



An  
Bord  
Pleanála

## Inspector's Report PL29N.247091

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### Development

Removal of hoarding enclosing a waste area, construction of a single storey building, change of use of existing garage to use as a kitchen and associated works.

### Location

Hole in the Wall Pub, Blackhorse Avenue, Dublin 7

### Planning Authority

Dublin City Council

### Planning Authority Reg. Ref.

2364/16

### Applicant(s)

Martin Caffrey

### Type of Application

Retention

### Planning Authority Decision

Grant retention permission

### Type of Appeal

Third Party

### Appellant(s)

Paul Haigney

### Observer(s)

None

9<sup>th</sup> November 2016

### Date of Site Inspection

### Inspector

Donal Donnelly

## 1.0 Site Location and Description

- 1.1. The appeal site is located at the Hole in the Wall Pub on Blackhorse Avenue approximately 4km north-west of Dublin city centre. Blackhorse Avenue (R806) continues along the north-eastern boundary of Phoenix Park for a distance of approximately 2.3km. The stone boundary wall of the park is located immediately to the south of the road either side of a single strip of buildings between the boundary wall and road extending for a distance of approximately 600m.
- 1.2. The appeal site is situated at the south-eastern end of the line of buildings on the south-eastern side of Blackhorse Avenue and includes the pub and car park to the east thereof. The Hole in the Wall pub has a linear form extending for approximately 90m from the main entrance in the gable to the far end, which is the subject of the development. The pub is long established at this location and takes its name from a tradition of serving drinks through a hole in the wall into Phoenix Park.
- 1.3. The subject area comprises part of the kitchen (41.48 sq.m.) containing a food prep area, fridge and dish wash area and formerly in use as a garage. Adjoining this is a bin storage area (42 sq.m.) for which retention permission is also sought.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the retention of the following:
  - Changes to the front façade consisting of the removal of previous temporary hoarding enclosing a waste area and the construction of an infill flat roofed single storey building;
  - Change of use of a previously existing garage to the current use as a kitchen wash and prep area;
  - Changes to the front façade consisting of 4 no. new windows in lieu of previous 2 no. garage doors.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Dublin City Council issued notification of decision to grant retention permission subject to five conditions.
- 3.1.2. Condition 3 requires the removal of the generator and storage tank from the roof of the premises, with no further mechanical plant to be located thereon.
- 3.1.3. Under Condition 5, it is stated that noise levels shall not cause annoyance and shall not constitute reasonable grounds for complaint.

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

- 3.2.1. The recommendation to grant retention permission, as outlined in the final Planner's Report, reflects the decision of the Planning Authority.
- 3.2.2. Under the assessment of the application, it is noted that a number of applications have been refused on the basis of unacceptable extension of a commercial use in a residential area.
- 3.2.3. The Case Planner states that the Hole in the Wall Pub is long established and would have always required the ancillary facilities for which permission is now sought. The location and appearance of these facilities from the public requires careful consideration and it is unclear to the Case Planner where they existed previously and why new facilities were created.
- 3.2.4. It is also unclear how the kitchen, wash and prep areas are accessed from the public house; an objector submits that dishes are often wheeled along the public footpath.
- 3.2.5. There is concern regarding the location of a generator and water storage tank on the roof of the bin storage area. This is considered to detract from the visual amenities of the area and a report from the Environmental Health Officer confirms that the mechanical plant on the roof has been the subject of noise complaints.
- 3.2.6. A request for further information was issued to the applicant asking for consideration of alternative locations for the wash up/ prep area and bin storage set back from the public domain and at a distance from adjacent residential property. If no such

alternative locations are available, consideration should be given to visual ameliorative measures. The applicant was also requested to give details of internal linkages.

- 3.2.7. It was confirmed in response to the further information request that an internal link between the pub and ancillary area exists and this is welcomed by the Planning Authority
- 3.2.8. The proposal to frost the windows facing the public footpath is acceptable in this case having regard to the low volume of passing pedestrian traffic and the non-availability of alternative areas on site.

## 4.0 Planning History

### Dublin City Council Reg. Reg: 4346/15

- 4.1. Planning permission refused for 1.8m high external moveable screens to enclose a proposed seating area at the south-eastern end of the pub.
- 4.2. Reasons for refusal related to the unacceptable level of disturbance for the neighbouring dwelling units and detrimental visual impact on the subject site and the surrounding area.

### Dublin City Council Reg. Reg: 6072/06

- 4.3. Permission granted for the demolition of existing structures on the site next to the Hole in the Wall pub and the construction of 5 no. townhouses.

### Dublin City Council Reg. Reg: 0007/03

- 4.4. Split decision issued granting permission for 1 no. house and refusing 1 no. house at 2 no. sites at the Hole in The Wall pub and Edgewood No.1.

### Dublin City Council Reg. Reg: 2385/99

- 4.5. Permission was refused for alterations and extension to The Hole in the Wall licensed premises comprising of Ground Floor: store and fire escape stairs, First Floor: New kitchen and carvery bar, additional dining area and new toilets. Second Floor: Staff toilets, locker room, canteen, office and dry store, fire escape stairs.
- 4.6. One of the reasons for refusal stated that the proposed extension of commercial use at three storey level abutting a residential area would be seriously injurious to the

residential amenity of residential properties adjoining, by reason of visual obtrusion, noise and general disturbance.

Dublin City Council Reg. Reg: 2960/96

- 4.7. Permission refused for the change of use of 2 no. original garages to stores to serve licensed premises. One of the reasons for refusal stated that the extension of the commercial use into a residential unit would seriously injure the amenities of property in the vicinity and would materially contravene the zoning objective for the area.

Dublin City Council Reg. Reg: 1670/94

- 4.8. Permission refused for change of use of ground floor of dwelling located at the north gable from residence to storage for pub and the demolition of the adjoining cottage and replacement with single storey store with cellar under.
- 4.9. A reason for refusal stated that the further extension of the commercial use into adjoining residential units would lead to an unacceptable intensification of this commercial use and an increase in the level of daytime and late night activity in the vicinity of adjoining residential properties.

Dublin City Council Reg. Reg: 2148/93

- 4.10. An application for change of use from residential to ancillary storage for the public house of portion of ground floor of the dwelling adjoining the northern gable of the licensed premises was refused for similar reasons to the above application.

Dublin City Council Reg. Reg: 2154/92

- 4.11. Permission granted on appeal for a 2 storey over basement extension and change of use of ground floor of adjoining dwelling to northern gable of existing licensed premises.

Dublin City Council Reg. Reg: 0734/91

- 4.12. Permission refused for change of use of existing first floor residence to restaurant, erect new 2-storey infill development comprising restaurant reception area and kitchen, internal revisions to existing lounge bar to provide 2 no. sets of ladies & gents toilets & fire escape stairs, change of use of part of existing ground floor residence to anti-room and change of use of existing garages to cold store.

Dublin City Council Reg. Reg: 294/89

- 4.13. Permission granted for the relocation of toilets, extension and lounge and alteration of storage area.

Dublin City Council Reg. Reg: 0200/88

- 4.14. Permission refused on appeal for a new entrance and conversion of store to lounge and new interior design.

**4.15. Dublin City Development Plan, 2016-2022**

- 4.15.1. The appeal site is zoned “Z1 – Sustainable Residential Neighbourhoods” where the objective is “to protect, provide and improve residential amenities.” Public houses are “open for consideration” in Z1 areas.
- 4.15.2. The site is within the boundary of the Phoenix Park Conservation Area and there is a Zone of Archaeological Interest designation around Phoenix Park immediately to the south of the site. There is a Road Scheme and Bridges objective along Blackhorse Avenue to the front of the site.

## **5.0 The Appeal**

### **5.1. Grounds of Appeal**

- 5.1.1. A third party appeal has been lodged by the resident of No. 5 St. Vincent’s Cottages, which is located opposite the site. The submission is accompanied by a noise nuisance log, planning history, before and after photos and a video depicting events described in the appeal.
- 5.1.2. The grounds of appeal and main points raised in the submission can be summarised as follows:
- Close proximity to the homes opposite ensures that even moderate noise emanating from the pub is readily audible within the homes.
  - Noise from construction works in 2014 after pub closing time could be heard from homes opposite throughout the night.

- Construction noise nuisance from conversion of residential double garage into a new commercial kitchen and adjacent flat roof shed was completed and functioning in September 2014 and operational noise nuisance became immediately apparent.
- Generator was not removed from the roof but was moved a few feet round the corner of the building partially out of sight and still on the roof level. Fuel tank is still in the same position since installation 9 months ago.
- Noise from wash up area continues 7 days a week, 14:00 to midnight and sometimes beyond. It can be heard above passing traffic and overhead aircraft.
- Practise of bringing dirty dishes to the wash up area via the public footpath has continued unchanged and the internal link appears not to be used to any real extent.
- Only solution is to overturn the retention permission as events described will continue unabated into the future.
- Wash up area could have been constructed in a location not directly behind the front façade – it seems this area was chosen to use the public footpath. Should Board grant permission, wash up area should be relocated further back from the footpath.
- Amplified music from the pub continues to be a major source of noise nuisance in the local area.

## **5.2. Applicant Response**

5.2.1. No response.

## **5.3. Planning Authority Response**

5.3.1. In response to the third party appeal, the Planning Authority states that it has no further comment to make.

## 6.0 Assessment

6.1. In my opinion, this appeal should be assessed under the following headings:

- Development principle;
- Impact on residential amenities;
- Impact on visual amenities;
- Appropriate Assessment.

### 6.2. Development principle

6.2.1. The appeal site is zoned “Z1 – Sustainable Residential Neighbourhoods” where the objective is “to protect, provide and improve residential amenities.” Public houses are “open for consideration” in Z1 areas and the Hole in the Wall pub is long established at this location. The development of facilities ancillary to this business would therefore be acceptable in principle subject to an assessment of the impact on its surroundings.

### 6.3. Impact on residential amenities

6.3.1. Many public houses have now been extended to include a restaurant element and this is often the reason for the need for expanded kitchen and waste facilities. It is stated in Section 16.29 of the Development Plan in relation to restaurants that the effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents will be taken into consideration.

6.3.2. The third party appellant’s dwelling is located on the opposite side of Blackhorse Avenue within 20m of the appeal site. There are also 2 no. 2-storey dwellings immediately adjoining the bin store and an apartment block at a distance of approximately 15m from the site. The development therefore has the potential to impact of surrounding residential amenities. Due consideration should also be taken of the fact that the kitchen extension and waste area have been developed without the benefit of planning permission and associated conditions that may have been deemed necessary to mitigate any adverse impacts on surrounding amenities.



- 6.3.3. The grounds of appeal relate mainly to the impacts of noise emanating from the development, in particular the dish wash area. The appellant has also submitted video evidence to illustrate the practise of bringing dirty dishes to the wash up area via the public footpath. It is considered that the wash up area could have been located in an area that is not directly behind the front façade of the building. The appellant also expresses concern regarding noise from a generator on the roof of the building and from bottles being taken to the bin store.
- 6.3.4. It would appear that the video footage recorded by the appellant was from the summer period when windows and doors along the front of the subject area were open. The noise of dishes being washed and bottles being wheeled along the footpath and sorted in the bin store is clearly audible. Some of the footage is recorded late in the evening and I would be in agreement that this level of noise adversely impacts on surrounding residential amenities.
- 6.3.5. At the time of my site visit, windows and doors along the front façade were closed. Furthermore, wooden frames with Perspex screens have been fitted over all the new window openings. These works appear to have been completed in recent times, possibly for the purpose of housing Christmas decorations. There was no apparent noise from the street; however, the dish washing facility was not in use at the time.
- 6.3.6. In my opinion, the greatest potential source of noise disturbance is from the dish wash area. There are four windows along the frontage where garage doors were previously located and if these windows are left open, the level of noise from dish washing can impact adversely on the amenities of properties opposite early in the morning and late into the evening.
- 6.3.7. Should the Board be minded to grant retention permission for this element of the development, I recommend that conditions are attached to limit and monitor the level of noise being omitted from the premises. Furthermore, I consider that the applicant should submit proposals for sound proofing or any other measures to ensure compliance with noise limits. This should also apply to the bin store to reduce the noise impact of bottle recycling. Noise from this area may be reduced through application of self-closing mechanisms on external doors and improved sealing around door frames.

6.3.8. The generator which was previously located on the roof of the bin store now appears to be situated to the rear of the former garage at first floor level. There are apartment balconies nearby facing onto Phoenix Park that may be adversely affected by the continual noise of this machine, particular in view of its elevated position. I recommend that it should be removed.

#### 6.4. **Impact on visual amenities**

6.4.1. Appendix 10 of the Development Plan sets out guidelines for waste storage facilities for commercial/ industrial developments. It is stated *inter alia* that there must be sufficient access and egress for receptacles to be moved to the appropriate collection point on the public street. The receptacle storage area must not be visible from the street and there should be adequate ventilation.

6.4.2. In terms of impact on visual amenities, the bin area is adequately screened from public view. Bins can be easily moved onto the street and returned to the bin store. Any proposals to improve sound proofing of this area, particularly around the main access doors, may also impact on ventilation. In my opinion, proposals for ventilating the bin storage area should be submitted to the Planning Authority for written agreement.

6.4.3. The Planning Authority has attached a condition to its notification of decision requiring the removal of the generator and storage tank from the roof. As noted, the generator has been relocated to the rear of the building and the storage tank remains in place. It should be noted that the site is located within a conservation area and the items in question would also be visible from the Phoenix Park side. I concur with the Planning Authority that these items of plant should be removed from first floor level in the interests of visual and residential amenity.

#### 6.5. **Appropriate Assessment**

6.5.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise.

## 7.0 Recommendation

- 7.1. I recommend that retention planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

## 8.0 Reasons and Considerations

Having regard to the pattern of development in the area and the long-established presence of a public house at this location, together with the requirement to provide suitable ancillary facilities for its operation, it is considered that subject to compliance with the conditions set out below, the development would not seriously injure the residential amenities of the area or of property in the vicinity, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 9.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted to the Planning Authority on the 23<sup>rd</sup> day of June 2016, 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 interests of clarity.

2. A scheme of noise mitigation measures shall be submitted to, and agreed in writing with, the planning authority within 3 months and implemented within 6 months of the date of this order. These measures shall include the

following:

- i. Sound proofing and ventilation of the bin storage area;
- ii. Use of self-closing mechanisms on external doors;
- iii. Improved sealing around door frames;
- iv. Fitting of noise attenuators to any openings required for ventilation or air conditioning purposes;
- v. Details of timeframe for activities likely to cause noise disturbance, e.g. dish washing, bottle sorting, bin removal, etc.

The applicant shall provide any additional noise mitigation measures as may be specified by the Planning Authority

**Reason:** To protect the residential amenities of property in the vicinity.

3. Noise levels shall not exceed 55 dB(A) corrected for any tonal or impulsive component as measured at the nearest dwelling between 0800 and 2000 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A) at any other time. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect the residential amenities of property in the vicinity.

4. The generator and storage tank located to the rear at first floor level and on the bin storage roof shall be removed within one month of the date of this order. No additional development shall take place anywhere on the roof of the premises, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

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

5. 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.

6. 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 Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

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Donal Donnelly  
Planning Inspector

11<sup>th</sup> November 2016