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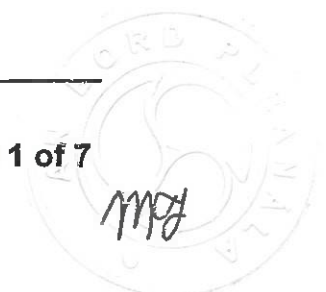
**Planning and Development Acts 2000 to 2020**

**Planning Authority: Fingal County Council**

**Planning Register Reference Number: F20A/0559**

**Appeal** by J.J. Gibney Limited care of Eamon Doyle Associates of Unit 13, Block 5, Port Tunnel Business Park, Clonshaugh, Dublin against the decision made on the 17<sup>th</sup> day of December, 2020 by Fingal County Council to grant subject to conditions a permission to the said J.J. Gibney Limited in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Permission for construction of extension to existing first floor kitchen (additional floor area 24.25 square metres) and change of use of part of existing first floor office (5 square metres) to kitchen store, retention of revised location for wheelchair accessible toilet, increase in floor area of landscaped roof garden and sun terrace for customer use (additional floor area 17.80 square metres) and all associated ancillary works, removal of requirement for annual noise monitoring review, change to permitted opening hours for landscaped roof garden and sun terrace for customer use to normal 7-day licence hours with closing time 11:30pm Monday to Thursday, 12:30am Friday and Saturday and 11:00pm Sunday, all works to be carried out at rear of existing licensed premises at Gibney's Bar, 5, 6 and 7 New Street, Malahide, County Dublin.



## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## **Reasons and Considerations**

Having regard to the TC zoning objective which applies to the site as set out in the Fingal County Development Plan 2017-2023, under which public house uses are permitted, together with the site's town centre location, the scale and design of the proposed development and the development proposed for retention, the pattern of development on the site to date, and the pattern of development in the vicinity including proximal residential properties, it is considered that, subject to compliance with the conditions set out below, the proposed development and the development proposed for retention would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would, therefore, be in accordance with proper planning and sustainable development.



## Conditions

1. The development shall be retained, 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 commencement of development and the development shall be retained, carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. No public address system, amplified music, TVs or bands shall be permitted within the first floor landscaped roof garden and sun terrace. No sound amplification shall be installed in the garden or terrace or projected into the first floor from other areas of the licence premises, nor shall any television screen, or similar, be installed therein.

**Reason:** To protect the amenities of adjoining properties.

3. The landscaped roof garden and sun terrace areas shall not be occupied by the public outside of the following hours: 11.00 to 22.30 hours seven days per week. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In the interest of protecting the amenity of the nearby residential properties.

4. (a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 0800 to 22.30 hours and by more than 1 dB(A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeq.T.
- (b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be subject to the same locational and decibel exceedance criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at LAeqT.
- (c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either
- (i) during a temporary shutdown of the specific noise source, or
  - (ii) during a period immediately before or after the specific noise source operates.
- (d) When measuring the specific noise, the time (T) shall be any five minute period during which the sound emission from the premises is at its maximum level.
- (e) Any measuring instrument shall be precision grade.



Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority within 3 months of the date of this Order. An acoustical analysis shall be included with this submission to the planning authority.

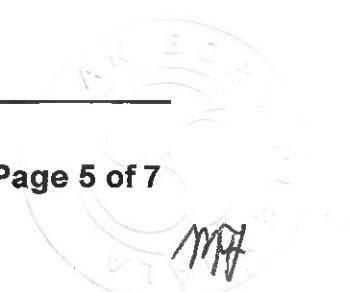
**Reason:** In order to protect the amenities of residential property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.

5. A noise monitoring programme shall be submitted to, and agreed in writing with, the planning authority, to include an annual review undertaken by a qualified acoustic engineer at the nearest noise sensitive location demonstrating compliance with the limits detailed in condition number 4.

**Reason:** In the interest of protecting the amenity of the nearby residential properties.

6. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

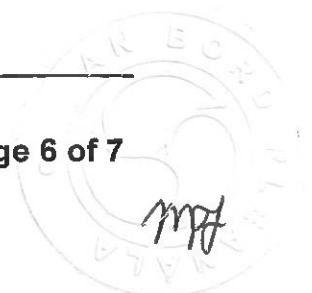


7. Notwithstanding the provisions of the Planning and Development Regulations 2001, as amended, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

**Reason:** To protect the visual amenities of the area.

8. Site development and building works shall be carried out only between the hours of 0800 to 1900 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.



9. 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.

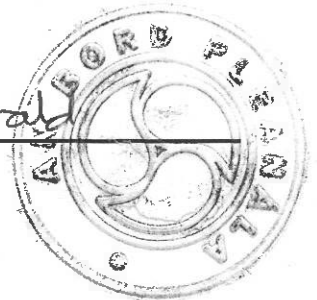
*DR. Maria FitzGerald*

**Maria FitzGerald**

**Member of An Bord Pleanála**

**duly authorised to authenticate**

**the seal of the Board.**



Dated this *17<sup>th</sup>* day of *May* 2021