



An  
Bord  
Pleanála

## Inspector's Report PL29S.246669

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<b>Development</b>	Amend previous permission conditions nos.3 & 4 reg.ref.2379/98 restricting opening hours and events (a Protected Structure).
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	2485/16.
<b>Applicant(s)</b>	Esc Bar and Restaurant Ltd
<b>Type of Appeal</b>	Third party against decision
<b>Planning Authority Decision</b>	Split decision <b>GRANT / REFUSE</b>
<b>Appellant(s)</b>	1. Mary Kate Kenyon.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	28/09/16
<b>Inspector</b>	John Desmond

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## 1.0 Site Location and Description

- 1.1. The application concerns a public house, Sober Lane, located in Irishtown at the junction of Irishtown Road and Barrack Lane, opposite (east of) the Garda Station and a Christian church and a short distance north of St Mathews church, c.440m northwest of the Aviva Stadium and c.220m southeast of the Irishtown Stadium. Irishtown Road, to the south (onto which the site fronts), is a broad thoroughfare. Barrack Lane is a narrow route, which is permeable to pedestrians but a cul-de-sac for vehicular traffic.
- 1.2. The application relates to a 2-storey building, over limited basement, with 100% site coverage. The premises is a Protected Structure. The principle frontage is a 5-bay building with screen parapet wall, that appears to have been constructed as two separate premises, possibly as residential dwellings. The ground floor commercial frontage appears to be of recent construction, notwithstanding its traditional style. A two-bay apex roofed building, with an original ground floor commercial frontage is recessed from Irishtown Road and is located along the Barrack Lane corner. To the rear, the premises is predominantly single-storey and flat-roofed, with a limited 2-storey element.
- 1.3. The surrounding area is an old urban and suburban area, mainly of terraced 2-storey housing, with some older 3-storey properties and intermittent commercial and non-residential properties. The site abuts residential property to the south, southeast and east. One of the two properties on the north side of Barrack Lane is a public house (Bath Street junction) and the other, a 3-storey Georgian style structure, may incorporate commercial and incorporate residential uses, but this is not clear.

## 2.0 Proposed Development

The proposed development comprises:

- Amend condition no.3 reg.ref.2379/98 to coincide permitted opening hours with pub licence hours to read:

*'The premises shall not be open to the public nor shall member of the public be on the premises between the hours of 0100 and 0800 on any day'.*

- Amend condition no.4 reg.ref.2379/98 to permit online and in-house marketing activities for events held at the premises.

*'The premises shall be used solely as a public house and restaurant with a first floor residential apartment. It shall not be used as a nightclub.'*

**Supporting documentation** – Planning Statement (March, 2016) prepared by Downey Planning, Chartered Town Planners. The statement sets out the rationale and justification for the proposed amendments and how it accords with the proper planning and sustainable development of the area. The main points are repeated in the response to the appeal and are summarised in that section below.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

Split decision –

- **GRANT** permission to amend condition no.3 subject to two standard conditions;
- **REFUSE** permission to amend condition no.4 on grounds that it would be contrary to the Z2 zoning objective and would seriously injure the residential amenities of the area.

#### 3.2. **Planning Authority Reports**

The report of the area planner is consistent with the decision of the planning authority.

- The reports notes the concerns of the objectors;

- Accepted that the additional half hour period would allow customers leave in a dispersed more orderly manner which will coincide with the pub license;
- Considered the allowing of parties to be unacceptable within the Z2 zone, close to residential properties as parties and the gathering of groups would lead to additional noise.

### 3.3. Other Technical Reports

Conservations Officer – No conservation issues (report not dated).

### 3.4. Third Party Observations

There are 6no. letters of observations on file from Pat & Christy Mullen of no.84 Irishtown Road (13/04/16), Daniel & Helen Doyle of 86 Irishtown Road (13/04/16), Gianpiero Cavalleri of no.33 Bath Street (15/04/16), Barry Donoghue & Sarah Doyle of no.15 Bath Street (15/04/16), Francis Bradshaw of no.23 Bath Street (15/04/16) and Mary Kate Kenyon of no.3 Chapel Avenue (15/04/16). The main points of the submissions are repeated in the grounds of appeal, summarised below. Additional points include:

- Sober Lane replaced a traditional style local pub with a 'Frat Style' themed party pub (operator's own description) more suited to the city or town centre. There were never any problems with the previous establishment.
- The business model is to attract customers from outside the local area through special promotions, with customers arriving and leaving in large groups, or congregating outside of residences.
- Repeated failure to comply with existing planning regulations and Dublin City Bye Laws, allowing customers to drink outside in the smoking area, on roads, footpaths including in front of private residences, and noise from these customers have disturbed the sleep of local residents necessitating complaints

to Sober Land management and to An Garda Síochána on several occasions (photos appended to submissions from the Mullens and the Doyles).

- Adverse impacts of excessive noise confirmed by enforcement action taken by City Council and by applicant's commissioning of Byrne Environmental Consulting Ltd.
- Events are arranged weekly, not occasionally.
- The would exacerbate adverse noise impact on the surrounding area, with change to condition no.3 increasing the lateness of patrons departing, and the change to condition no.4 increasing the numbers of patrons.
- It is alleged that the 'specified area' (condition no.1 of previous permission) is being used for purposes other than as a restaurant (photos appended to submission from O'Donoghue & Doyle).

#### 4.0 **Planning History**

##### 4.1. On site

**Reg.ref.0498/98:** Permission **GRANTED** by Dublin City Council (15/06/98) to John Clarke (Irishtown) Ltd., for development comprising alterations to existing residence lounge and bar, demolishing portion of existing lounge, office and stores, extending existing lounge and bar, providing new toilets, kitchen and stores to ground and first floor, subject to three conditions.

*Condition no.2: 'The use of the premises shall be limited to that of a public house and single residential unit. No part of the premises shall be used as a restaurant without a prior grant of planning permission and no nightclub use shall take place anywhere on the premises. Reason: To control development.'*

**Reg.ref.2379/98:** Permission **GRANTED** by Dublin City Council (07/12/98) to John Clarke (Irishtown) Ltd., serve food in new bar and lounge for the purpose of acquiring a restaurant licence subject to four conditions.

Condition no.3: *'The proposed premises shall not be open to the public nor shall members of the public be on the premises between the hours of 0030 and 0800 on any day. Reason: In the interest of residential amenity and to protect the residential amenities of adjoining owners.'*

Condition no.4: *'The premises shall be used solely as a public house and restaurant with a first floor residential apartment. It shall not be used as a night club nor shall organised functions to which the public at large is invited be held on the premises. Reason: In the interests of residential amenity and to protect the residential amenity of adjoining owners.'*

**Reg.ref.2520/98:** Permission **GRANTED** by Dublin City Council (26/05/99) to John Clarke (Irishtown) Ltd., to retain basement store, ground-floor store extension, re-positioning and extension of kitchen, change of kitchen to store, relocation of porch and disabled WC, two-storey atrium, change of use from ground floor private residence to lounge and restaurant use, other alterations and permission for change of use from first floor residence to public lounge, subject to four conditions.

Condition no.2: *'All conditions of planning permission 0498/98 and 2379/98 shall be complied with in full. Reason: In the interest of the proper planning and development of the area.'*

**Reg.ref.0055/99:** Permission **GRANTED** by Dublin City Council (10/06/99) to John Clarke (Irishtown) Ltd., for the retention of mechanical extraction, ventilation units and ducting on flat roof area at rear, subject to one standard condition.

**E0783/15:** Relates to enforcement action concerning breach of conditions nos.1, 2, 3, 4 of reg.ref.2379/98 and signage and murals. Details from Planning Officers report - no other details provided.

**E0801/14:** Relates to vents / air conditioning units and noise. No other details provided. Details from Planning Officers report - no other details provided.

#### 4.2. In vicinity

**PL244802: Reg.ref.2164/15:** Permission **GRANTED** on appeal by the Board (06/08/15), upholding the decision of Dublin City Council for demolition of 2 existing terraced houses and replacement with two 2-storey terraced three-bedroomed houses with pedestrian access off Barrack Lane to the rear garden at Nos. 11 and 13 Bath Street, Irishtown, Dublin 4 for Texel Properties Ltd.

### 5.0 **Policy Context**

#### **Dublin City Development Plan 2011-2017**

Map F – Zone Z2 ‘*To protect and/or improve the amenities of residential conservation area*’; Protected Structure; Conservation Area; Zone of Archaeological Potential.

Chapter 15 Land Use Zoning: 15.8 Non Conforming Uses; 15.10.2 Residential Neighbourhoods (Conservation Areas) – Zone Z2.

### 6.0 **Natural Heritage Designations**

South Dublin Bay and River Tolka SPA (site ref.004024) c.750m to southeast.

South Dublin Bay SAC (site ref.000210) c.700m to southeast.

### 7.0 **The Appeal**

#### 7.1. **Grounds of Appeal**

The grounds of appeal submitted by third party Mary Kate Kenyon of 3A Chapel Avenue, Irishtown (31/05/16), can be summarised as follows:



1. DCC did not take adequate account of land use zoning objective Z2 residential neighbourhood (conservation area).
  - The Board will note the number of observations on file and the provenance of the application being a warning letter issued by DCC.
  - By having to start the clearing of the pub at 00.30 rather than 00.01, the amenities of the residential conservation area will not be improved.
  - Local residents should be able to rely on the provisions of section 15.10.2 of the CDP, including ‘... *The general objective for such area is to protect them from unsuitable new developments or works that would have a negative impact on the amenity of architectural quality of the area.*’
  - A restaurant is open for consideration but a public house is not a permissible use on Z2 lands.
  - Policies and objectives for residential conservation areas (chapter 7) and standards under section 17.10.8 and appendix 10 required to be taken into account.
2. Error in planning assessment
  - The Planning Officer’s conclusion regarding the impact of amending condition no.3 failed to take account fully the observations of local residents.
3. The premises are also within a specially designated conservation area under the current Dublin City Development Plan, in addition to being a Protected Structure.
  - This is not observed in the report of the Planning Officer or in the report submitted by the Conservation Officer.

## 7.2. Planning Authority Response

None.

### 7.3. Other Party Responses

The main points of the **first party response submitted by Downey Planning Consultants** (28/06/16) on behalf of Esc Bar and Restaurants Ltd., can be summarised as follows:

#### 1. General overview and rationale for application:

- The subject building has been operating as a public house for over 80 years.
- Application is to regularise 1998 permission such to coincide with present day operation including opening hours and marketing activities.
- The pub license allows the premises to serve alcohol until 00.30am Friday and Saturday. Section 7 of the Intoxicating Liquor Act, 1962, as amended, allows 30 minute drinking up time for the purpose of allowing a more gradual departure of customers from the premises.
- As is common practice in pubs and restaurants across the city, Sober Lane occasionally organise events, such as table quizzes and themed nights, announced on their website and via social media, and also cater for individuals wishing to reserve an area for a party. Condition no.4 prohibits this practice.
- At the time of attaching the condition, social media was not in use to organise such events and condition no.4 is somewhat outdated.
- The proposed amendment of condition no.4 is for the deletion of *'nor shall organized functions to which the public at large is invited be held at the premises'*, so as to read *'The premises shall be used solely as a public house and restaurant with a first floor residential apartment. It shall not be used as a night club.'*

#### 2. Addressing grounds of inadequate account of Z2 objective

- The proposed amendments concern only minor operational activities, with no intensification of established use or development works proposed, and it will therefore have no negative impact on the architectural quality of this residential conservation area.
- The Planning Officer considered the contents of the observations.
- The use is a long established use and has been subject of numerous applications in which the use was accepted as an established use, regardless of the uses permissible or open for consideration under Z2 objective.

### 3. Addressing grounds of alleged error in planning assessment

- The Planning Officer was correct in their analysis of the proposal to amend condition no.3 regarding allowing for customers to leave in a dispersed and orderly manner.
- It is understood that Vintage Inn pub, c.30m distant operates to standard opening times.
- Byrne Environmental Consulting Ltd., were retained to undertake comprehensive acoustic testing of the premises and recommended necessary mitigation measures to reduce noise and is in the process of obtaining a suitable qualified mechanical engineer to assess and upgrade the vents and air handling units of the premises where necessary. Every effort is being made to mitigate against noise nuisance at the premises.

### 4. Located within specifically designated conservation area under the plan.

- Following issuing of a Warning Letter, every effort was made to regularise the issues at hand including engagement with the enforcement section of the Council, preparation of the application (to regularise operational issues) and appointment of suitable consultants to undertake necessary noise surveys/studies at the premises to seek to mitigate noise nuisance and to protect residential amenity.

- The premises, containing a long established public house, contributes to the attractiveness of the area and compliments the conservation designation and the Conservation Officer's reports confirms 'no conservation issues'.

#### 7.4. **Observations**

None.

#### 7.5. **Further Responses**

None.

#### 8.0 **Assessment**

8.1. I consider the key issues in determining this appeal are as follows:

- Scope of consideration
- Policy issues
- Residential amenities
- Appropriate Assessment

#### 8.2. **Scope of consideration:**

8.2.1. The planning authority, in effect, issued two decisions in respect of the proposed development – a decision to grant permission for the amendment of condition no.3 of planning permission reg.ref.2375/98 and a decision to refuse permission for the amendment of condition no.4 of the said same permission. This appeal is a third party appeal against the decision to grant permission for the amendment of condition no.3 only. As there is no first party appeal against either decision or against conditions attaching to the former, I shall confine my assessment, in general, to consideration of the proposed amendment of condition no.3.

### 8.3. Policy issues

- 8.3.1. The site is zoned objective Z2 Residential Neighbourhoods (Conservation Areas) ‘*To protect and/or improve the amenities of residential conservation area*’. Within the Z2 zone, the general objective is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area. Public house use is not listed as permitted in principle or open for consideration on Z2 land. However, the development plan notes (section 15.10.2) that whilst the housing is the principle land use, such areas can include a limited range of other secondary and established uses, such as those outlined above in respect of Z1 lands. In this regard, public house is open for consideration on Z1 land. Furthermore, the applicant submits that the public house use is established over 80 years and has been subject of numerous applications in the recent past, such that the principle of the use is not in question. I consider this reasonable.
- 8.3.2. Section 15.8 of the development plan addresses non-conforming uses. It provides that when extensions to, or improvements of, premises accommodating long established non-conforming uses are proposed, each shall be considered on their merits, and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area. Should the Board consider the existing use to be a non-conforming use, notwithstanding its long established nature and previous authorisations through planning permissions, it should be noted that no physical works are proposed under this application. The proposed development comprises improvements in operations and not ‘*improvements of premises*’. However, the Board is not precluded from considering the impact of the subject development on the amenities of premises in the vicinity.
- 8.3.3. The application relates to a building designated a Protected Structure, located within a designated conservation area and zone of archaeological potential. The proposed development entails no works but relates to changes to operations carried out at the

premises. I would point out that noise mitigation measures alluded to by the applicant (in response to the appeal) do not form part of the application under appeal and it is possible that such works may not be exempted development having regard to the Protected Structure status of the structure. I consider the assertion of the Dublin City Conservation Officer, in her report, that there are no conservation issues, to be reasonable.

#### **8.4. Residential amenities**

- 8.4.1. There is evidence from the City Planning Officer's report (refers to enforcement files opened in respect of, *inter alia*, breach of conditions no.2 preventing noise and odour emissions, no.3 breaching opening hours restrictions, and no.4 prohibiting nightclub use or use for organised functions for members of the public) and from the applicant's own submission (Planning Statement submitted with application and response submitted to appeal) and supported by third party observations and third party appeal, that the existing use operating from the premises is having adverse impacts on residential amenities in the vicinity. In addition, it would also appear (from the said sources, but excluding the applicant's submissions) that '*specified areas*' of the premises that are restricted to use as a restaurant (condition no.1 of reg.ref.2379/98) have been in use contrary to the restrictions imposed by condition attaching to planning permission.
- 8.4.2. The hours during which customers are permitted on the premises (effectively, the operating hours) are currently restricted to outside of 0030 and 0800 hours by condition no.3 of reg.ref.2379/98. The applicant indicates that under the pub license the operator is entitled to serve alcohol until 0030 on Friday and Saturday (I assume it actually refers to 12.30AM on Saturday and Sunday, respectively), with provision for an additional 30 minutes drinking up time and that therefore conflict arises between the regulation of the premises under its pub license and its grant of planning permission. The applicant submits that alteration of condition no.3 to allow customers remain on the premises until 0100 hours would enable a more orderly

dispersal of customers from the premises rather than all leaving en masse. In general I would concur with the position of the Planning Authority that this is reasonable and that condition no.3 should be amended accordingly. However, this change should only apply only to Friday night / Saturday morning and Saturday night / Sunday morning, as based on the applicant's response to the appeal, this serving time only applies on those nights.

- 8.4.3. Whilst the concerns of local residents are valid and reasonable, however I consider the issue of noise emissions and / or anti-social behaviour or general disturbance arising at the premises to be a matter of enforcement by the Planning Authority and An Garda Síochána and the licensing authority.

#### 8.5. **Appropriate Assessment**

Having regard to the scale and nature of the proposed development, comprising amendments of conditions concerning the operation of a public house within the built up area of Dublin, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

#### 9.0 **Recommendation**

- 9.1. I recommend that planning permission be **GRANTED** for the amendment of condition no.3, only, of planning permission reg.ref.2379/98 having regard to the reasons and considerations and subject to conditions as set out below;

#### 10.0 **Reasons and Considerations**

Having regard to the land use zoning objective of the application site and adjoining properties, objective Z2 '*To protect and/or improve the amenities of residential conservation area*' and to the provisions of the Dublin City Development Plan 2011-2017 concerning same, it is considered that the proposal to amend condition no.3 of

planning permission reg.ref.2379/98 to increase by 30 minutes (that is until 0100 hours on Saturday morning and Sunday morning only) the permissible period that customers may remain on the premises would not seriously injure the amenities of property in the vicinity subject to compliance with the conditions set out below.

## 11.0 Conditions

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

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

2. On Saturdays and Sundays, the premises shall be permitted to be open to the public and members of the public shall be permitted on the premises outside the hours of 0100 and 0800 only.

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

3. The terms and conditions of the planning permission for that development permitted under reg.ref.2379/98 shall be fully complied with, except where modified by this permission.

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

4. . Nothing in this decision shall be taken to authorise the proposed amendment of condition no.4 of decision to grant planning permitted under



reg.ref.2379/98.

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

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John Desmond  
Planning Inspector

28<sup>th</sup> September 2016