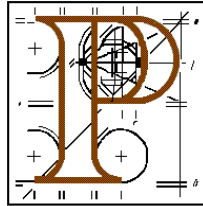


## An Bord Pleanála



## Inspectors Report

**Development:** Permission to retain the intermittent use of the existing car park of 746sq.m. at the side and back of the Horse Show House as a beer garden. Includes temporary structures to provide bar and catering facilities, existing smoking deck of 41m and flagpoles all at The Horse Show House, 34-36 Merrion Road, Ballsbridge, Dublin 4.

### Planning Application

Planning Authority: Dublin City Council  
Planning Authority Reg. Ref. 2639/16  
Applicant: James Madigan and Sons Ltd.  
Type of Application: Permission and Retention Permission  
Planning Authority Decision: Split

### Planning Appeal

Appellant(s): James Madigan and Sons Ltd.

Observers: None

Type of Appeal: First Party  
Date of Site Inspection: 22/09/16

**Inspector:** Gillian Kane

## **1.0.0 SITE LOCATION AND DESCRIPTION**

- 1.0.1 The subject site is located on the northern side of side of Merrion Road, just south of the junction with Angelsea Road and across the road from the RDS. The site comprises a two storey public house with an open area to the side and rear. On the date of my site inspection, the open area to the side of the pub was set out as a beer garden with a series of tables & chairs, benches and high tables. To the rear of the site and closed off by a large wooden gate and boundary, the outdoor seating area also accommodated a wooden stage, two large freight containers with seating on the roof and a series of murals / graphic prints on the boundary fences. The flagpoles and flags referred to in the public notices have been removed, as has the canopy over the beer garden to the side of the building.
- 1.0.2 To the immediate east of the site is the AIB headquarters, to the north is Eagle Star House, an office development and to the west is a protected structure in use as offices.
- 1.0.3 Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

## **2.0.0 PROPOSED DEVELOPMENT**

- 2.0.1 Permission was sought to retain the following:
- the intermittent use of the existing 746sq.m. car park to the side and rear of an existing public house, as a beer garden, including temporary structures: a covered stage and entrance canopy,
  - retention of the boundary treatment of timber clad fences and graphic wall linings to the beer garden area,
  - retention of the existing external smoking deck of 41sq.m. with canopy
  - retention of 2 existing flagpoles and advertising flags at the front of the building
- 2.0.2 Details provided in the application form: total site area is 1,434.m., existing public house: 722sq.m., car park / beer garden to be retained 746sq.m. resulting in a plot ratio of 0.503 and site coverage of 36%.
- 2.0.3 The application was accompanied by a cover letter with photographs. The cover letter states that the use of the car park as a beer garden corresponds with large scale events in the area and

reverts to a car park when not in use. The letter states that the beer garden has been in use for approximately ten years.

**2.1.0 Reports on File following submission of application**

2.1.1 **Drainage Division Engineering Dept:** No objection subject to developer complying with the Dublin Regional Code of Practice for Drainage Works.

2.1.2 **Planning Report:** Application has arisen as the result of enforcement. The proposal to entirely cover the site has implications for adjoining properties. Size of proposed beer garden is excessive. Proposed stage is completely unacceptable. Proposed development appears to a large venue rather than a beer garden. The proposed flagpoles are considered excessive advertising and would set an undesirable precedent. The proposed smoking deck to be retained is acceptable. Split decision recommended.

**3.0.0 PLANNING AUTHORITY DECISION**

3.0.1 By order dated 02/06/2016 a split decision was issued as follows:  
GRANT permission for the retention of the smoking deck of 41sq.m. with canopy subject to 2 no. standard conditions.

REFUSE permission for the retention of the intermittent use of the car park as a beer garden, including temporary structures to provide bar and catering facilities, covered stage and entrance canopy, boundary treatment of timber clad fences and graphic wall linings, 2 no. flagpoles and advertising flags, for the following reason:

1. The proposed retention of the intermittent use of the existing car park of 746sq.m. at the side and back of the Horse Show House as a beer garden, including temporary structures to provide bar and catering facilities, a covered stage and an entrance canopy, to retain the boundary treatment of timber clad fences and graphic wall linings to the beer garden area, and to retain the existing two flagpoles and advertising flags to the front of the building, is considered to be excessive in scale which would intensify the significant scale of public house use served by the combined beer garden and would thereby further exacerbate the impacts of noise on adjoining properties with the flagpoles considered to be visually obtrusive and detrimental to the scale and character of the existing building. The development proposed to be retained would therefore be

contrary to the proper planning and sustainable development of the area.

#### **4.0.0 PLANNING HISTORY**

4.0.1 **DCC reg. ref 6008/03:** Planning permission refused for advertisement clock on front elevation of the Horse Show House.

4.0.2 **DCC reg. ref 1166/02:** Planning permission granted for redevelopment of Horse Show House, including demolition of existing structures and out buildings, construction of a five storey office building with basement car parking

#### **5.0.0 LOCAL POLICY**

##### **5.0.1 DUBLIN CITY DEVELOPMENT PLAN 2011 - 2017**

5.0.2 The subject site is zoned "Z6" in the Dublin city development plan, with the stated objective "to provide for the creation and protection of enterprise and facilitate opportunities for employment creation" ('Z6' – Employment Enterprise). Public house is an open for consideration use in such zones. An open for consideration use is one which may be permitted where the Planning Authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on permitted uses and would otherwise be consistent with the proper planning and sustainable development of the area.

5.0.3 Section 15.2 of the development plan states that Z6 lands remain an important land bank for employment use which it is considered strategically important to protect, especially as mixed use is a more sustainable form of development. Where Z6 employment lands are close to high quality public transport, residential and support businesses development will be permitted as a subsidiary to the employment use. Section 15.2 also states that in considering applications for the development of lands zoned objective Z6 there needs to be a consistency of approach in terms of the quantum of non-employment generating floorspace permitted on such lands.

5.0.4 Of relevance to the subject proposal, section 15.10.6 states that within the land-use objective Z6 the following development principles shall apply, in addition to complying with landuse zoning:

## **Employment**

■ To create dynamic and sustainable employment areas that are poised to facilitate innovation, creativity, research and development, science and technology and the development of emerging industries and technologies, to ensure the optimum development/ redevelopment of underutilised lands and sustain and expand a significant long-term employment base, supported by a compatible mix of subsidiary uses and convenient access to national and international markets.

■ Redevelopment proposals on Z6 lands should ensure that the employment element on site should be in excess of that on site prior to redevelopment in terms of the numbers employed and/or floor space.

**Uses:** To incorporate mixed-uses in appropriate subsidiary ratios to generate urban intensity and animation. All such uses, including residential and retail shall be subsidiary to employment generating uses and shall not conflict with the primary aim of the Z6 land-use zoning to provide for the employment requirements of the city over the development plan period and beyond and shall not detract from existing centres.

- 5.0.5 Development Management standards for Z6 zones include:
- Indicative plot ratio: 2.0- 3.0
  - site coverage is 60%
  - car parking standards for zone 2: 1 space per 300sq.m. net floor area

## **6.0.0 GROUNDS OF APPEAL**

6.0.1 An agent for the Applicant has submitted a first party appeal against the Council's decision to refuse permission for the retention of the use of the car park as a beer garden, the associated temporary structures to provide bar and catering facilities, the covered stage, the entrance canopy, timber clad boundary fences, graphic wall linings, 2 no. flagpoles with advertising flags to the front of the building.

6.0.2 The appeal states that the application arose from enforcement action. The agent notes that much of the development for retention would be considered exempted development but was included in the planning application instead of requesting a section 5 declaration.

- It is submitted that the external smoking deck has been in position for more than ten years and falls under class 160(6)(a)(i) of the Planning and Development Acts 2000-2015.
- It is submitted that the temporary bar structure, covered stage and canopies are erected for limited periods at times for local cultural and sporting events e.g. The Dublin Horse Show. It is submitted the structures can be considered to be exempted development under SI600 of 2001 exemptions Class 37 except that they would be in position for longer than the conditions and limitation of class 37 would allow.
- It is submitted that the timber clad boundary walls are exempt under class 4(1)(h) of the Planning and Development Acts 2000-2015 as they are works that do materially affect the external appearance of the structure.
- It is submitted that the photographic PVC wall lining which may contain advertising is exempted development under SI 600 of 2001, class 7 as it is in an enclosed area not visible from the road.

6.0.3 It is submitted that the beer garden is not excessive in scale. The proposed beer garden is located to the side and back of a licensed premises. The car park of 746sq.m. includes a storage area of 91m, the 41sq.m. smoking deck, bar and catering facilities of 29sq.m. and the stage of 12sq.m.. The proposed beer garden is 573sq.m. of the 746sq.m. car park. Revised drawing showing areas attached. The entrance to the beer garden is 233sq.m. and can be removed from the beer garden if the Board see fit. This would reduce the beer garden to 340sq.m.

6.0.4 There have not been any complaints about noise from the adjoining properties. The AIB centre to the east has permission for an office development. The property to the north is an office development and the property to the west has a restaurant on the ground floor and office use on the upper floors. It is stated that the use of the beer garden is normally outside of office hours and does not impact on the adjoining properties. It is submitted that noise levels from the beer garden are not high. The stage and canopy are used for background music and to provide a platform for a TV to show sporting events. Music is played between 17.00 and 22.30 only due to the Garda imposed noise curfew.

6.0.5 The advertising flags and flagpoles have been removed.

- 6.0.6 In relation to the query over 'intermittent use' it is submitted that the beer garden is opened from time to time during summer months when there is demand. It is used mostly at weekends and in the evenings outside of office hours. During the Dublin Horse Show the beer garden is open for 5 days. The dates of the horse show change every year. The beer garden is also used for private parties.
- 6.0.7 It is submitted that the proposed development does not have serious implications for the surrounding office developments. It is noted that no third party objected to the proposal. It is submitted that the proposed development is welcome in an area populated with offices, hotels, the RDS, the Aviva and many corporate headquarters. It is submitted that the proposed development cannot limit the future development of adjoining sites as they are all completely developed.
- 6.0.8 It is stated that the stage to be retained is a demountable structure. Noise levels are not high and cannot be heard over the background traffic noise. The beer garden is surrounded by buildings and trees which reduces noise levels. The surrounding area is not residential.
- 6.0.9 Two modified shipping containers are used to provide bar and catering facilities. They are taken away when not required. A hinged cover acts as a canopy when open. The containers are used by the applicants at other events.
- 6.0.10 The subject site is not a 'large venue'. It is a beer garden used from time to time, mostly in summer. Apart from evening BBQ's for local businesses, access to the beer garden is available to all patrons of the Horse Show House.
- 6.0.11 The proposed development provides tourist and visitor facilities in the area. The subject beer garden removes the possibility of on-street drinking which occurs in Ballsbridge during these events. The beer garden provides temporary employment for 7-8 people. The Horse Show House has been in the ownership of the applicants for 48 years. The premises has adapted to meet the demands of the area.
- 6.0.12 The Board is requested to grant permission.

## **7.0.0 OBSERVATIONS**

7.0.1 None on file.

## **8.0.0 RESPONSES**

### **8.1.0 Planning Authority Response**

8.1.1 None on file.

## **9.0.0 ASSESSMENT**

9.0.1 On reading of all documentation submitted with the appeal, I consider the issues to be:

- Principle of the development
- Proposed use as a Beer Garden
- Smoking Deck
- Ancillary structures to be retained: Stage, Bar and Catering Facilities
- Boundary Wall Treatment
- Appropriate Assessment

### **9.1.0 Principle of the Development**

9.1.1 The proposed development refers to the retention of the side and rear of the Horse Show House for intermittent use as a beer garden, complete with smoking deck, stage and two structures to provide bar and catering facilities. Public house use is open for consideration in Z6 zones where the Planning Authority is satisfied that the proposed development would be compatible with the overall policies and objectives of the zone, would not have undesirable effects on the permitted uses and would otherwise be consistent with the proper planning and sustainable development of the area.

9.1.2 The objective for Z6 zones is to provide for the creation and protection of enterprise and facilitate opportunities for employment creation. The subject use as a public house would not generally be considered to be an employment generating enterprise but rather a support service to the other uses with the wider area. The need for such uses is acknowledged in the development plan, with the caveat that such support uses remain as subsidiary to the primary employment and enterprise uses of the zone.

9.1.3 In principle, the use of lands adjoining the public house as a beer garden accords with the policies and objectives for Z6 lands. The surrounding land uses are primarily office uses and therefore



unlikely to be negatively affected by the predominantly evening and seasonal use of the beer garden. The nature and extent of that use is discussed in greater detail below.

9.1.4 I note that the wooden fence with double gate / entry is not shown on the plans submitted with the application, nor is it referred to in the public notices or the application form. A grant for planning permission of same has not been found. The fence, being in excess of 2m in height would not be considered to be exempted development and therefore requires planning permission.

9.1.5 The enclosure / structure around the two freight containers in use as bar and catering facilities with external staircase and seating above are not shown on the application drawings, nor are they referred to in the public notices or the application form.

9.1.6 The 2 no. flagpoles and flags had been removed on the date of my site inspection. Drawing no. 151125PL03 shows 2 no. flag poles of approx. 1.9m in height on the front elevation of the public house. No details have been given in relation to the detail of the flags to be attached. The canopy over the beer garden to the side of the pub was also removed prior to the date of my site inspection.

## **9.2.2 Proposed Use as a Beer Garden**

9.2.1 The application seeks permission to retain the intermittent use of the car park as a beer garden. I note that on the date of my site inspection, the beer garden appeared to be a permanent fixture. It appeared that significant work had been undertaken to create an outdoor space, complete with seating, wall coverings, designated areas for benches, a central raised platform with additional seating and a pole to hold / fix lighting. The ground had been covered with mulch for most of the area with strips of a green artificial grass type surface running along the eastern boundary. The two freight containers at the rear – along the northern boundary – appeared to be contained within an overall structure with an external staircase leading to a seating area on the roof of the structures. I note that this structure is not shown on the accompanying plans, nor is it referred to in the public notices or the planning application form. It is considered that a significant amount of work was undertaken to create the beer garden and a significant amount of work would be required to re-instate the space to a car park. It is considered that such work could not be undertaken lightly nor in a short period of time. The overall impression is of a permanent outdoor space associated with the pub.

9.2.2 The use of the side and rear of the public house as a beer garden removes all car parking available to the Horse Show House. Details of the land used as a car park have not been provided to the Board. The existing Horse Show House pub is stated to be 722sq.m. Table 17.1 of the development plan shows the requirement for the public houses in zone 2 to be 1 space per 300sq.m. net floor area. Therefore a minimum of two spaces is required. The existing pub is in an area well served by public transport and proximate to a large number of employment uses. It is considered that the shortfall in parking facilities at this location is not material.

9.2.3 I am satisfied that the use of the car park as a beer garden is acceptable, would not cause undue impacts on the surrounding landuses and would be in accordance with the zoning objective for the area. I concur with the Planning Authority that the term 'intermittent' is somewhat problematic. 'Intermittent' refers to something occurring at irregular intervals, not continuous or steady. The difficulty with using such a term in a planning application is that it refers to an undefinable parameter. What the applicant considers intermittent may not be what the Planning Authority or An Bord Pleanála considers to be intermittent. Given the acceptance in principle of the proposed development, the extent of the use as a beer garden may be defined by the Board as being acceptable within summer months, eg May to September inclusive. Alternatively should the Board decide that the nature and extent of the proposed development has not been adequately described in the public notices, they may wish to require the re-advertisement of the proposed development to be retained.

### **9.2.0 Smoking Deck to be retained**

9.2.1 The applicant has made the case that much of the development sought to be retained would fall under the exempted development regulations.

9.2.2. It is submitted that the external smoking deck has been in position for more than ten years and falls under class 160(6)(a)(i) of the Planning and Development Acts 2000. Section 160(6)(a)(i) of the Act states that an application to the High Court or Circuit Court for an order under this section shall not be made in respect of a development where no permission has been granted, after the expiration of a period of 7 years from the date of commencement of the development. If the smoking deck has been in place for in excess of ten years without planning permission, it is unauthorised

development for which the Planning Authority cannot seek an order to require the applicant to cease the unauthorised development. This does not confer authorisation on the structure, it merely prevents the Planning Authority from seeking an order in relation to the unauthorised development. The development remains unauthorised. The subject smoking deck is not exempted development under s160 of the Act.

9.2.3 The 41sq.m. deck to be retained is to the rear of the public house. It comprises a raised structure with a railing around three sides, a canopy over and seating within. The principle of the structure is acceptable.

**9.3.3 Ancillary structures to be retained, stage, bar and catering facilities.**

9.3.3 The appellant has made the case that the temporary bar structure, covered stage and canopies can be considered to be exempted development under S1600 of 2001 exemptions Class 37 except that they would be in position for longer than the conditions and limitation of class 37 would allow.

9.3.4 The temporary bar, covered stage and canopies cannot be considered to be exempted development under Class 37 of schedule 2, Part 1. Class 37 refers to development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use. The use of the former car park as a beer garden and the placing of temporary structures on it to facilitate such use coincides with local cultural and sporting events but the development does not qualify of itself as a fair, local event etc. Therefore the use does not qualify as a class 37 use. Notwithstanding that, as noted by the appellant, the time limits set in the conditions of class 37 (use continuous for a period exceeding 15 days or in aggregate over 30 days in any year) would disqualify the subject use from being considered exempted development under class 37.

9.3.5 In isolation, the provision of the stage, bar and catering facilities is acceptable. Their use as support services to the beer garden is acceptable in principle, once the nature and extent of the use of the beer garden is defined.

#### **9.4.0 Boundary treatment of painted wooden fence**

9.4.1 The appellant has that the timber clad boundary walls are exempt under class 4(1)(h) of the Planning and Development Acts 2000-2015 as they are works that do materially affect the external appearance of the structure. Section 4(1)(h) refers to development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structures being works which affect only the exterior of the structure or which do not materially alter the external appearance of the structure. The timber structures placed over dark brick boundary walls are located at the side of the public house, in the area originally covered by a canopy but which is not open. The timber wall treatments, with false fireplaces at various points appear to be intended to give the impression of an internal room. It is considered that this treatment could not be considered to be maintenance, nor could it be considered to be consistent with the character of the structure or of neighbouring structures. It is considered that the treatment of the boundary walls to the side of the subject site could not be considered to be exempted development under section 4(1)(h) of the Planning and Development Acts 2000-2015.

9.4.2 As above, in isolation, the provision of the wall coverings is acceptable. Its use as support services to the beer garden is acceptable in principle, once the nature and extent of the use of the beer garden is defined.

#### **9.5.0 Boundary treatment of Wall Linings**

9.5.1 The appellant submits that the photographic PVC wall lining which may contain advertising is exempted development under SI 600 of 2001, class 7 as it is in an enclosed area not visible from the road. It is not clear if the subject wall linings are currently an advertisement (no obvious logo, merchandising or other branding visible on the date of the site inspection) or if advertising may be added when required. The wall linings are not visible from the public road due to the large wooden fence and gate. As noted above, it appears that the wooden fence does not have planning permission and is not exempted development. Were the fence to be removed, the wall lining would be visible from the public road and therefore would not be considered to be exempted development under class 7.

9.5.2 Notwithstanding the above, the subject wall linings as erected currently are acceptable in principle

**9.6.0 Appropriate Assessment**

9.6.1 Having regard to the nature and scale of the proposed development and / or the nature of the receiving environment, and / or proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

**9.7.0 Other**

9.7.1 As note above, the canopy over the beer garden to the side has been removed, as have the flagpoles and flags on the front elevation. Should the Board decide to grant permission, the proposed development should refer to the omission of said items.

**10.0.0 CONCLUSION AND RECOMMENDATION**

I have read the submissions on file, visited the site, and have had due regard to the provisions of the Dublin City Development Plan 2011 - 2017, the planning history on the subject and adjoining sites and all other matters arising. It is considered that, subject to compliance with the conditions set out below, the proposed development would not injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area. I recommend permission be GRANTED for the retention of the proposed development subject to the following conditions:

**REASONS AND CONSIDERATIONS**

10.1.0 Having regard to the zoning objectives for the area and pattern of development in area, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be acceptable in terms of traffic safety, public health and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

**CONDITIONS**

1. The development shall be retained 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. The proposed entrance canopy erected to the side of the public house and the proposed flag poles with flags on the front elevation shall be omitted. The structure with external staircase leading to an outdoor seating area on the roof of the temporary structures providing bar and catering facilities and the wooden gate / boundary separating the side from the rear of the beer garden shall both be removed unless authorised by a prior grant of permission

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

3. The use of the car park as a beer garden shall be restricted to the months May – September inclusive, unless authorised by a prior grant of permission.

**Reason:** In the interest of clarifying the nature and extent of the development.

4. The proposed beer garden shall be used for purposes and functions connected with the public house only, and shall not be used, sold, let or leased for events and functions independent of the public house.

**Reason:** In the interest of clarity

5. 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.

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

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**Gillian Kane**  
**Planning Inspector**  
**29/09/16**