



An
Bord
Pleanála

Inspector's Report ABP-303282-18

Development	The placement of street furniture outside of Gastropub.
Location	The Merry Cobbler, 78-82 Irishtown Road, Dublin 4.
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	SF/552
Applicant(s)	Jimmy Stafford
Type of Application	Licence Application
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Jimmy Stafford
Observer(s)	None.
Date of Site Inspection	3 rd April 2019
Inspector	Ronan O'Connor

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1.0 Site Location and Description

1.1. The site is located on the eastern side of Irishtown Road and on site is a public house which is a Protected Structure. It is located to the immediate north of residential properties at 84 and 86 Irishtown Road. To the north of the site is Barrack Lane, which allows access onto Bath Street.

2.0 Proposed Development

2.1. The placement of street furniture outside of Gastropub. The application includes:

- 4 no. tables.
- 16 no. chairs.
- Timber faced plant boxes and laminated glass screens.

3.0 Planning Authority Decision

3.1. Decision

REFUSE permission on the grounds that the proposed seating would have a negative impact on existing residential amenity in adjacent properties in terms of noise and disturbance, and as such would be contrary to the Z2 zoning objective of the site which is zoned as residential conservation area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Environment and Transportation Department – Recommend refusal on amenity grounds.

Planning – does not interfere with traffic/previous complaints due to noise and customers using public footpath/submissions have been received from surrounding residents noting concerns/concerns in relation to the visual impact/setting of the Protected Structure/do not view application favourably given visual impact and the negative impact on residents.

Dublin Fire Brigade – No objection on condition not to obstruct or reduce width of escape route from building or adjoining buildings/Use of gas heaters is not permitted without prior consultation with the Fire Service.

Roads and Traffic Planning – Furniture would not cause an obstruction.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. None on file.

4.0 **Planning History**

4585/17 – **Refuse Retention Permission**- 2 no. horizontal sliding sash windows installed in the front ground floor façade for one reason relating to negative impact on the character and setting of the protected structure.

29A.LC2067 (SF552) – **Appeal against refusal Disallowed** – Screening/5 Tables/20 chairs/Plant boxes - reasons of impact on the adjoining residential amenity in terms of noise and disturbance.

29S.246669 (Reg. Ref. No 2485/16) - **Spilt decision** to amend condition no 3 relating to opening hours and permission for in house events, where the Board allowed an increase in opening hours by 30 minutes (restricted under Reg. Ref. No 2379/98) and refused to remove the restrictions in condition no 4 of Reg. Ref. No 2379/98, relating to in house events as they would seriously injure the residential amenities of property in the vicinity.

2379/98 **Permission granted** to serve food in the new bar and condition no 3 restricted the use of premises to 00.30 and condition no 4 restricted the use of nightclubs or large organised functions.

0498/98 **Permission granted** for alterations to residents bar and lounge and condition no 2 restricted any nightclub use on the premises.

5.0 Policy and Context

5.1. The public house is a Protected Structure and therefore the following policy and guidance are relevant.

- Architectural Heritage Guidelines for Planning Authorities, 2004. Development guidelines for Protected Structures and Areas of Architectural Conservation

5.2. Development Plan

Dublin City Development Plan 2016-2022

5.2.1. The site is zoned in Z2 "To protect and/or improve the amenities of residential conservation areas".

- Objective S1O26: To protect residents of mixed-use development from noise emanating from other uses such as shops, office, nightclubs, late night busking, public houses and other night time uses through the planning system.
- Section 9.5.8 Noise Pollution: Minimise the impact of noise pollution by controlling developments which are noise sensitive away from more sensitive areas such as residential areas. If it is likely to create disturbance due to noise, a condition can be imposed limiting the hours of operation and level of noise generation.
- CHC4: To protect the special interest and character of all Dublin's Conservation Areas. Development will contribute positively the character and distinctiveness of the appearance and setting.
- Development Management Standards - S.16.30 Street furniture.

5.3. Natural Heritage Designations

5.3.1. South Dublin Bay and River Tolka SPA (code 004024) c.750m to southeast and South Dublin Bay SAC (code 000210) c. 700m to southeast.

5.4. EIA Screening

5.4.1. Having regard to the nature and scale of the proposed development there is no real likelihood of significant effects on the environment arising from the proposed

development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The Grounds of Appeal are as follows:

- Concerned that having lodged the application on 13th June 2018 the decision was not made until 21st November 2018 – 23 weeks after lodgement – understood that a planning decision must be made within 8 weeks of lodgement – assume that the decision to refuse must be invalid.
- DCC reference is SF552 – This is exactly the same DCC reference is the previous unsuccessful application lodged in May 2017/concerned that the incorrect application was adjudicated upon/later application did not have the same layout or area.
- Pub is open for food from noon until 10pm.
- Have submitted information/photographs in relation to other licenced premises that have street furniture and are also located adjacent to residential premises/submitted map showing adjacent and nearby land uses.
- Contend the external seating would cause no greater noise and disturbance than at the licenced premises referred to.
- Vintage Inn, at 74 Irishtown Road, has a beer garden with seating that adjoins a residential premises.
- Would be unfair to deny applicant use of the area at its street frontage.
- Area in question is well recessed from the street and screen by a large mature tree.
- Building immediately to the north is a 3 storey office block/Busy Garda Station across the road which is open night and day.
- Dwelling to the south is setback 5m from the front of the Merry Cobbler/metal railing and bicycle stand between it and the proposed seating area/seating area

can have a 2m high screen at this end to give further privacy to No. 84 Irishtown Road.

- Will only be used during favourable weather.

6.2. **Planning Authority Response**

6.2.1. None.

6.3. **Observations**

6.3.1. None.

7.0 **Assessment**

7.1. The appeal is made under the provisions of Section 254 of the Planning and Development Act, 2000, which relates to licensing of appliances and cables etc., on public roads. Subsection 5 states that in consideration of an application for licence under 254 a planning authority, or Board on appeal, shall have regard to the following:

- a) The proper planning and sustainable development of the area,
- b) Any relevant provisions of the development plan, or local area plan,
- c) The number and location of existing appliances, apparatuses or structures, on under, over or along the public road, and
- d) The convenience and safety of road uses including pedestrians.

7.1.1. Having regard to the above, the main issues of the appeal can be dealt under the following headings:

- Residential Amenity
- Built Heritage
- Access and Pedestrian Movement.
- Other Matters
- Appropriate Assessment

7.2. Residential Amenity

- 7.2.1. The existing public bar is located beside two residential properties which have large front gardens close to the proposed seating area.
- 7.2.2. The appellant has also cited examples of other licenced premises that have seating in proximity to residential uses. On this point I note that each application is considered on its own merits.
- 7.2.3. The appellant also notes that that this current application differs from the previous application as the number of tables has been reduced. I note that one of the tables that was previously proposed (Appeal Ref 29A.LC2067) has been omitted from this proposal, resulting in a reduction in the number of seats from 20 to 16. My view is that the reduction in the number of table/seats does not overcome the previous concerns of the Board having regard to residential amenity. The previous Inspector cited concerns in relation to the location of the seating approximately 2m from the adjoining property. This is essentially still the case, despite the removal of one of the tables from the proposed seating area. As such there are still concerns relating to residential amenity, having regard to noise emanating from the seating area.

7.3. Built Heritage

- 7.3.1. The existing building is a Protected Structure and is located within a conservation area. Policy CHC4 of the development requires that all development contributes to the character and protection of the special interest of all Dublin's Conservation Areas. As per the previous application for seating, planters and screening on this site, I do not consider the proposal would have a negative impact on the overall character or setting of the Protected Structure nor would it impact on the character of the residential conservation area.

7.4. Access and Pedestrian Movement

- 7.4.1. There is no objection to the proposed development, having regard to access and pedestrian movement, as there remains sufficient space to the front of the premises and the proposal would not cause any inconvenience or negative impact on the safety of road users including pedestrians.

7.5. Other Matters

7.5.1. The appellant cites concern that the previous application drawings may have been considered by the planning authority. On this point I note that the drawings received from the planning authority, in relation to this current appeal, differ from the drawings that were considered under the previous appeal.

7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature and scale of the proposed development within a serviced area and separation distance to the nearest European site, 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 the conservation objectives of any European site.

8.0 **Recommendation**

8.1. It is recommended that the proposed development is refused for the reasons and considerations as set out below.

9.0 **Reasons and Considerations**

Having regard to the location of the gastropub directly adjacent to residential properties, the Z2 zoning "To protect and/or improve the amenities of residential conservation areas", the planning history (An Bord Pleanála appeal reference number 29A.LC2067, planning register reference number SF552) and the guidance in Section 9.5.8 of the Development Plan for the appropriate location of development in noise sensitive locations, it is considered that the proposed development, consisting of an outdoor seating area for 16 people, would seriously injure the residential amenities of the adjoining properties. To grant a licence would, therefore, be contrary to the proper planning and sustainable development of the area.

Rónán O'Connor
Planning Inspector

08th April 2019