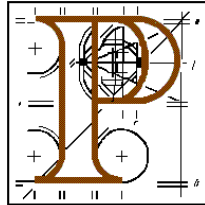


An Bord Pleanála



Inspector's Report

PL27.245896

DEVELOPMENT:-

Permission to retain (a) demolition of derelict shed and replacement with rear and side extension of 90 square metres, (b) construction of first floor enclosed fire exit, (c) change of use of 98 square metres of first floor from residential to public house, (d) erection of canopy shelter to front of site at The Harbour Bar, 1-4 Dock Terrace, Harbour Road, Bray, County Wicklow.

PLANNING APPLICATION

Planning Authority: Wicklow County Council
Planning Authority Reg. No.: 15/989
Applicant: Multilane Limited
Application Type: Permission
Planning Authority Decision: Refuse Permission

APPEAL

Appellant: Multilane Limited
Type of Appeal: First v. Refusal
Observers: The Murphy Family
Date of Site Inspection: 10th March, 2016.
INSPECTOR: Mairead Kenny

SITE DESCRIPTION AND PROPOSED DEVELOPMENT

The site is the location of a two storey public house called the Harbour Bar. This establishment is well known for its character and its music sessions and is stated to be 140 years old. The site is conveniently located close to the DART station. The site context is the coastal zone of the northern end of Bray and the site itself is set back from the seafront, which is dominated by the three storey residential terrace Martello Terrace to the east of the site and by the harbour to the north-east. The two adjoining properties to the north of the site operate as a sea scouts clubhouse and a restaurant. Large amounts of land in the area to the north is devoted to boat and car parking / storage. To the west of the site is the elevated railway line. To the south is a public road and a residential property, which is on elevated ground.

The public house has been extended over the years as follows:

- (i) by extension to the front in the form of a conservatory (photo 1)
- (ii) at the first floor level, which recently changed from residential to public house (including toilets and offices) (photographs 2 and 3)
- (iii) at the side and rear where
 - a storage container is in use as a kitchen area and store as well as a serving hatch from which food is served to customers in the front outdoor spaces (photos 7 and 8)
 - a 30 square metre shed has been demolished and roofing of open areas has taken place
 - an enclosed fire stairs is in place
 - all of the above spaces including the keg storage area, fire escape, refrigeration room and kitchen are of total area of 90 square metres (photograph 6)
- (v) at the rear in the form of a partly covered yard set out for smoking (photos 4 and 5)
- (vi) at the front in the form of picnic table seating and patio heaters as well as a two canopy features one of which is temporary in nature and the other would appear to be a permanent fitting – I refer respectively to the green structure to the front of the kitchen hatch and to the stripped structure at the main façade to the south of the conservatory.

The application subject of this appeal provides for

- retention of (ii) and (iii) above – retention of the additional 98 square metres trading area at first floor level and replacement of the demolished shed of 30

square metres and other areas with the kitchen, fire escape, keg room and fridges and storage of 90 square metres.

The application also refers to a further item namely a large yellow coloured canopy, which had been removed at the time of my inspection. That structure appears to have been in place to the front of the kitchen server where it would have covered an outdoor seating area of about 60 square metres.

The entire ground floor area of the site (indoors and outdoors) is currently occupied by use in association with the public house. At the time of inspection the area to the front was entirely set out with outdoor tables.

PLANNING HISTORY

UD4427 relates to a current planning enforcement file.

UD606B refers to unauthorised development comprising a smoking shelter/canopy. The planner's report states that the file was closed as the development was statute barred.

Under PL27.213273 the Board upheld the decision of the Planning Authority under Planning Reg. Ref. 05/0073 to refuse permission to retain a 28.5 square metre canopy-covered smoking/seating area to the front of the public house. The reason for refusal related to visual amenities. The first party appellant clarified that the permission related to the canopy only as the seating / smoking area had been permitted 20 years before.

Planning Reg. Ref. refers to a grant of permission for the conservatory to the front.

Planning Reg. Ref. 100/86 refers to a grant of permission for alterations to the front of the building.

Planning Reg. Ref. 172/81 refers to a grant of permission for alterations and extensions.

DEVELOPMENT PLAN POLICY

The relevant plan is the Bray Development Plan 2011-2017 in relation to which the following applies:

- The site is on lands zoned MU6 "mixed use" the objective of which is to provide for mixed use development in accordance with the Bray Harbour and North Beach Area Action Plan.
- Policy 13.1.2 refers to transitional areas and the need to avoid abrupt transitions in scale and use particularly adjacent residential zones.
- The site is in Zone 1 of the Action Plan as set out on Map B – this area is designated for integrated harbour and marina uses comprising a marina basin,

leisure harbour and similar uses – bars and restaurants are acceptable uses – residential development which is ancillary to other uses is acceptable.

INTERNAL REPORTS AND PRESCRIBED BODIES

The report of the **Executive Planner** which is counter-signed by the Senior Executive Planner on the 20th November, 2015 notes as follows:

- Due to the location of the kitchen / store buildings to the rear of the outdoor seating area / canopy they are not obvious when viewed from the harbour area. Concerns in relation to the temporary nature of the building.
- No objection in principle to the change of use at first floor level subject to no significant adverse impact on the amenities of surrounding residents.
- Whilst the enforcement file in relation to the canopy/smoking area is closed the applicants do not have permission for same. By granting permission for the canopy the unauthorised use of this outdoor seating area would be consolidated as it would encourage the use of people socialising outdoors which would in turn have a serious adverse impact on the amenities of surrounding residents.
- Concerns in relation to design and scale of canopy which is a dominant feature in the streetscape due to its colour and appearance and temporary nature.
- Residential properties to the south and east are 37 metres/23 metres and one is on a higher level to the application site. Consideration has to be given to the fact that there is an existing bar operating on the site and also to the potential impact of the additional floorspace on the amenities of surrounding properties.
- Notwithstanding the lack of detail regarding the nature of the activities, the additional floorspace in the indoor bar area together with the construction of a canopy over part of the outdoor seating area for which no permission exists has significantly increased the capacity of the premises.
- This would give rise to noise and general disturbance being increased particularly from the outdoor area where people are more likely to linger and congregate due to the presence of the canopy.

A submission from **Iarnrod Eireann** sets out a range of obligations on the developer.

DECISION OF PLANNING AUTHORITY

The Planning Authority decided to refuse permission for three reasons summarised below:

- Retention of canopy shelter in particular would represent consolidation of unauthorised development, the seating area for which no permission exists.
- Increase in floor space of the bar and lounge including the outdoor seating area to the front for which no permission exists has significantly increased the

capacity of the Harbour Bar and has had a significant adverse impact on the amenities of surrounding properties by way of noise and general disturbance and would represent substandard development in an area where residential and commercial premises are located and set an undesirable precedent.

- Having regard to design of the kitchen/keg room which is in essence a converted storage container and the design and scale of the canopy in particular its colour and temporary style the development would result in haphazard development consisting of temporary structures that would have a significant adverse impact on visual amenities of the area and set an undesirable precedent.

GROUNDINGS OF APPEAL

The main points of the first party appeal include:

- The O'Toole family who operated the Bar from 1932 to 2013 have confirmed in a letter dated 16th December, 2015 that the outdoor seating area predates October 1964 and is an authorised use.
- No increase in capacity relates to the external area under the canopy which is long established and authorised by reason of pre 1963 planning provisions.
- The kitchen/keg room and storage area replaced a previously structurally unsound shed at this location and does not give rise to an increase in floor area.
- An effective increase of 51 square metres in lounge area equates to less than 10% of the overall floor area of 532 square metres which is not material and does not have a significant effect on the amenities of the area.
- The bar is in place for over 140 years and is an area zoned for mixed use.
- The applicant has and will continue to manage the bar with due care.
- The Board is invited to require replacement of the kitchen/keg room within 3 years of any grant of permission for this application. The Board could condition a different colour or a two year permission.
- The decision of the Planning Authority has been unduly hasty. The Board is invited to accept the attached submission regarding the outdoor seating from which it follows that the additions to the bar and lounge area relatively minor.

The attached letter from the previous owner indicates that the outside area has always been a huge attraction and a vital component of the business. The use of the outdoor area continued until the sale of the pub to the company Multilane Limited.

OBSERVATION

The observation submitted by the Murphy family of 8 Martello Terrace includes the following points:

- Since the change of use of the first floor level footfall has more than doubled and anti-social behaviour increased and a small pub has become a Super Pub.
- The erection of a canopy shelter in the front yard allows patrons to remain within the vicinity of the premises long after closing times giving rise to an unacceptable level of noise pollution in a residential area leading to An Garda Síochana being called to the premises on many occasions in the last year.
- The owners have given rise to conditions, which are not conducive to sleep. They have not shown respect for my family home and the neighbourhood. We maintained an excellent relationship with the previous owners.
- The attached submission of An Taisce refers.

ASSESSMENT

I consider that the issues arising in this case can be considered under the following headings:

- residential amenities
- visual amenities
- development plan standards and parking
- other matters.

Residential amenities

I consider that the primary factor in considering this appeal is the need to strike a reasonable balance between the established commercial premises and the nearby residential property.

The possible intensification of use of the outdoor area to the front of the premises is a significant consideration. I consider that the first party's position overly simplifies the matter. While it is stated and affirmed by previous owners that the external area under the canopy is long established and authorised by reason of being 'pre-1963' this is not proven in my opinion. The level of evidence presented comprises a few letters. This is insufficient to demonstrate that the entire outdoor space has an established commercial use and to dispel arguments about a change of use by reason of intensification.

Whether or not the Board accepts the first party's statements relating to the authorised nature of the outdoor seating is one issue. The consequences of the development subject of the current appeal is the primary issue. I consider that the presence of a kitchen with serving hatch together with the proposed canopy would give rise to an intensification of use of the outdoor seating area. The consolidation of (possible) unauthorised development is a technicality. Of greater relevance is the the conclusion of the Planning Authority that there would be adverse impacts on

residential amenities. I consider that having regard in particular to the scale of the outdoor seating area to the front (60 square metres) to the serving of food and the shelter afforded by the canopy there would be an intensification of use which would impact on the amenities of the area.

Apart from the increased usage of the outdoor area the development involves an increase at first floor level (51 square metres of which is public trading area) and is likely to have removed some open spaces to the side of the premises. I consider that the intensity of use of the site is high with all spaces in active use either for customers or operational reasons. In the absence of original floor plans or other documentation there is no reference point to support the applicant's claim that the changes which have occurred are not material and do not have a significant effect on amenities. Such information would be available to the owner.

Regarding the changes to the first floor level involving an increase in the trading area, I consider that this may be acceptable. However, it is appropriate that the long-term regulation of the area including the use of the area and opening hours be clarified. In particular the question is whether or not the first floor area is to function as a music venue. In the absence of such information I do not recommend a grant of permission for the first floor alterations.

In the event that the Board considers that a temporary permission might be appropriate the appellant suggests that the canopy could be retained for two years and the kitchen and related structures for three years.

Visual amenities

In relation to the visual impact of the development I propose to consider the canopy which was previously in situ. The development otherwise does not give rise to a significant change in the appearance of the building as the kitchen / stores are largely situated within the body of the site and not highly visible from the street.

The large canopy structure which is subject of this application would by reason of its scale be a dominant feature to the front of the two storey public house. Taken in conjunction with the other canopy and the conservatory the original form of the building and its architectural details would be overwhelmed. I consider that the retention of the canopy does not protect or promote the visual amenities of this area. The matter is summed up in the previous reason for refusal issued by the Board for a different canopy also to be located to the front of the building.

I conclude that reason no. 3 of the decision of the Planning Authority is valid.

Development plan standards and parking

The use of the premises as a public house is both established and is acceptable under the zoning objective for the area. The site is at the southern edge of a large plot of land designated for mixed use marine type activities. The site however also abuts a residential zone and the development plan policy relating to transitional

areas is relevant in this regard. Based on my conclusions above relating to the impacts on residential amenities I consider that the scale of the development is contrary to the development plan policy set out under section 13.1.2.

I note and agree with the comments made in the report of the Executive Planner to the effect that the development has not given rise to a large increase in floor area, that site coverage and plot ratio are within the relevant standards and that parking demands could be accommodated on nearby streets.

RECOMMENDATION

I recommend that the Board uphold the decision of the Planning Authority to refuse permission for the reasons and considerations below.

REASONS AND CONSIDERATIONS

1. The site is located in a mixed use area, which contains a significant and established residential element. It is the policy of the Planning Authority as set out in section 13.1.2 of the Bray Town Development Plan 2011-2107 to avoid developments that would be detrimental to amenity and in zones abutting residential areas to pay particular attention to the use and scale of development proposals in order to protect the amenities of residential properties. Based on the submissions made including in relation to the history, nature and operation of public house at first floor and ground floor and outdoors, the Board is not satisfied that the proposed development does not constitute a significant intensification of use, which is significantly affecting the residential amenities of the area. The proposed development therefore constitutes an excessive form of development, which contravenes section 13.1.2 of the development plan and is not in accordance with the proper planning and sustainable development of the area.

2. Taken in conjunction with the other structures attached to the front and side of the two-storey building, including an awning, a conservatory and a storage container, the proposed canopy would be incongruous in terms of its design and out of character with the streetscape and would set an undesirable precedent for future development in this area.

Mairead Kenny

Senior Planning Inspector

31st March 2016