

An  
Bord  
Pleanála

Board Order  
ABP-314846-22

---

**Planning and Development Acts 2000 to 2022**

**Planning Authority: Fingal County Council**

**Planning Register Reference Number: F21A/0490**

**Appeal** by Mary Lynch of 2A Old Street, Malahide, Dublin against the decision made on the 20<sup>th</sup> day of September, 2022 by Fingal County Council to grant subject to conditions a permission to DCD Pubs Limited care of OA Studios of 18 Croagh Avenue, Stepside, Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** New hardwood fire escape doors to replace existing metal gates to front elevation, new bar and seating area to first floor storage room, new outdoor lounge seating area with boundary line timber panelling, new unisex bathrooms to existing first floor storage room and all associated site works, all at Fowler's Pub and Restaurant, 10-12 New Street, Malahide, County Dublin as amended by the revised public notice received by the planning authority on the 24<sup>th</sup> day of August, 2022.

## 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.**

## Reasons and Considerations

Having regard to the provisions of the Fingal Development Plan 2023-2029, the location of the proposed development within the settlement boundary of Malahide on zoned Town Centre lands, the small scale nature of the proposal in the context of the overall appeal site and the prevailing pattern and character of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area by reason of noise emissions or otherwise. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 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 to the planning authority on the 11<sup>th</sup> day of August, 2022, 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. No public address system, or other amplified sound or live music shall be permitted within the outdoor lounge area. No sound amplification shall be installed in the outdoor lounge area or projected into this area from other areas of the licensed premises, nor shall any television screen, or similar, be installed therein.

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

3. The outdoor lounge area shall not be occupied by the public outside of 1100 to 2230 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 2230 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 Let.



- (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 Let.
- (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 prior to the commencement of development. 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. (a) The developer shall comply with all future outdoor lighting requirements of the planning authority in relation to adjusting the lights by re-aiming, the addition of louvres and shields and/or dimming, to deal with any glare issues that may arise for road users, residents and adjacent lands/properties which may only become apparent when the installation has been commissioned.
- (b) The operational hours of the outdoor lighting shall not extend beyond 2230 hours with automatic cut-off at that time.

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

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. The proposed hardwood fire escape doors shall be finished in a muted colour and comply with the 'Malahide Colour Scheme' in the Malahide Public Realm Strategy – Design Guide for Shopfronts.

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

9. 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.

10. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Use Eireann.




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

11. Site development and building works shall be carried out between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

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

12. 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 Contributions 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.



**Stephen Bohan**

**Member of An Bord Pleanála**

**duly authorised to authenticate**

**the seal of the Board.**

Dated this *14<sup>th</sup>* day of *December* 2023.