at the ground floor level to the north, with a retail unit adjoining to the south. Another licenced premises, “Taproom 47”, is located at the junction of Church Street Upper and King Street North to the south of the subject site. The upper floors of these adjoining properties were noted to be in residential use at the time of the site inspection.
- 1.3. The Kings Court apartment scheme is located to the south-west of the application site on King Street North, while the Kevin Barry housing scheme, comprising 2 no. 4 storey apartments blocks, is located to the east of the site on the opposite side of Church Street Upper.
- 1.4. The outdoor seating and dining space is located on the northern side of the bar area and is enclosed by a 3.5 m high stone wall with planting along the northern and western boundaries. A vacant site adjoins the northern site boundary, while a yard space adjoins the western site boundary. A metal-clad kitchen/serving structure, which is occupied by Dublin Pizza Company, is situated within the outdoor space to the rear of the adjoining book makers premises.
- 1.5. The outdoor seating area accommodates 9 no. communal tables with bench seating and is covered by 2 no. metal canopy structures suspended on metal supports.

2.0 Proposed Development

- 2.1. Retention planning permission is sought for:
 - (a) the use of the private open space to the rear and side of the property as a public seating and dining area ancillary to the licensed premises;

(b) the use of the metal-clad structure within the private open space to the rear and side of the property as a kitchen and serving area ancillary to the licensed premises; and,

(c) 2 no. canopy-type structures within the private open space to the rear and side of the property partially covering the seating and dining area ancillary to the licensed premises.

2.2. Planning permission is also sought for external acoustic upgrades and associated site works in the public seating and dining area ancillary to the licensed premises.

2.3. The planning application documentation states that the outdoor space has been designed to accommodate 104 no. patrons.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Notification of the Decision to Refuse Permission and Refuse Retention Permission for 1 no. reason issued on 4th February 2020.

3.1.2. Permission was refused on the basis that the development would cause serious noise disturbance to the surrounding residential units, would be contrary to policy SI25 of the development plan and would seriously injure the residential amenity and depreciate the value of residential properties in the immediate vicinity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. Basis of Planning Authority's decision.

3.2.3. Dublin City Council's Planning Officer considered that noise outbreak would occur from the public seating and dining area, which would be seriously injurious to the residential amenity of the area due to the close proximity of residential units.

3.2.4. Other Technical Reports

3.2.5. **Conservation Officer:** Request for Further Information recommended.

3.2.6. **Drainage Division:** No objection subject to conditions.

- 3.2.7. **Environmental Health Officer (EHO):** Recommended that planning permission be refused.
- 3.2.8. Even with the proposed noise mitigation measures in place, the EHO considered that opportunities would arise for noise outbreak along the northern and western sides of the open space. It was also noted that the proposed noise barrier structures may result in non-compliance with the Public Health (Tobacco) Act, 2002. The EHO further considered that insufficient details had been provided in relation to flue gas emissions from the pizza hut/met clad kitchen area.
- 3.2.9. The EHO noted that numerous noise complaints had been received from residents in the locality who consider that their private amenity has been adversely affected by the outdoor space.

3.3. **Prescribed Bodies**

- 3.3.1. **Transport Infrastructure Ireland:** Recommends that a S.49 development contribution levy for Luas Cross City be attached (if applicable).
- 3.3.2. **National Transport Authority:** None received.
- 3.3.3. **Department of Culture, Heritage and the Gaeltacht:** None received.
- 3.3.4. **Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs:** None received.
- 3.3.5. **The Heritage Council:** None received.
- 3.3.6. **Irish Water:** None received.
- 3.3.7. **Fáilte Ireland:** None received.
- 3.3.8. **An Taisce:** None received.
- 3.3.9. **An Chomhairle Ealaíon:** None received.

3.4. **Third Party Observations**

- 3.4.1. None received.

4.0 Planning History

- 4.1. **Planning Authority Reg. Ref. 3855/99:** Permission granted on 4th February 2000 for the construction of 3 no. 2-bedroom apartments on the first and second floors of the existing building, the construction of an entrance door on the ground floor and ancillary works.
- 4.2. **Planning Authority Reg. Ref. 2749/98:** Planning permission granted on 20th November 1998 for renovations and 2-storey rear extension over ground floor level to existing 3-storey building to comprise 3 no. 2-bedroom apartments and 3 no. 1-bedroom apartments, change of use from residence to apartments, construction of entrance door on ground floor and all ancillary works.
- 4.3. **Planning Authority Reg. Ref. 1590/97:** Retention planning permission granted on 21st August 1997 for an existing single-storey bar extension at ground floor level to the rear and internal modifications to the existing bar at ground floor level.
- 4.4. **Enforcement**
- 4.5. **Planning Authority Ref. E0622/19:** Ongoing enforcement case in relation to the outdoor seating area.

5.0 Policy and Context

5.1. Dublin City Development Plan 2016-2022

5.1.1. Land Use Zoning

5.1.2. The site is subject to land use zoning “Z5” (City Centre) which has the objective “to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity”.

5.1.3. The primary purpose of this zone is to sustain life within the centre of the city through intensive mixed-use development. As a balance, and in recognition of the growing residential communities in the city centre, adequate noise reduction measures must be incorporated into development, especially mixed-use development, and regard should be given to the hours of operation.

5.1.4. Conservation

5.1.5. Nos. 119-121 Church Street is a Protected Structure (RPS Ref. No. 1544).

- 5.1.6. **Policy CHC1:** To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.
- 5.1.7. **Policy CHC2:** To ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:
- (a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest;
 - (b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances;
 - (c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials;
 - (d) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure;
 - (e) Protect architectural items of interest from damage or theft while buildings are empty or during course of works;
 - (f) Have regard to ecological considerations for example, protection of species such as bats.
- 5.1.8. **Night Clubs/Licensed Premises/Casinos/Private Members' Clubs**
- 5.1.9. In recognition of the importance of Dublin as a thriving and multi-dimensional capital city, there is a need to facilitate the concept of the 24-hour city, particularly in the city centre and other key district centres. Dublin City Council will encourage entertainment/cultural/music uses which help create an exciting city for residents and tourists alike, and which are capable of attracting people in cutting edge industries such as digital media.
- 5.1.10. There is a need to strike an appropriate balance between the role of these entertainment uses in the economy of the city and the following: (a) to maintain high-quality retail functions on the primary city centre streets and ensure a balanced mix

of uses; and, (b) to protect the amenities of residents from an over-concentration of late night venues.

5.1.11. Noise emanating from and at the boundaries of these establishments are issues which will need to be addressed in planning applications for such establishments. Noise insulation and reduction measures, especially relating to any mechanical ventilation or air-conditioning, will be required to be submitted with any such planning application.

5.1.12. Matters that shall be taken into account by the planning authority in assessing planning proposals for these uses and extensions to such uses include, but are not limited to the following: (a) the amenity of neighbouring residents and occupiers; (b) hours of operation; (c) traffic management; (d) shop frontage treatment and impact on streetscape; and (e) proposed signage.

5.1.13. **Noise Pollution**

5.1.14. **Policy SI25:** To seek to preserve and maintain air and noise quality in the city in accordance with good practice and relevant legislation.

5.1.15. **Section 16.36:** Where it is considered that a proposed development is likely to create a disturbance due to noise, a condition may be imposed by the planning authority on any planning permission limiting the hours of operation and level of noise generation.

5.2. **Natural Heritage Designations**

5.2.1. None.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. An appeal has been lodged by McGill Planning on behalf of the applicant, the grounds of which can be summarised as follows:

- Dublin City Council's decision to refuse permission does not appreciate that the retained and proposed structures will mitigate any unreasonable noise

impacts for adjoining properties as demonstrated in the acoustic reports which accompany the application;

- The applicant has established and maintained contact with local residents when the original noise complaints were made and the seating area was uncovered and had piped music. The applicant has gone to great lengths to resolve the original noise complaints as evidenced by the lack of any third-party objections to the application;
- The planning authority's decision disregards the city centre location, the long-established, mixed-use nature of the area and the fact that a licensed premises has operated at this location since the early 20th century, with residential uses overhead and adjoining;
- The outdoor space has been an intrinsic part of the licenced premises for several decades and has been used as a smoking area since 2004. Many of the adjoining residents are located in blocks which were constructed since that time;
- The consolidation and expansion of bars and licenced premises in the city centre is key to achieving the site's Z5 zoning objective. Sustaining this premises at Church Street is particularly important given the lack of evening/weekend uses in the area;
- The development plan allows conditions to be imposed on permissions which limit the hours of operation and levels of noise generation in mixed-use developments/areas. This is a pragmatic approach which recognises that noise is an ongoing environmental issue to be mediated in city centre locations where a greater concentration and mix of uses is promoted;
- Similar precedents exist across the city centre where licenced premises were permitted to provide covered outdoor areas in locations which included residential uses, subject to sufficient noise mitigation and management measures being put in place (ABP Ref. PL29S.243928; DCC Reg. Refs. 3497/13 and 3356/11 refer);
- The applicant has gone to significant lengths to reduce the impact from the development, including the removal of all amplified music and the installation

of double battened acoustic panelled doors to reduce noise spill onto Church Street. Signs have also been erected to notify patrons to avoid smoking on the street after 10pm to reduce noise nuisance;

- All awnings will be closed from 10pm onwards which will reduce acoustic spill. The updated acoustic report concludes that the proposed noise mitigation measures and additional operational measures, will result in an acceptable noise environment for adjoining properties;
- The seating and dining area is modest in scale, with all works minimal and reversible in nature. Although the building is a Protected Structure, all works are located outside the building in the rear former yard and will not have any impact on the setting of the main building and will have no negative visual impact from the street.

6.1.2. The appeal is accompanied by:

- (1) a statutory declaration which states, inter alia, that the rear yard area has been continuously used in conjunction with, and as an intrinsic part of, the former Richmond Bar since 1989 and its use as a smoking area since 2004;
- (2) A summary of the sequence of events and actions taken by the applicant in relation to previous noise complaints, including meetings with local residents. Copies of correspondence between the applicant and Dublin City Council's Enforcement Officer and with local residents are also included;
- (3) An updated Acoustic Report prepared by Allegro Acoustics in response to the report of Dublin City Council's Environmental Health Officer;
- (4) A Conservation Impact Statement prepared by Philip Ginnell MRIA which concludes that the works will not impact on the fabric of the Protected Structure.

6.2. Planning Authority Response

6.2.1. None received.

6.3. Observations

6.3.1. None received.

7.0 Assessment

7.1. I am satisfied that the main issues for consideration in this case include:

- Noise Impacts of the Development
- Impact on Protected Structure
- Appropriate Assessment

7.2. Each of these issues is addressed in turn below.

7.3. Noise Impacts of the Development

- 7.3.1. Dublin City Council refused retention permission and planning permission for the development on the basis that it would cause serious noise disturbance to the surrounding residential units and would be contrary to policy SI25 of the development plan which seeks to preserve and maintain air and noise quality in the city in accordance with good practice and relevant legislation.
- 7.3.2. The planning application is accompanied by an Environmental Noise Assessment and Noise Control Engineering Recommendations as prepared by Allegro Acoustics. Noise monitoring was undertaken at 3 locations within the outdoor space from 25th – 28th October 2019, which was considered a worst-case scenario as a bank holiday weekend. An environmental noise model was developed which predicted the noise levels at 14 no. of the nearest residential receivers, without any noise mitigation measures in place. The noise levels emanating from the outdoor space exceeded the EPA night-time noise criterion of 45 dBL_{aeq} (as contained within the Guidance Note for Noise: License Applications, Surveys and Assessments in Relation to Scheduled Activities (NG4)) at all locations, ranging from 54dBL_{aeq} - 74dBL_{aeq}.
- 7.3.3. In order to reduce the noise levels to within the recommended limit, a series of mitigation measures are proposed including: (1) limiting the number of people permitted in the outdoor space to 104; (2) installing noise barriers in place of the metal gate at the western end of the beer garden, between the pizza hut and perimeter wall, between the pub roof tiles and the awning steel support, between the pizza hut roof and the end of the awning; and, by constructing a roof over the existing timber slat structure in the alleyway leading to Church Street; (3) installing additional shrubbery at the perimeter walls; and, (4) keeping the door between the

pub and outdoor space closed as much as possible to eliminate noise outbreak from inside the premises. In the event this is not feasible, it is recommended that a lobby be created within the building with an automatically closing door. With these mitigation measures in place, the predicted noise levels at the nearest residential receivers are predicted to range from 29.5dB to 44.4dB.

- 7.3.4. In reviewing the Planning Officer's report, I note that the concerns which arose in relation to noise disturbance are based on the report of the EHO, who had recommended that planning permission be refused for the subject development. The EHO considered that the applicant's acoustic report did not definitively show that the recommended night-time noise criterion could be achieved and that opportunities would remain for noise outbreak along the northern and western boundaries of the open space, even if the mitigation measures were adopted. The EHO further considered that insufficient information had been provided in relation to flu gas emissions from the kitchen/serving area, and that if the noise barriers are implemented, this may result in non-compliance with the Public Health (Tobacco) Act, 2002.
- 7.3.5. The appeal submission includes an updated report from Allegro Acoustics which has been prepared in response to the EHO's concerns. To ensure that the mitigation measures and predicted noise levels are achieved, it is proposed to: (1) place a staff member within the outdoor space during busy periods to limit access to 104 no. patrons; and, (2) undertake environmental noise monitoring after the mitigation measures have been installed to verify that the night-time noise limit is achieved at the nearest noise sensitive locations.
- 7.3.6. The response also confirms that the gap between the edge of the awning and the northern and western site boundaries will be filled with dense foliage/greenery which will act as a natural sound absorbing material. This gap was included in the noise model of the outdoor space, with the calculations showing that the night-time noise limit will still be achieved at the nearest noise sensitive locations. It is further confirmed that the pizza hut oven does not require a mechanical extract ventilation system and that there are no other items of external plant. As such, there will be no noise emissions from the metal clad kitchen/serving structure.

- 7.3.7. In considering the issues which have been raised, I note in the first instance that the site is subject to land-use zoning "Z5" (City Centre). The primary purpose of this zone is to sustain life within the centre of the city through intensive mixed-use development. While there are a number of residential developments in the vicinity of the application site, including on the upper floors of the subject building, the neighbouring lands are generally mixed-use in character. I further note that a licensed premises has been established on the subject site for in excess of 30 years (former Richmond Bar) and that the yard area to which this application relates, has been used as a smoking area since the smoking ban was introduced in 2004. As such, in my opinion, the development to which this appeal case relates, comprises the intensification of a long-established use, in an established mixed-use area within the city centre.
- 7.3.8. Notwithstanding the foregoing, in my opinion, the key consideration in this case is whether the use of the outdoor space as a seating and dining area has the potential to have a disproportionate negative impact on the residential amenity of the existing residential properties. The area is mixed in land-use terms, and as such, would not have the same expectations of noise and activity as a primarily residential zone (Z1 or Z2). However, the noise emissions from the outdoor space must be of an appropriate level to ensure that undue negative impacts do not arise with respect to the residential amenity of the neighbouring properties.
- 7.3.9. While the EHO's report notes that noise complaints have arisen in relation to the outdoor space, the applicant's agent submits that the applicant has gone to considerable effort to resolve these issues, including the removal of piped music, the installation of double battened acoustic doors onto Church Street, the closing of the awnings over the outdoor space after 10pm and the introduction of signage notifying patrons to avoid smoking on the street after 10pm. In considering the foregoing, I note that no third-party submissions were made in relation to this application.
- 7.3.10. The applicant's Environmental Noise Assessment identifies a range of mitigation measures to ensure that night-time noise levels will be within the acceptable range. Dublin City Council's EHO considered that the report did not definitively show that the recommended noise criterion will be achieved. In my opinion, the report has identified acceptable mitigation measures to reduce noise levels to an appropriate level at the nearest noise sensitive locations as confirmed in the response to the

EHO's concerns prepared by Allegro Acoustics. However, it is recommended that noise monitoring be undertaken on a periodic basis to ensure that noise levels are maintained at an acceptable level. This matter can be addressed by way of condition in the event planning permission is granted in this instance.

- 7.3.11. While the EHO noted that the installation of the proposed noise barriers/mitigation measures may result in non-compliance with the Public Health (Tobacco) Act, 2002, I note that this matter is dealt with under a separate code, and as such, is not open for adjudication by An Bord Pleanála.

7.4. Impact on Protected Structure

- 7.4.1. Dublin City Council's Conservation Officer had serious concerns that the structures that have been placed inside the open areas to the rear of the building have detracted from the special architectural character of the Protected Structure and the associated external spaces. The Conservation Officer recommended that further information be requested in relation to the development, including, inter alia, photographic and drawn records of the extant building, new works and repairs, structural interventions, services installation, details of any pad foundations to the external canopy and the proposed acoustic upgrade works.
- 7.4.2. The applicant's Conservation Impact Statement notes that the building fabric is not completely original and has been altered at various stages in the past, including 2 no. ground floor level extensions. The assessment concludes that the proposed works, as well as the retention of the existing works, are both reversible, will not be visible from the public road and will not impact on the fabric of the Protected Structure.
- 7.4.3. While the protected status of the building is noted, I am satisfied that the retained and proposed development is acceptable given that the works primarily relate to the external space to the rear of the Protected Structure. I further note that the retained and proposed works are reversible as identified within the applicant's Conservation Impact Statement. Notwithstanding the foregoing, I acknowledge that the noise mitigation measures interface with the fabric of the Protected Structure and as such, it is considered reasonable that the proposed development be supervised by a suitably qualified conservation expert. This matter can be addressed by way of condition in the event An Bord Pleanála grants permission in this instance.

7.5. Appropriate Assessment

- 7.5.1. Given the nature and scale of the development and the location of the site relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

7.6. Conclusion

- 7.6.1. In my opinion, the proposed and retained development would be acceptable in this instance having regard to the site's Z5 (City Centre) land use zoning objective, the established use of the site and having regard to the mitigation measures which are proposed to reduce undue noise impacts on the nearest residential receptors. As such, I am satisfied that the retained and proposed development would be in accordance with the proper planning and sustainable development of the area.

8.0 Recommendation

- 8.1. I recommend that retention permission and planning permission be granted subject to conditions.

9.0 Reasons and Considerations

- 9.1. Having regard to the site's Z5 (City Centre) land use zoning objective, which seeks to sustain life within the centre of the city through intensive mixed-use development, and the existing, established use on the site, it is considered that, subject to compliance with the conditions set out below, the retained and proposed development would not seriously injure the residential amenities of the area or of property in the vicinity. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained and carried out and completed 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 the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>All works to the Protected Structure, shall be carried out under the supervision of a qualified professional with specialised conservation expertise.</p> <p>Reason: To ensure that the proposed works are carried out in accordance with best conservation practice.</p>
3.	<p>(a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive locations shall not exceed:</p> <p>(i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Sunday inclusive.</p> <p>(ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.</p> <p>(b) Procedures for the purpose of determining compliance with these limits shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>(c) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.</p>

	Reason: To protect the residential amenities of property in the vicinity of the site.
4.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>

Louise Treacy
 Planning Inspector

20th July 2020