



An  
Bord  
Pleanála

## Inspector's Report ABP-302791-18

### Development

Retention permission is sought for minor alterations to the permitted development (2975/11 [PL29N.240131] and 4196/16 [PL 29N.2485522]) comprising 1) the construction of a new draught lobby (c. 13.5 sq.m.) at main entrance to restaurant on north elevation 2) the addition of glazing on western and eastern corners of restaurant to enclose c. 75.4 sq.m. of permitted restaurant space and partial realignment of southern façade 3) the addition of a retractable pergola structure over permitted restaurant space on upper terrace and 4) the addition of screened roof level plant (c. 20 sq.m.).

### Location

Clontarf Baths, Clontarf Road, Dublin 3.

### Planning Authority

Dublin City Council

### Planning Authority Reg. Ref.

3600/18

<b>Applicant(s)</b>	The Clontarf Baths and Assembly Rooms Company Ltd.
<b>Type of Application</b>	Retention permission
<b>Planning Authority Decision</b>	Split Decision (partial grant, partial refusal)
<b>Type of Appeal</b>	First Party – V - Refusal
<b>Appellant(s)</b>	The Clontarf Baths and Assembly Rooms Company Ltd.
<b>Observer(s)</b>	Peter Parkin
<b>Date of Site Inspection</b>	1 <sup>st</sup> December 2018
<b>Inspector</b>	Tom Rabbette

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## 1.0 Site Location and Description

1.1. The application site is located off the Clontarf Road in Clontarf in Dublin 3. The site has been recently redeveloped, there is a restaurant building on the northern/front part of the site and a pool to the rear/southern side of the site. There are open terraces to the south of the restaurant building. There are changing facilities at a lower level adjacent the pool.

## 2.0 Proposed Development

2.1. Retention permission is being sought for minor alterations to the permitted development (2975/11 [PL29N.240131] and 4196/16 [PL 29N.2485522]) comprising of four elements as follows:

- 1) The construction of a new draught lobby (c. 13.5 sq.m.) at main entrance to restaurant on the north elevation.
- 2) The addition of glazing on the western and eastern corners of the restaurant to enclose c. 75.4 sq.m. of permitted restaurant space and partial realignment of southern façade.
- 3) The addition of a retractable pergola structure over permitted restaurant space on upper terrace.
- 4) The addition of screened roof level plant (c. 20 sq.m.).

## 3.0 Planning Authority Decision

### 3.1. Decision

By Order dated 20/09/2018 the p.a. issued a split decision. Retention permission was granted, subject to conditions, for the new draught lobby, the addition of glazing on the western and eastern corners of the restaurant, the partial realignment of the southern façade and the addition of screened roof level plant area. Retention permission was refused for the retractable pergola structure for one reason.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

#### Report dated 20/09/18:

- Extensive planning history noted.
- Split decision recommended.

### 3.2.2. Other Technical Reports:

#### Drainage Division Report dated 24/08/18:

- No objection subject to condition.

## 3.3. Third Party Observations

There are a number of observations on file made to the p.a.:

#### Clontarf Residents Association

The submission from the above to the p.a. can be summarised as follows:

- Reference is made to the extensive planning history pertaining to the site.
- Reference is made to condition no. 2 of the Board's decision on PL 29N.240131.
- A key consideration in obtaining approval related to the fact that the pool was being brought back into use and that the restaurant would be small in scale and operate as an ancillary facility to the pool.
- The reality since the opening of the facility makes it abundantly clear that the pool is ancillary to the restaurant as opposed to the other way around.
- The opening of the restaurant and the opening/availability of the pool is compared and contrasted.
- The Board's decision in the 2016 appeal is cited.
- The parking proposals that were approved for the site, including the provision of bike stands, have not been implemented.

- The volume of cars parking at the restaurant consistently exceeds the 15 spaces that were to be provided, the current proposal does not include for additional parking facilities.
- A large-scale restaurant or other development have consistently been refused on this site.
- The retention application should be rejected.

Peter Parkin, Clontarf Road.

The submission from the above to the p.a. can be summarised as follows:

- The development is not completed in accordance with the planning permission.
- List of non-compliance issues submitted.
- Reference is made to enforcement notice being made.

## 4.0 Planning History

PL 29N.248522 (4196/16): Modifications to approved restaurant and café bar to include single storey extension to accommodate additional storage and staff facilities. The p.a. decision to grant permission was upheld on appeal.

PL 29N.240131 (2975/11): The Board granted permission, on foot of a planning authority decision to grant permission for restoration of seawater baths, provision of restaurant, cafe bar, ancillary accommodation, 15 car parking and 47 bicycle parking spaces and all ancillary works at Clontarf Baths, Clontarf Road, Dublin 3.

PL 29N.239460 (4076/10): Permission sought by Dublin City Council for alterations to existing baths and site to include a flood defence wall and link with proposed Clontarf flood defences approved by An Bord Pleanala (29N.JA0008).

PL 29N.228684 (3843/07): Permission refused to Abbeybeg Ltd for demolition of existing sheds and outbuildings associated with the former outdoor pool and construction of a day spa and all associated site works. Permission refused for one reason, which includes:

“It is considered that the proposed development, by reason of its nature, scale and intensity would not come within the scope of the zoning objective for the site and that

due to its considerable length (exceeding sixty metres and including a cantilever over the foreshore) taken in conjunction with its height and the associated surface car parking, the proposed development would compromise the recreational amenities and detract from the visual amenities of the public open space, especially the adjacent promenade and the views from it over Dublin Bay.”

PL29N. 207328 (1498/04): The planning authority decision to grant permission for a two storey mixed use development of commercial, leisure and an art gallery was overturned following three third party appeals to the Board. Permission was refused for one reason, which includes:

“The proposed development, by reason of its nature, scale, intensity and height at this prominent location on the seaward side of the promenade, would significantly detract from the character of the area, would compromise the recreational use of the promenade, would be visually obtrusive and would seriously injure the amenities of the area.”

PL 29N.125174 (4219/00): Planning authority decision to grant permission for a two storey mixed use development of commercial, leisure and residential uses along with car parking and a sculpture was overturned by the Board following third party appeals.

PL 29S84800 (1939/90): Outline permission was sought for the development of a two-storey building occupying the area where the change-rooms were located, and to refit the existing pool area to accommodate an indoor swimming pool and an outdoor swimming pool. The indoor swimming pool to be enclosed in a conservatory type structure. A restaurant was also attached to this development, and the proposal also included a revised car parking area. An appeal against the planning authority decision to refuse permission was withdrawn prior to determination.

## 5.0 Policy Context

### 5.1. Development Plan

#### Dublin City Development Plan 2016-2022

The site is zoned Z9 ‘to preserve, provide and improve recreational amenity and open space’.

The S2S 'Sutton to Sandycove Promenade and Cycleway' scheme is proximate to this site.

Section 16.2.2.3 relates to 'Alterations & Extensions'

## 5.2. Natural Heritage Designations

The site is immediately adjoin the designated SPA site ref. 004024 South Dublin Bay and River Tolka Estuary. There are also 14 other Natura 2000 sites within 15 km of the application site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The contents of the first party's grounds of appeal can be summarised as follows:

- The appeal relates to the p.a. decision to refuse retention permission for a retractable pergola structure over the existing terrace space.
- The applicant requests that the Board confines its considerations solely to the pergola structure that is the subject of the appeal, the other elements of the application being granted retention permission by the p.a.
- The regeneration of the Baths site after many years of dereliction is a significant element of community gain, replacing a dangerous anti-social space with an aesthetically pleasing building and amenity space.
- A description of, and justification for, all elements of the proposed retention development has been submitted.
- The p.a. reason for refusal, along with the reporting planner's comments in relation to the retractable pergola structure, are noted in the applicant's grounds of appeal.
- The p.a. has decided that enclosing the area represents an 'additional 105 sq.m. of enclosed dining space', the applicant holds that the subject area covered by the pergola has always been permitted patron space with a covering over.



- The pergola may provide greater enclosure than originally envisaged, but this is as a result of on-site experience and the nature of the Irish climate.
- The p.a. conclusion on additional dining space resulting in the restaurant not being subsidiary to the main use of the site is inaccurate.
- Under both 2975/11 and 4196/16, the space was shown as ‘terrace area’ and its use as such was not altered by way of condition by either ABP or the p.a.
- Under the terms of the two governing permissions, the use of the terrace space as dining area for customers was not prohibited or restricted in any manner.
- If weather permitted, the applicant would be entitled to place tables and chairs across the entire terrace setting for the use of patrons of the baths.
- The subject pergola does not have a negative visual impact as claimed by the p.a., it assimilates successfully into the new baths setting.
- The applicant tests the subject pergola against the required criteria/design standards as set out under s.16.2.2.3 ‘Alterations & Extensions’ of the CDP, said section haven been cited in the p.a. reason for refusal.
- The pergola space has a unique function that enhances the use of the baths for swimmers and allows the restaurant to operate as a commercial venture.
- The operation of the baths and the success of the commercial space are inextricably linked.
- Access to the baths is provided free of charge to swim clubs, Swim Ireland and community groups.
- The free use of the pool represents a huge element of community gain.
- There are significant running costs for the facility, in order to support the operation of this unique amenity, the restaurant area needs to be commercially viable.
- If the restaurant cannot survive, then the entire facility will be closed and access to the baths will be lost once more.
- The pergola enhances the swim experience.

- It is a unique indoor/outdoor space that functions separately to the restaurant offering in that it is easily accessible for swimmers in a casual manner following their use of the baths (reference is made to submitted pictures showing how the space is used by bath users).
- Submission includes a letter from Clontarf Swimming Club supporting the appeal.
- The submission includes 'before and after' pictures showing the new development.

## 6.2. Planning Authority Response

- There is no response from the p.a. on file at time of writing.

## 6.3. Observations

### Peter Parkin, Clontarf Road, Clontarf, Dublin 3.

The contents of the observer submission to the Board from the above can be summarised as follows:

- The car spaces and bicycle spaces for the development have not been marked or set out as in the permission granted by DCC and ABP.
- As there is no defined parking, the development is generating parking across drives and on footpaths, making it impossible for residents to gain access to their property.
- This situation is causing untold stress and anxiety for residents.
- The development has not been completed in accordance with planning permission.
- The developer continued to build without planning permission.
- The developer/owner received an enforcement notice and was instructed to remove the increased restaurant space.
- An application for retention to DCC was refused.

## 7.0 Assessment

Notwithstanding the specific grounds of first party appeal relating to that part of the proposed development that was refused permission by the p.a., this assessment and recommendation will address the entire proposal. The assessment hereunder will address each of the four elements as listed in the public notices.

Draught lobby: It is proposed to construct a new draught lobby (c. 13.5 sq.m.) at main entrance to restaurant on the north elevation. The p.a. granted permission for this part of the proposed development in their split decision. The design of this lobby is integrated with the original design of the building. It does not adversely impact on the visual amenity of the building nor on the wider area. I recommend permission be granted for this part of the development.

Additional glazing on the western and eastern ends, partial realignment of southern façade: In the development as previously permitted the roof structure extended out over an external terrace area at both the western and eastern ends of the main restaurant building, it also extended out over an external terrace area along the southern façade. The applicant is now seeking permission to effectively enclose these three areas and incorporate them into the internal floor space of the restaurant. This will result in an additional c. 75 sq.m. floor space for the restaurant. It also results in changes to the western, eastern and southern elevations.

I note that the envelope of the building (as defined by the curved roof over the main building) does not change. Parts of the previously external terrace area that were under the roof structure now become internalised spaces. It appears one of the main reasons for this change was a response to impacts from the sea with wave overtopping impacting the terrace in high tide and windy conditions.

I note that in the scheme as originally granted, the restaurant area at both the western and eastern ends adjacent the terrace areas had folding doors allowing for the restaurant area to open up to these terraces.

The p.a. has granted the retention permission for this part of the development proposal as sought. I concur with the p.a. decision. I would argue it is somewhat of a design refinement on the original proposal. It appears as a design response to the challenges of the Irish climate at this seafront location. In design terms it is well

integrated with the original structure design, it does not detract from the visual amenities of the development nor does it impact on the wider receiving environment. I recommend that the Board uphold the p.a. decision and grant permission for this part of the development.

Retractable pergola structure. It is proposed to add a retractable pergola structure over what the applicant refers to as the permitted restaurant space on the upper terrace. It is this part of the proposed development that is the focus of the first party's grounds of appeal. The p.a. refused permission for this part of the development in its split decision.

The p.a. refused permission for one reason but there are effectively two elements to this refusal. One relates to the land use zoning objective and the desire that the restaurant/café use remains subsidiary to the swimming use on the site. The p.a. is concerned that the additional floor space of c. 105 sq.m. that this pergola structure delivers to the restaurant is excessive, particularly when taken in conjunction with the extra floor space gained via the works to the western and eastern ends addressed above.

It is not an unreasonable concern by the p.a. in my opinion. The p.a. Planner's Report cites condition no. 2 of PL 29N.240131. That condition put a number of restrictions on the development with the specific reason to ensure that the restaurant/café use remains subsidiary to the main use of the site for swimming, in accordance with the recreation and open space zoning.

Notwithstanding the p.a. concerns, I am of the opinion that, on balance, the pergola structure does not conflict with condition no. 2. The pool has been refurbished and delivered as part of the original development. There has been significant planning gain arising from the redevelopment of what was a derelict urban site and the reinstatement of the pool at this location. I am persuaded by the applicant's justification for this structure. As described in the file documentation, the structure enhances the use of the pool for the swimmers. It can, and based on file documentation, it does, from time to time, operate as a unique indoor/outdoor space that functions separately to the restaurant offering. Again, the Irish climate also appears to be a contributory factor for the need for this structure. The pergola is a part design response to the challenges of the climate here providing cover for the

swimmers to warm up following the swim. Weather permitting the roof and walls of the structure can be mechanically retracted, effectively returning it back to an open terrace area. But it is also a reality that the viability of the pool depends on the commercial viability of the restaurant and, in that regard, the pergola structure does provide additional floor space to the restaurant.

Should the Board be mindful to grant permission, I would recommend that condition no. 2 of PL 29N.240131 (along with other conditions on the relevant previous permissions) be reapplied (similar to that as adopted under condition 2 on PL 29N.248522). Condition 2(c) safeguards the use of the pool here.

The second aspect of the p.a. refusal relating to the pergola structure relates to the design of it. The p.a. cited s.16.2.2.3 of the CDP relating to 'Alterations & Extensions'. They hold that the structure would detract from the visual amenities of the overall facility.

I do not concur with the p.a. in relation to the design of the structure. It reflects the overall design response of the existing new buildings on the site. I note that it was the same design practice that was involved in the parent permissions. The language and expression of the pergola is not alien to the main building on the site.

Having regard to the foregoing, I would recommend that the Board overturn the p.a. refusal for the pergola structure.

Roof Plant: This is the fourth and final element of the proposed development. The development description refers to the addition of screened roof level plant (c. 20 sq.m.). The p.a. granted permission for this part of the proposal. The applicant's documentation describes this an area of plant space that has been added to the restaurant roof comprising extract ventilation plant from the kitchen. It goes on to describe that the plant is screened by a louvered screen wall in anodised aluminium finish to match the existing windows. This part of the development is not indicated on the submitted drawings. Part of the plant is visible from the front of the building, there does not appear to be a screen wall around the plant (based on observations made on the day of the site inspection). Should the Board be disposed to a grant of permission final design details should be submitted to the p.a. for their written agreement.

Observer submission

An observer submission on file addressed to the Board and observer submissions made to the p.a. as part of the application process make reference to, inter alia, alleged non-compliance with the terms of the parent permissions pertaining to the site. I note that planning enforcement is a matter for the planning authority to address in the first instance.

### Appropriate Assessment

The site is immediately adjacent a SPA and there are an additional 14 other Natura 2000 sites within 15 km of the appeal site. There is an AA screening report on the current file. This, along with the nature of the proposed development, have been fully considered by the undersigned. I note the Board screened out Stage 2 AA in the previous applications on the site.

Having regard to the nature and scale of the proposed development and nature of the receiving environment 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.

## **8.0 Recommendation**

- 8.1. I recommend that retention permission be granted for all four elements of the proposed development subject to the conditions as indicated below.

## **9.0 Reasons and Considerations**

Having regard to the planning permissions pertaining to the site, the nature of the alterations to the permitted development and the limited scale of the proposed works, it is considered that, subject to compliance with the conditions set out below, the proposed development would not conflict with the land use zoning objective for the area, would not seriously injure the visual or recreational amenities of the area or the amenities of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The proposed 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. Prior to the commencement of development the applicant shall submit to, and agree in writing with, the planning authority, plans and elevations of the screened roof level plant area.

**Reason:** In the interests of clarity and the visual amenities of the area.

3. Other than the alterations indicated on submitted drawings, the development shall be carried out and completed in accordance with the previous permissions, granted under planning register reference numbers 2975/11 (An Bord Pleanála reference number PL 29N.240131) and 4196/16 (An Bord Pleanála PL 29N.248552).

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

4. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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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Tom Rabbette  
Inspectorate

1<sup>st</sup> December 2018