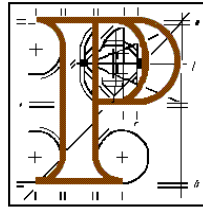


An Bord Pleanála



Inspector's Report

PL 29S 245491

DEVELOPMENT:

Blocking up the opening in the roof; Installation of a new staircase for patrons between the second floor and the roof space; Installation of a fire escape stairs with stone clad surrounds; Fitting out the roof space as a seating area, part covered over by a fixed screen and enclosed by louvred screens and, Installation of a glazed screen and balustrades at the Crown Alley frontage.

LOCATION:

Vintage Cocktail Club, 15 and 16 Crown Alley, Dublin 2.

PLANNING APPLICATION

Planning Authority:

Dublin City Council

P. A. Reg. Ref:

2001/15

Applicant:

Crown Alley Cocktail Club,

Decision:

Refuse Permission

APPEAL

First Party Appellant:

Crown Alley Cocktail Club,

Type of Appeal:

Appeal against Refusal of Permission.

Observers:

None

Date of Inspection:

21st December, 2015.

Inspector:

Jane Dennehy.

1.0 INTRODUCTION

- 1.1 This file contains a first party appeal against the decision of Dublin City Council to refuse permission for a new amenity roof terrace/smoking area, part covered with a glazed roof, removal of an existing roof opening and an extension to the roof level of two staircases for access and for fire escape.

2.0 SITE LOCATION AND DESCRIPTION

- 2.1 The site is that of a three storey building on Crown Alley close to the corner with Cope Street at the rear of the Central Bank building in Temple Bar. Access to the premises is via a ground floor entrance door at which there is a doorbell and a small sign with the letters, "VCC".
- 2.2 The ground and first floors are in use as cocktail bars each of them have seating, small tables and a bar at which vintage cocktails and other drinks are prepared and served and food is also served. The second floor is laid out in a similar manner with tables and chairs and a bar area and is stated to be in use as a smoking cocktail bar. The previously permitted development of a square shaped opening, (in excess of 3 m x 3 m) with a timber frame and insulation and electronically operated retractable awning fitted in the opening is fully complete and is operational. (PL. 29S 243928/P. A. Reg. Ref.3044/14 refers.)

3. PLANNING HISTORY.

- 3.1 **P. A. Ref. Ref. 1516/83:** Permission was granted for a change of use to restaurant.
- 3.2 **P. A. Ref. Ref. 0901/92:** Permission was granted for retention of a shop fascia sign and shutter.
- 3.3 **P. A. Ref. Ref. 6022/04:** Permission was granted for retention of change of use from restaurant to music café/bar.

According to Condition No 2, *"No music or other amplification shall be emitted to the public street in such a manner as to cause nuisance to the occupants of nearby properties"* The reason provided is, *"In the interest of orderly development."*

- 3.4 **P. A. Reg. Ref. 29S 243928/P. A. Reg. Ref.3044/14:** The planning authority decision to refuse permission for retention of the change of use of the second floor cocktail bar to use as a smoking cocktail bar and for retention of replacement of a glazed roof light over an existing 3.3 metres x 3.1 metres structural opening with a retractable fabric roof was overturned following appeal. Permission was granted subject to three conditions. According to Condition No 2 live music is not permitted at second floor level. The current application was lodged with the

planning authority prior to the determination of the appeal against the decision to refuse permission.

4. DEVELOPMENT PLAN.

- 4.1 The operative development plan is the Dublin City Development Plan, 2011-2017
- 4.2 The the site location is within the area subject to the zoning objective: *Z5: To consolidate and facilitate the development of the central area and identify, reinforce and strengthen its civic design, character and dignity*".

5. THE PLANNING APPLICATION.

- 5.1 The application lodged with the planning authority on 2nd January, 2015 indicates proposals for permission for:
- Blocking up the opening in the roof;
 - Installation of a new staircase for patrons between the second floor and the roof space and,
 - Installation of a fire escape stairs with stone clad surrounds, fitting out the roof space as a seating area, be part covered over by a fixed screen and enclosed by louvered screens and,
 - Installation of a glazed screen and balustrades at the frontage facing onto Crown Alley.
- 5.2 The application is accompanied by a copy of the acoustic report which was originally submitted with the previous application. In the written submission accompanying the application the planning authority was requested to take development plan policies, visual and land use considerations in to account.
- 5.3 The internal technical report of the Environmental Health Officer contains a recommendation for a request for further information about number of patrons that could be accommodated at the roof and analysis on noise impact arising from human voices.
- 5.4 A response was received on 27th July, 2015 to the additional information request which was issued on 2nd March, 2015 in which the planning authority was requested to submit the further information required by the Environmental Health Officer. According to the submission, the accommodation capacity of the roof terrace space which is forty nine square metres in floor area is fifty persons and two staff. Information on

noise impact that had also been requested was not included in the submission.

5.5 The supplementary internal technical report of the Environmental Health Officer contains a recommendation for a request for clarification of additional information providing a further opportunity for information on noise analysis to be submitted.

5.6 The planning officer in her report states that there are grounds for concern as to potential negative impact, based on the information about the number of patrons that can be simultaneously accommodated.

6.0 DECISION OF THE PLANNING AUTHORITY.

6.1 By Order dated, 19th August, 2015 the planning authority decided to refuse permission on the basis of the reason which is reproduced below:

“Having regard to the previously Planning Authority’s decision to refuse permission (3044 – 14) and notwithstanding the centre city location it is considered that the proposed development would by virtue of scale (intensity of use) and location ‘roof terrace/smoking area would through the transmitting of late evening noise materially and negatively impact on the amenity of adjoining residential properties, this depreciating the value of such properties, and a such would set an undesirable precedent for similar such development and as such would be contrary to both the provisions of the Dublin City Development Plan, 2011-2017 and the proper planning and sustainable development of the area.”

7.0 THE APPEAL.

7.1 An appeal was received from Manahan Planners on behalf of the applicants on 15th September, 2015 and it includes a letter from the applicant’s acoustic consultant. The submission includes an outline and discussion on the planning background and context, the proposed development and the planning authority’s assessment of the application at the end of which it is concluded that the decision of the planning authority does not stand up to scrutiny.

7.2 The grounds of the appeal can be outlined as follows:

- There is a lack of persuasive argument in the planning officer report as to serious injury to residential amenity where it is argued that there is no planning justification for a lesser standard of residential amenity where the land use zoning is other than Z1 or Z2. As stated by the inspector in the report on the previous proposal, the potential impact of residential amenity must be accorded a different weight in a commercial zone to a residential zone. The needs of business are

given greater weight in a commercial zone and the needs of residents are given greater weight in a residential zone.

- The overall planning objective for the city centre is to increase vitality and accessibility and vibrancy as a place in which to work, reside and visit. The objective for the Temple Bar area is to facilitate and provide for activities such as those provided for by the applicant. The proposed development is consistent with the policy objective to facilitate tourism and use of flat roofs for restaurants, bars and amenity spaces is very popular in the inner areas of European Cities such as the roof at Galleries Lafayette in Paris. Dublin is lagging behind in the offer of similar facilities. The appeal contains photographs and links to examples of roof top bars and restaurants in various cities.
- It is the applicant's intention to comply with and not to circumvent public health policy with regard to smoking at licensed premises although providing for alternative options for patrons to using the public pavement for smoking creates difficulty as explained in connection with the previous application. The proposed development provides patrons who wish to smoke with a comfortable and safe space which is under the control of the applicant and from which smoke is discharged directly to the open air in accordance with smoking legislation.
- Originally smokers were accommodated on the top floor and it is preferable that smokers be accommodated within the premises instead of the public footpath which is narrow and which along with the roadway is intensively used by pedestrians in day and night hours. The lessening of the use of the public footpath by patrons at the applicant's premises who wish to smoke is not contrary to proper planning and sustainable development
- The roof terrace is not visible from public streets or from the Central Bank because it is hidden from view by a higher building. It is not injurious to visual amenity in the area and the building itself, in contrast to other buildings in the area does not display any signage.
- The building has been refurbished sympathetically having regard to the historic fabric and removal of the rooflight has little adverse impact on the existing fabric.
- Noise from the roof would not be audible over and above the general level of noise on adjoining streets and premises and it would not be possible to differentiate between noise sources in the area. Patrons converse while low key music played within the premises

8. RESPONSE TO THE APPEAL BY THE PLANNING AUTHORITY.

8.1 There is no submission from the planning authority on file.

9. EVALUATION

9.1 The current proposal is a distinct, stand-alone proposal for a roof terrace bar for use patrons of the Vintage Cocktail Club on Crown Alley which can also accommodate patrons who wish to smoke.

9.2 The issues considered central to the determination of a decision and discussed below are:

- Nature and Intensity of Use.
- Impact on the Public Realm.
- Residential Amenity in Mixed Use Central City Locations.
- Impact on the Amenities of Residential Properties on the Vicinity.

9.3 Nature and Intensity of Use.

The Vintage Cocktail Club is a licensed premises which specialises in cocktails. Intensity of use regarding numbers of patrons present and frequency of occupation at full capacity on the roof terrace is relatively unpredictable. For assessment the 'worst case scenario' is use of the roof terrace at full capacity. The proposed roof terrace which is to be fully fitted out and accessible to all patrons, is to have capacity for up to fifty persons, according to the application, potentially some standing and some seated along with and there is to be a fully manned bar with two staff. Relative to the existing permitted development it constitutes a significant expansion of the public floor space, being fully fitted out as a bar with seating for patrons. This is in effect an extension to the existing cocktail bar and an intensification of use in that at present the opening in the roof does make the roof accessible to patrons but facilitates patrons while they are within the building.

9.3 Impact on the Public Realm.

The case made in the prior appeal as to the desirability of discontinuation of use of the public footpath and adjoining road space by providing facilities within the premises for patrons if they wish to smoke. The public or planning benefit whereby use of the public realm would appear to have been accommodated by way of the relatively recent prior grant of permission and permission for retention. (PL 243928/P. A. Ref. Ref. 3044/14 refers.) It is therefore not accepted that there is any public benefit in the current proposal by way of elimination of use of the public footpath by patrons who wish to smoke.

9.4 Residential Amenity in Mixed Use Central City Locations.

There is no dispute in planning principles and practice that the interests of residential development and the level of residential amenity at residential property must be balanced off against all development objectives in areas subject to mixed use zoning objectives such as the development objectives for the Z5 zone provided for in the Dublin City Development Plan. To this end, expectation that residential amenity at a similar level to that provided for in an area subject to a single use zoning objectives for new or established residential development is inappropriate, in conflict sustainable development interests and unreasonable. The case made to this end in the appeal is fully supported.

9.5 Impact on the amenities of residential properties in the vicinity.

The appeal contains a persuasive argument about the potential contribution of a roof terrace bar, restaurant/café development within the city centre to the vitality and vibrancy of the city centre with wide ranging venues and facilities as a destination for citizens and visitors. The argument to this end in principle is fully accepted and supported.

9.6 Nevertheless, it is considered that the proposed development having regard to the nature and intensity of the proposed use of the roof terrace, particularly at night time would potentially give rise to undue adverse impact on the residential amenities of residential units in relatively close proximity. To this end, it is likely to be in conflict with the encouragement of the integration residential use with commercial uses within the city centre's mixed use areas.

9.7 While it is stated that potential noise emanating from the proposed roof terrace would not exceed existing ambient noise levels at street the proximity of the source of noise and activity at roof terrace level to upper floor apartments above the commercial units in the vicinity potentially results in an unacceptable level of disturbance and interference to residential amenity. Furthermore, such development could hinder the potential for encouragement of possible future residential use on upper floors in the vicinity. To this end, it is considered that the proposed development is unacceptable.

9.8 The potential for precedent for roof terrace development is not a major concern as it is considered that the acceptability of roof terrace development which in principle would be desirable depends on the individual merits and characteristics of the surrounding environment.

9.10 **Appropriate Assessment Screening.** Having regard to the nature, scale and location of the proposed development at roof terrace level at the existing club premises in Temple Bar it is considered that the proposed development would not be likely to have significant effect,

individually or in combination with other plans and projects on European sites.

10. CONCLUSION AND RECOMMENDATION.

- 10.1 In view of the foregoing it is recommended that owing to the nature and intensity of use at roof terrace level, permission should be refused for the proposed development on grounds of potential for adverse impact on the amenities of residential property in the vicinity. It is recommended that the planning authority decision be upheld and that the appeal be rejected.
- 10.2 A draft order is set out overleaf indicating a decision to refuse permission is set out overleaf.

DECISION

Refuse Permission on the basis of the Reasons and Considerations set out below:

REASONS AND CONSIDERATIONS

Notwithstanding the location in the Temple Bar District a busy entertainment, retail and commercial area interspersed with residential development in the central city area, having regard to the rooftop location in relatively close proximity to upper floor residential development in the immediate vicinity, it is considered that by reason of the capacity, nature and intensity of use, the proposed development would adversely affect and would be seriously injurious to the residential amenities of properties in the vicinity by reason of potential for noise and disturbance arising from use of the roof terrace as a fitted out bar facility, especially during night time hours. As a result the proposed development would be contrary to the proper planning and development in the area.

Jane Dennehy,
Senior Planning Inspector.
23rd December, 2015.