



An
Bord
Pleanála

Inspector's Report ABP-307032-20.

Development

Permission for the addition of a filled in floor at first floor level (127.4m²) subdividing the existing auditorium into two event spaces; alterations to existing stairs from ground to first floor; and associated minor alterations. Part of the Temple Bar Music Centre includes No. 11 Temple Lane South, a Protected Structure.

Location

The Button Factory, Temple Bar Music Centre, Curved Street, Dublin 2.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

3247/19.

Applicant(s)

Nottub Ltd.

Type of Application

Permission.

Planning Authority Decision

Grant with Conditions.

Type of Appeal

Third Party

Appellant(s)

Declan O'Brien.

Observer(s)

F. McDonald.

Date of Site Inspection

27/07/2020.

Inspector

A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located on Curve Street, in the Temple Bar area of Dublin city. The building has frontage on two additional streets, including Temple Lane South and a small area along Eustace Street. The site comprises the Button Factory building, formerly the Temple Bar Music Centre and includes no. 11 Temple Lane South, which is a protected structure.
- 1.2. The Button Factory building covers four floors over a basement comprising recording studios at both basement and fourth floor level, offices occupy a small section of the second-floor level with a large void. The building also has a large auditorium which occupies much of the ground floor with a large area providing a double height space with sloped ceiling. The first-floor element of the building comprises raked seats in the balcony. The ground floor also includes the Crow Bar.
- 1.3. The site has a stated area of 648m² with the total floor area of the existing building amounting to 2,373.4m².

2.0 Proposed Development

- 2.1. Permission is sought, for the addition of a filled in floor at first floor level (127.4m²) subdividing the existing auditorium into two event spaces; alterations to existing stairs from ground to first floor; and associated minor alterations. Part of the Temple Bar Music Centre includes No. 11 Temple Lane South, a Protected Structure, all at The Button Factory, Temple Bar Music Centre, Curved Street, Dublin 2.
- 2.2. The application included a number of supporting documents including as follows;
 - Plans, particulars and completed planning application form
 - Planning Cover letter
 - Conservation Method Statement
- 2.3. The development, if permitted will result in the breaking up of the single auditorium space into two separate performance spaces, with an overall increase in the building floor area of 127.4m² to 2,500.8m².
- 2.4. Following a request for further information, the applicant submitted a an Acoustic Report, justification for proposed division of the auditorium and submits that issues

raised in relation to conservation concerns will be addressed should permission issue due to the cost associated with the preparation of the detailed drawings.

- 2.5. A further report in relation to acoustics was submitted following a request for clarification.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 9 conditions.

Condition 5 relates to noise.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, planning history and the County Development Plan policies and objectives.

The initial Planning Report concludes that further information is required in relation to the development in terms of requiring an acoustic report, justification for the subdivision of the auditorium and issues of conservation.

Following the submission of a response to the FI request, the PA sought clarification in relation to the detail in the acoustic report.

The final planning report concludes that proposed development is acceptable. The Planning Officer recommends that permission be granted for the proposed development, subject to 9 conditions.

This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

3.2.2. Other Technical Reports

Conservation Officer: The initial report notes 'no review of the file but the particulars of the proposal were discussed with the Planning Officer'.

Following the submission of the response to the further information request, the following comments are made by the Conservation Officer:

The previous planning and section 5 applications, and relevant conditions, have not been complied with. Failure to comply with the requirements of the PA have resulted in a series of non-compliant interventions that seriously detract from the architectural character of this important contemporary building as well as the protected structure itself, including inappropriate overpainting of the façade using an inappropriate colour.

It would be important for the spirit of the original architectural design intent of the Group '91 Temple Bar Masterplan, which includes the protected structure, is protected.

A series of seemingly innocuous alterations may have a cumulative effect on the overall architectural character of a space and the proposed development would result in significantly altering the architectural character of the original spaces and would result in the dilution of one of Dublin's custom designed performance spaces. This would be most regrettable in light of the loss of cultural venues in the city.

The alteration of the 'internal street' would seriously compromise the architectural clarity of the design intention of the entrance space to the auditorium.

The applicant has not submitted sufficient justification for the subdivision of the auditorium, nor have they provided sufficiently detailed technical information that would identify the necessary structural work, ventilation strategy, services installation, acoustic treatment and fire treatment required.

Should the PA grant permission, detailed drawings are to be provided prior to the commencement of any works on the site. the applicant should be required to revise the general arrangement drawings at ground floor level so that the original architects design intent for the building is respected and so that the original floor plan, particularly pertaining to the 'internal street' remains fully legible.

The report concludes providing a number of conditions to be attached to a grant of planning permission.

Drainage Division: No objection subject to compliance with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

Environmental Health Section: The report of the 20/02/2020 refers to the further information submitted by the applicant. The report notes that from noise monitoring, the crowd and music noise associated with the current use does not impact the nearest noise sensitive premises. The EHO however submits that the report does not address a number of issues relating to increase in the number of patrons, with an increase in crowd noise and music levels, are the existing sound insulation measures in place adequate and will the increase in patrons mean different entrances will have to be used which may allow for noise break out. In the absence of this information, the initial report recommends refusal of permission.

A second report was provided on the 02/03/2020 which recommended conditions be attached to any grant of planning permission.

3.2.3. Prescribed Bodies

Transport Infrastructure Ireland: As the site lies within the area for an adopted Section 49 Supplementary Development Contribution Scheme – Luas Cross City (St. Stephen's Green to Broombridge Line) under S.49 Planning and Development Act 2000, as

amended, and if the application is not exempt, a condition relating to S.49 Contribution Scheme Levy should be included.

3.2.4. **Third Party Submissions**

There are 2 no. third party objections/submissions noted on the planning authority file. The issues raised are summarised as follows:

- The application should be considered invalid as there are a number of developments which have been carried out on the premises without planning permission and are therefore unauthorised.
- The creation of two venues within the Button Factory would be detrimental to the residential amenity of those living in the vicinity.
- Details of measures to be put in place to limit 'entertainment noise breakout' from the two venues has not been provided.
- Issues raised in relation to the partitioning of Curve Street with crash barriers taking over more than half the width of what is a public street.
- Recent developments, including the running of 'pub session' style gigs have resulted in the use of the entrance on Temple Lane – previously used as a loading bay/fire exit.
- The current proposals suggest that these gigs will be a permanent fixture.
- There have been regular complaints made to the management of the Button Factory about ongoing disturbances.
- The filling in of the floor will greatly increase the capacity of the venue and represents an intensification of use.
- There is currently an issue with overflow and queues on the surrounding streets.
- Street furniture on the street remains in place far later than the 10pm standard for street furniture licence allows.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA ref: 1661/92: Permission granted for a 4 storey over basement music centre incl. auditorium backstage facilities foyer offices music rehearsal/ experimental facilities 3 no. shop units and ancillary accommodation with frontage onto new curved street; change of use and conversion of no. 11 Temple Lane South including minor changes to listed Temple Lane South elevation and new roof and retention of listed facade to no. 10/10A including minor changes to elevation.

PA ref: E0048/16: Enforcement file opened in relation to the erection of digital signs and use of basement as a museum.

PA ref: EXPP0180/17: Exemption certificate for the erection of signs refused.

PA ref 2050/18: Permission refused for the retention of 2 no. digital illuminated signs (1.55 sq.m each) located at first floor balcony level above the entrance to the Temple Bar Music Centre on the south elevation fronting Curved Street. Part of Temple Bar Music Centre includes No. 11 Temple Lane South, a Protected Structure.

The reason for refusal related to the adverse impact on the visual amenity of the building and the undesirable precedent for similar type advertisements and signage.

These signs were not present on the date of my site inspection.

PA ref: 0244/18: Exemption Certificate sought for a number of alterations and change of use at the Button Factory over the years. Dublin City Council issued a split decision in this regard as follows:

Grant Exemption (not requiring planning permission):

10. Installation of a set of bright globe lights to soffit of balcony on Curved Street.
12. Partitioning of Curved Street with crash barriers at night-time (You are advised that this is a matter for street furniture licensing under the Planning and Development Regulations, 2001).
13. (part) Opening of two fire exists on Temple Lane (You are advised that this is a matter for the Chief Fire Officer in the first instance).

Refuse Exemption (requires planning permission):

1. Erection of retractable awning on Curved Street façade.
2. (part) Installation of telecommunications antennae at NE corner.
3. Replacement of 2 static pictures with variable digital image signs in windows on Temple Lane.
4. Erection of projecting neon sign 'Crowbar' on Temple Lane front of the building.
6. Installation in the front window of this bar of a red neon sign and digital sign.
9. Painting of mural of BP Fallon on Curved Street façade.
11. Installation of 16 bright containers for plastic plants on canopy to Temple Lane.
13. (part) Temple Lane signage.

The decision also included the following notes:

NOTE 1:

Due to insufficient information provided and in accordance with Section 5 of the Planning and Development Act, 2000 (as amended) no decision can be made in relation to the following matters:

5. Change of use of internal bar to free standing bar with entrance from Temple Lane.
7. Installation of a refrigeration motor in fire escape to corner Curved Street and Temple Lane.
8. Change of use of basement rehearsal space into Irish Rock & Roll Museum Experience.

These cases may be the subject of further, separate applications to the planning authority for a declaration under Section 5 of the Act.

NOTE 2:

With regard to the 'unsolicited additional information' per letter dated 4th July 2108, received by the Planning Authority on the same date, you are advised

of the opinion of the Planning Authority that this does not comprise additional information regarding the specific matters raised in the original Section 5 application and cannot be considered as such. These cases may be the subject of further, separate applications to the planning authority for declarations under Section 5 of the Act.

Having undertaken a site inspection, it appears that a number of those elements deemed to be development and not exempted development remain in place. I could not find evidence that any retention permission for said elements has been granted. Enforcement issues are a matter for the local authority, however.

ABP ref 302714-18 (PA ref: 0320/18): Section 5 request in relation to the use of the existing auditorium bar within the Button Factory under provisions of a 'Seven-Day Publicans Licence' instead of the existing 'Publicans Licence (Ordinary) Theatre. The Board found that the matter is development and is not exempted development.

5.0 Policy and Context

5.1. National Inventory of Architectural Heritage

The National Inventory of Architectural Heritage (NIAH) is a unit within the Department of Environment, Heritage and Local Government engaged in compiling an evaluated record of the architectural heritage of Ireland. Where an NIAH survey of a particular area has been published, relevant planning authorities will be provided with information on structures within the area of that survey. The planning authority can assess the content of, and the evaluations in, an NIAH survey with a view to the inclusion of structures in the RPS according to the criteria outlined in these guidelines.

The subject site lies within a Conservation Area and it is noted that there are a number of protected structures and structures listed on the NIAH in the vicinity. The subject site includes a protected structure as follows;

- Temple Lane Studios, NIAH ref 50020109– Regional Rating.
Category of Special Interest - Architectural Social.

In addition to the above, the following structures lie immediately adjacent to the subject site:

Temple Lane:

- Geopal Print Works (in use as an office with apartments overhead), NIAH ref 50020108 – Regional Rating. Category of Special Interest - Architectural Social.

Curved Street:

- Filmbase, Shop / Retail Outlet (in use as an office), NIAH ref 50020117 – Regional Rating. Category of Special Interest - Architectural Artistic Social.

Eustace Street:

- House (in use as an office), NIAH ref 50020107 – Regional Rating. Category of Special Interest - Architectural Artistic Social.
- House (in use as an office), NIAH ref 50020106 – Regional Rating. Category of Special Interest - Architectural Artistic Historical.
- House (in use as a shop/retail outlet), NIAH ref 50020104 – Regional Rating. Category of Special Interest - Architectural Artistic Social.

5.2. Development Plan

The Dublin City Development Plan 2016 – 2022, is the relevant policy document relating to the subject site. The site is located in the Temple Bar area of the city centre and is affected by the zoning objective Zone Z5: City Centre, where it is the stated objective 'To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'.

The site is located within a Conservation Area and includes a protected structure, Temple Lane Studios, No. 11 Temple Lane South.

5.3. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), & North Dublin

Bay pNH (Site Code 000206), which are located approximately 2.8km to the north east of the site. The South Dublin Bay SAC (Site Code: 000210) (& pNHA Site Code 000210) is located approximately 3.5km to the north east of the site.

The Grand Canal pNHA, (Site Code 002104), is located approximately 1.6km from the site.

5.4. EIA Screening

Having regard to nature and scale of the development, together with the nature of the proposed works, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal against the decision of the Planning Authority to grant planning permission for the proposed development. The issues raised reflect those raised with the PA during their assessment of the proposed development and are summarised as follows:

- Issues raised in relation to the use of the side doors on Temple Lane for a series of free events aimed at the tourist market. Use of this side door is not included in the application.
- The Acoustic Report submitted stated that monitoring occurred on the 12th of November during a concert where access was through the main door and not during a free event when the side door is opened.
- Noise breakout was not captured at its worst – during the free events.
- Monitoring did not take place during a club night when on-street queuing is at its most rambunctious.
- The intensification of use and its potential impact on the amenity of the area is a concern.

- The justification document does not address the issue of queuing or crowd management.
- The expanded venue would give the potential for four events to be run on any given night – 2 early and 2 late shows.

6.2. Applicant Response

The first party submitted a response to the third-party appeal. The submission is summarised as follows:

- The works proposed may be considered to be exempt development under the provisions of Section 4(1)(h) of the Planning and Development Act 2000, as amended.
- There is no intended material intensification in use of the building.
- The main auditorium occupies part of two floors and accommodates c550 patrons at a single performance.
- The need now is for smaller venues. In response to demand, the need to turn the medium sized (550) venue into two smaller venues has been identified.
- The subdivision of the venue will also better facilitate the continued education and training programmes of the Sound Training College at Button Factory.

The response to the Grounds of appeal are summarised as follows:

- Issue is taken with the nature of the grounds of appeal which indicate that the appeal is against something that is not included in the planning application.
- Reference is made to established activity that has nothing to do with the proposed development.
- The new arrangements will not significantly intensify capacity.
- By separating the venues, the development will occasion smaller queues, temporarily separated, compared to what the appellant describes as large rambunctious queues at present. All access will be through the Curved Street entrance.
- The development will have no impact on Architectural Heritage.

- Noise monitoring carried out indicated that noise levels from crowd and music noise does not impact the nearest noise sensitive premises.
- The City Development Plan supports the proposed development.
- It is considered that the appellant has more significant concern with the ongoing daytime operation as opposed to night-time main event operation. Daytime events relate to unticketed free events.
- Reference to breakout noise from daytime operations relate to a doorway without lobby that exists on Temple Lane. This door is closed during main events but acts as an exit and fire escape.
- The submitted observation includes proposals to provide an internal lobby, which includes sound absorption, to restrict daytime noise break-out.

In response to the third-party observation, details of which are discussed under Section 6.4 of this report, the first party submits that the contents of the observation are fully disputed as having anything in particular to do with the development the subject of this appeal.

In conclusion, the first party considers that the proposed development has been misrepresented throughout the grounds of appeal, as something that is not contained in any part of the proposal. The appellant has used an innocuous planning proposal to lever a response to complaints that have nothing to do with the content of the planning application.

It is requested that permission be granted.

6.3. Planning Authority Response

None.

6.4. Observations

There is 1 no. observation noted in relation to the proposed development. This observation is submitted by Mr. Frank McDonald and the issues raised are summarised as follows:

- Seeks to support the third-party appeal and in particular the issue of intensification of the existing use of the building.
- The model outlined by the applicant does not accurately represent the operations of the premises with details of noise events outlined.
- Issues raised in terms of access onto Temple Lane and the impact of crowds on Curved Street, and in particular since the opening of Meltdown, fast food outlet, and associated street furniture.
- Due to the operations of the Button Factory, crowd control barriers have extended to the middle of Curved Street, taking from the public space, substantially privatising the area.
- Using the entrance on Curved Street for both venues will reinforce the occupation of Curved Street.
- DCC undertook an inadequate planning assessment.
- Issues with capacity figures presented in application.
- Issues raised in relation to noise breakout.
- The observer does not agree that the development will not detract from the amenities of adjoining properties. Nor does he have confidence that compliance with noise conditions will be monitored or enforced.
- It is not believed that the proposed development has been shown to comply with the requirements of Section 16.32 of the Dublin City Development Plan.

There are a number of enclosures with the observation.

7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Heritage Impacts
3. Residential Amenity Impacts
4. Other Issues
5. Appropriate Assessment

7.1. Principle of the development

- 7.1.1. The Button Factory is an established music venue which is located in the Temple Bar area of the city centre. The building has frontage onto Temple Lane South to the east, Curved St. to the south and Eustace St. to the west. The main entrance to the venue is via Curved Street.
- 7.1.2. The proposed development seeks to alter the interior of the venue by sub-dividing the performance space horizontally and create two smaller event spaces, one at ground floor level and one at the current balcony level by infilling a new floor at this level. It is submitted that the two smaller venues will provide for an intimate venue on the ground floor level for singer/songwriter type acts while the first floor venue will continue to provide for the larger acts, but within a smaller venue to the current offer at the Button Factory. Other amendments include alterations to the existing stairs from the ground to first floor.
- 7.1.3. This area of Dublin is affected by the zoning objective Zone Z5: City Centre, where it is the stated objective 'To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. Having regard to the planning history, and established use of the Button

Factory as an events venue, I am satisfied that the principle of the proposed development is acceptable.

7.2. Heritage Impacts

7.2.1. The subject site is located within a Conservation Area and in an area which includes a number of protected structures and structures listed on the NIAH, including the following structure which is included within the subject site:

Temple Lane Studios, NIAH ref 50020109– Regional Rating.
Category of Special Interest - Architectural Social.

The NIAH description states as follows:

Attached three-bay three-storey former warehouse, built c.1800, now in use as recording studio. Flat roof, hidden behind smooth rendered parapet with concrete coping. Smooth rendered wall to front (east) elevation and cast-iron wall ties. Oculi to second floor having granite surrounds with blocks and keystones, and timber window frames with crossed quadripartite glazing bars. Round-headed windows to first floor with granite sills, cut granite surrounds having keystones, and one-over-one pane timber sliding sash windows. Central double-height square-headed opening to first and second floors, with glazed screens and timber battened aprons. Square-headed door openings having dressed granite surrounds and keystones, and double-leaf recent timber doors. Elliptical-headed central door opening to having dressed granite surrounds, keystones and voussoirs on plinth blocks, rendered reveals and double-leaf timber battened doors. Granite paving and kerb stones to front. Situated to west side and north of Temple Lane South.

The NIAH appraisal states as follows:

This unusual building was utilised by Thomas Salt & Co. as stores for East India Pale Ale in the mid-nineteenth century, according to Thom's Directory. It retains many features of its original use as a warehouse, including the large central loading bays and the archway which facilitated horse-drawn carts. The granite detailing and large openings provide a robust, heavy appearance befitting an industrial building. It is a reminder of the former industrial character of Temple Lane South and the adjacent Cecilia Street

- 7.2.2. The proposed creation of the new floor to sub-divide the existing venue will not impact on the fabric of the protected structure. Having undertaken a site inspection, it is noted that inside the façade of the protected structure, there is a second wall in which the performance space is housed. The submitted Architectural Heritage Impact Assessment states that the new structural beams and floor plate will have no impact on the retained historic fabric. The inner structural wall defines the service void separating the historic fabric from the new build.
- 7.2.3. In considering the impacts of the proposed development, I note the comments of the Dublin City Council Conservation Officer who has raised concerns and in particular, a concern that the spirit of the original architectural design intent for one of Dublins' custom designed performance spaces will be diluted. I would concur with this concern but would note the applicants' submissions in relation to the changing nature of performance venues, and the need/demand for smaller spaces. I also note that the Button Factory acts as a teaching facility in areas of performance, lighting, sound engineering etc., which brings with it, other requirements for the use of the building. In this context, I am satisfied that the identified needs of the business can be accepted as a justification for the proposed works. Residential amenity issues are discussed further below.
- 7.2.4. Should the Board be minded to grant planning permission in this instance, the conditions recommended by the Dublin City Council Conservation Officer should be included.

7.3. Residential Amenity Impacts

- 7.3.1. The primary issues raised in this third-party appeal relate to the impact of the venue on existing residential properties in the vicinity of the venue. In particular, the current issues of noise and late opening are noted, as is the potential impact arising due to the perceived intensification of the use of the space. I would also note that there has been a number of noise complaints made to the venue and it is clear that residents in the area have suffered dis-amenity at times. The Temple Bar area of Dublin City is one of the primary tourist areas in Ireland, and always appears to be bustling with crowds of people enjoying the bars and restaurant offers in the area. I also note that a number of venues in the area, including bars, have music and performances on a regular basis.

- 7.3.2. In the course of the PAs assessment, further information was sought in relation to the preparation of an acoustic report which demonstrates that there will be no noise break out from the facility in terms of crowd or music noise. The Air Quality and Noise Control Unit of Dublin City Council also initially raised concerns in this regard. In terms of noise and the impacts on residential amenity, I note the third-party submissions.
- 7.3.3. An Acoustic Report was submitted by the applicant in support of the proposed development. The report notes that unattended noise measurements were carried out on two occasions, one when there was no event in the Button Factory, and the second when there was an act performing on the main stage. Measuring equipment was located on the third floor of the Button Factory and the microphone was pointed towards Temple Lane approximately 1m from the building. A second manned measurement was carried out at street level along Temple Lane, during the performance in the Button Factory.
- 7.3.4. The existing ambient noisescape was found to be typical of the Temple Bar location, being a very busy thoroughfare of people out socially. The noisescape included voices, music from local pubs, traffic, aircraft movements and plant noise from local buildings. The predominant noise is that from passers-by and revellers.
- 7.3.5. The report notes the construction of the Button Factory was designed around the acoustic isolation theory of a 'room within a room', with sound insulation mitigation in mind. The report noted that there was at no time either music noise or crowd noise audible or intelligible outside the Button Factory at street level on Temple Lane. It is concluded that there will be no additional noise spill onto the local streets / domestic properties due to the proposed splitting up of the existing double height performance area.
- 7.3.6. With regard to the issue of breakout noise, further details were provided by the applicant. The submission notes the proposed uses for the two performance areas, the ground floor proposed to be designed for singer songwriter type acts in an easy listening environment. The area will primarily be seated and designed to be intimate between performer and audience. Expected crowd noise levels will be low in comparison to the above floor. The proposed new first floor will remain as originally intended for bigger act performances. Although the volume in this room will be

smaller than previously, the reverberation time will require treatment to enhance the internal acoustics. It is not expected that there will be any increase in crowd noise from this part of the venue.

- 7.3.7. The report concludes that there will be no effect on the local ambient conditions based on the measurement data obtained. Finally, the report notes a number of other local ambient noise contributors in the area which appear to be unattenuated. The Senior EHO considered the information submitted and recommended the inclusion of two conditions in the event of a grant of planning permission. I consider that the inclusion of these conditions is reasonable and appropriate in any grant of permission.
- 7.3.8. The issue of intensification of use also potentially arises in terms of the proposed development. The existing Button Factory has a capacity of approximately 550 patrons. The existing ground floor performance area of the venue has a floor area of approximately 190m², including the small bar within the performance space, and the seated balcony area, excluding the first floor bar area, approximately 58m². The development, if permitted, will result in the creation of two venues, with the ground floor area retained and the first floor area increasing to approximately 185m², with the existing seating to be retained. I note the intention of the sub-division is to provide a more intimate ground floor venue, which will include seating, thereby reducing capacity, for smaller events while the proposed first floor venue will continue to attract bigger acts, in a smaller performance space than currently offered in the Button Factory.
- 7.3.9. In terms of the issues raised by the appellant in terms of noise breakout during the free events which are held during the day, I note that The Button Factory has operated as a performance venue for many years under a 'Publicans Licence (Ordinary) Theatre'. Such a licence restricts the opening times of the bars within the building and is not a 7 Day Ordinary publicans licence. With regard to the issue of noise breakout during the day, the applicant has proposed to provide an internal lobby, which includes sound absorption, to restrict daytime noise break-out. While I acknowledge this proposal, having regard to the planning history associated with the site, I do not consider it appropriate to consider this element further as to do so, in my opinion, would legitimise a use of the building for which planning permission does not appear to have been sought or previously permitted. Such a use would require

further consideration in terms of intensification of use on the site and possibly the bar licence for the Button Factory. I also note that the doors onto Temple Lane are indicated to be fire doors. Any changes in this regard would require the consideration of the Fire Officer.

- 7.3.10. In terms of impacts of patrons attending events at the venue, I would accept the submission of the applicant in relation to the reduced capacity of both floors and the staggering of starting / finish times, would reduce the numbers of people queuing outside the event on Curved Street before events and numbers leaving the premises. The proposed development does not propose the use of the doors on Temple Lane as entrance to the venue.
- 7.3.11. Overall, I am satisfied that the proposed development will not result in an intensification of use of the venue. I am further satisfied that subject to compliance with conditions in relation to noise breakout and sound insulation, the development is acceptable in this long established performance venue, and will not significantly impact existing residential amenity in this city centre location.

7.4. Other Issues

7.4.1. Planning History

The Board will note that a number of concerns have been raised by third parties and DCC departments regarding the non-compliance with previous conditions of planning permission. I would acknowledge that there are a number of elements on and within the building which have been deemed to require the benefit of planning permission, but for which no planning application, or perceived efforts to address same, have been submitted to the council. I would also note that some elements, deemed by the Section 5 process to require permission, have been addressed.

In terms of the proposal before the Board, I am satisfied that should the Board decide to grant permission in this instance, a condition which clearly indicates what is being permitted, ie, the sub-division of the existing auditorium into two event spaces and alterations to the existing stairs from ground floor to first floor and associated minor alterations, should be included. A grant of permission will not remove the need for the applicant to address issues of unauthorised development.

The existing premises currently operate under a Publican's Licence (Ordinary) Theatre which restricts the sale of alcohol to specified times and only to:

- (a) Persons who have paid for seats for the performance taking place
- (b) Theatre employees

The specified opening times associated with such a licence begins 30 minutes before the commencement of the performance and ends 30 minutes after the performance ends. The purpose of this licence is to allow the premises to sell alcohol to theatre attendees and staff for a limited period and in an ancillary capacity to the overall use of the building as a theatre.

Having regard to the comments of the third party appellant, I would be satisfied that a grant of permission in this instance, does not legitimise the use of the performance space for unticketed / free events, if it has been deemed that permission for such use is required. Enforcement issues, however, are not a matter for the Board.

7.4.2. Development Contribution

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

In addition, the Board will note that the site lies within the area for an adopted Section 49 Supplementary Development Contribution Scheme – Luas Cross City (St. Stephen's Green to Broombridge Line) under S.49 Planning and Development Act 2000, as amended. As such, a condition relating to S.49 Contribution Scheme Levy should also be included.

7.5. Appropriate Assessment

The site is not located within any designated site. Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.0 Recommendation

I recommend that planning permission be granted for the proposed development for the following stated reason and subject to the following stated conditions.

9.0 Reasons and Considerations

Having regard to the pattern of permitted development in the area, to the provisions of the Dublin City Development Plan 2016 – 2022, and to the layout and design as submitted, the Board considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities, or conservation status of properties in the wider Temple Bar area and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 18th day of December, 2019 and 13th day of February, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. This permission relates solely to the addition of a filled in floor at first floor level (127.4m²) subdividing the existing auditorium into two event spaces and alterations to the existing stairs from ground to first floor. No other uses or features are permitted in the absence of a specific grant of permission.

No permission is granted to provide an internal lobby, which includes sound absorption, to restrict daytime noise break-out as indicated in the response to the third-party appeal to An Bord Pleanála on the 22nd day of June, 2020. This feature shall require a separate planning permission whereby its detail shall be fully assessed and considered.

Reason: In the interest of clarity and proper planning and sustainable development.

3. The developer shall comply with the following requirements:

- (a) The LAeq level measured over 5 minutes, when measured in a habitable room, garden or open space at a time when an outside area would be expected to be used, when entertainment is taking place at the proposed development, shall show no increase when compared with the representative LAeq (5 minutes) level measured from the same position, under the same conditions and during a comparable period with no entertainment taking place.
- (b) The Leq level measured over 5 minutes, in the 50Hz to 160Hz third octave bands inclusive measured in a habitable room, garden or open space at a time when an outside area would be expected to be used, with entertainment taking place at the proposed development, shall show no increase when compared with the representative Leq measured over 5 minutes in the 50Hz to 169Hz third octave bands inclusive, measured from the same position, under the same conditions and during a comparable period with no entertainment taking place.

Reason: In the interests of residential amenity and orderly development.

4. The developer shall comply with the following conservation requirements:

- (a) A conservation expert with proven and appropriate expertise shall be employed to design, manage, monitor and implement the works to the building and to ensure adequate protection of the retained and historic fabric during the works. In this regard, all permitted works shall be

designed to cause minimum interference to the retained building and facades structure and/or fabric.

- (b) All works to the protected structure shall be carried out in accordance with best conservation practice and the Architectural Heritage Protection Guidelines for Planning Authorities (2011) and Advice Series issued by the Department of the Environment, Heritage and Local Government. Any repair works shall retain the maximum amount of surviving historic fabric in situ. Items to be removed for repair off site shall be recorded prior to removal, catalogued and numbered to allow for authentic re-instatement.
- (c) All existing original features, in the vicinity of the works shall be protected during the course of the refurbishment works.
- (d) All repair of original fabric shall be scheduled and carried out by appropriately experienced conservators of historic fabric.
- (e) The architectural detailing and materials in the new work shall be executed to the highest standards so as to complement the setting of the protected structure and the historic area.

Reason: To protect the fabric, character and integrity of the protected structure.

5. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours 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.

Reason: In order to safeguard the residential amenities of property in the vicinity.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

7. The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City (St. Stephen's Green to Broombridge Line) in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

A. Considine

Planning Inspector

31st August 2020