



An  
Bord  
Pleanála

## Inspector's Report ABP-303477-19

### Development

PROTECTED STRUCTURE:

Retention & temporary continuation of use of beer garden/outdoor dining area.

### Location

The Bernard Shaw Public House, 11-12, Richmond Street South, Dublin 2

### Planning Authority

Dublin City Council South

### Planning Authority Reg. Ref.

4233/18

### Applicant(s)

Bernard Shaw Taverns Ltd.

### Type of Application

Permission.

### Planning Authority Decision

Grant Permission subject to conditions.

### Type of Appeal

Third Party

### Appellant(s)

Linda Hickey.

### Observer(s)

Transport Infrastructure Ireland TII.

### Date of Site Inspection

02 April 2019.

### Inspector

Brid Maxwell

## 1.0 Site Location and Description

- 1.1. The appeal site consists of a public house “The Bernard Shaw” located in the Portobello area of the South City Centre, Dublin. The premises are located on the east side of South Richmond Street approximately 95m south of its junction with Harcourt Road and Harrington Street and 175m north of the Grand Canal. The area is mixed use in character including commercial and residential properties with significant areas of redevelopment. The vibrancy of the area is somewhat diminished by the presence of several derelict sites and vacant buildings as well as ongoing construction projects. To the west of the site on South Richmond Street is mainly characterised by red brick Victorian terraces of two and three storey buildings which are mainly in commercial use or vacant. To the east and rear of the site is a significant urban block extending from Charlemont Street / Charlemont Mall, Richmond Street South, Tom Kelly Road and Harcourt Street currently under redevelopment as a mixed-use urban regeneration project including new street, residential units, retail, office, restaurant, multiplex cinema, community sports centre and childcare facility. (PL29S238212 PL29S240620 refer.)
- 1.2. The Bernard Shaw public house (11-12 Richmond Street South) is a protected structure dating from 1895. The site also includes an existing open yard to the rear and part of derelict lands of 13 and 14 Richmond Street South. Adjoining to the north of the site is the connected temporary food market “Eatyard” which operates short food festivals and events.
- 1.3. The site is irregular in shape extending to connected sections to the rear comprising smoking area, beer garden and open-air dining area. The smoking area is covered by awnings and an area between the awnings and the Big Blue Bus pizza kitchen and dining area 43sq.m (a modified double decker bus) is open air.
- 1.4. The Bernard Shaw operates as a public house and café, with music events DJs and live bands Thursday – Sunday. Website <http://thebernardshaw.com/> advertises operational opening hours as follows:
- Bar: Mon-Sub 12pm – Close
- Café: Mon-Sat 10:00-16:00
- Big Blue Bus Pizza; Mon-Wed 16:00-23:00 Thurs -Sub 12:00-close.

## 2.0 Proposed Development

- 2.1. The proposal does not involve any works rather involves the temporary continuation of use for a period of 3 years of the semi-covered smoking area and beer garden / outdoor dining area previously permitted under Reg Ref 4332/08 and reg ref 3497/13 (ABP Ref PL29S242944 and “The Big Blue Bus” pizza kitchen and dining area of 43 sq.m (as previously permitted by Ref Ref 3334/12 (ABP. PL29S242235) and Reg Ref 2207/14).
- 2.2. Application details indicate that it is with an eye on continued utilisation of derelict lands that The Bernard Shaw wishes to maintain its operation of a beer garden and open dining area. This forward looking perspective accepts the impermanence of the use with an eye to potential redevelopment of the site and adjoining property holdings.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1 By order dated 13<sup>th</sup> December 2018 Dublin City Council notified of decision to grant permission and retention permission subject to 4 conditions which included the following:

- Condition 2. Restriction permission to a period of 3 years.
- Condition 3. Terms and conditions of permission for the original development Reg Ref 3334/12 (PL29S242235), Reg Ref 2227/14, Reg Ref 3848/10 and Reg Ref 3497/13 shall be fully complied with.
- Condition 4. Compliance with Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

### 3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's report concludes that given the site's location in a dense urban environment the continuation of the temporary use is acceptable and recommends permission subject to conditions. In relation to third party submissions it is asserted that contact with Environmental Health Office confirmed no recent complaints and while Enforcement Officer advised of "queries with regard to noise" and ongoing monitoring and noise conditions recommended.

### 3.2.2. Other Technical Reports

Conservation Officer's report notes no additional impact on built fabric.

Engineering Department – drainage division indicates no objection subject to compliance with the Greater Dublin Regional Code of Practice for Drainage Works and compliance with previous conditions relating to surface water management.

### 3.3. Prescribed Bodies

Transport Infrastructure Ireland notes location within area for S49 Supplementary Development Contribution Scheme – Luas Cross City. St Stephen's Green to Broombridge Line.

### 3.4. Third Party Observations

A number of submissions from local residents (Lennox Street) object on common grounds including

- Failure to provide acoustic barriers as required by previous permission. Operation during summer months as an open-air live music venue results in significant detrimental impact on residential amenity.
- Protected structure status of residential properties in the vicinity prevents installation of double glazing to mitigate noise pollution.
- Public order issues.
- Cumulative impact of public houses / restaurants in the area.
- Acoustic tests required.

## 4.0 Planning History

### 4.1 There is an extensive planning history on the site which including:

**2207/14** Continuation of use of the Big Blue Bus as previously permitted under Reg Ref 3334/12 (ABP PL29S242235) for a temporary period of 3 no years. Permission granted in 2014 to end 20<sup>th</sup> May 2017.

**PL29S242944 3497/13** 11/12 & 13/14 Richmond Street South.

Continuation of use of the smoking area (permitted under 4332/08) replacement of the existing canopy over the smoking area; continuation of use of the beer garden and outdoor dining area for a temporary period of 5 years and erection of a 9 m high acoustic screen wall and two noise barriers (6 m high and 2,5n high to partially enclose the beer garden / outdoor dining area; soft landscaping and all associated site development works. First party appeal in respect of development contribution.

**ED 514/12** Enforcement file in relation to expired temporary permission.

**PL29S242235 3334/12.** 11/12 13/14 Richmond Street South Board granted permission for a temporary period expiring on 21<sup>st</sup> April 2014 for Retention of 'The Big Blue Bus' double decker bus used as a pizza kitchen and dining area and permission for construction of an acoustic screen wall 9m high and 12 m wide and 1.2m deep consisting of scaffolding and painted plywood sheeting designed and laid out in an artistic abstract composition in the approved beer garden and outdoor dining area.

**PL29S238352 3848/10** 13&14 Richmond Street South. Temporary 3-year permission granted for change of use of open yard and part derelict lands to use as a beer garden and open dining area with access to the Bernard Shaw public house. First party appeal to the Board related to financial contributions and duration of temporary permission condition. Permission Expired 10 April 2014.

**4332/08** Retention permission for single storey 55 sq.m smoking enclosure to side of Bernard Shaw public house, protected structures, Granted for a period of 3 years. Expired 2011.

**2684/10** 13, 14 & 16 Richmond Street South. Application for change of use from residential/commercial/mixed use to new use to allow parking and storage of motor vehicles for a temporary period of 5 years. Refused 2010.

## 5.0 Policy and Context

### 5.1. Development Plan

- The Dublin City Development Plan 2016-2022 is the statutory plan for the area.
- The site is zoned Z10 *“inner suburban and inner city sustainable mixed uses”*
- The objective is *“To consolidate and facilitate the development of inner city and inner suburban sites for mixed uses, with residential the predominant use in suburban locations, and office/retail residential the predominant uses in inner city areas.”*

I note that public house is not a use that is either permissible or open for consideration in Z10 zone. Restaurant is a permissible use.

- Section 6.5.4 refers to Regeneration / Vacant Land / Active Land Management. It is stated that *“The City Council will look positively on appropriate temporary uses as interim solutions for vacant land and properties.”*
- Policy CEE 16(v) seeks *“To promote and facilitate the use, including the temporary use of vacant commercial space and vacant sites, for a wide range of enterprise including cultural uses, and which would comply with the proper planning and sustainable development of the area and the provisions of the development plan.”*
- 16.29 Restaurants

“The positive contribution of café and restaurant uses and the clusters of such uses to the vitality of the city is recognised.

In considering applications for restaurants, the following will be taken into consideration:

- The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents
- Traffic considerations

- Waste storage facilities
- The number/frequency of restaurants and other retail services in the area (where a proposal relates to a Category 1 or 2 shopping street as defined in, ‘City Centre Retail Core, Principal Shopping Streets’ in Chapter 7 and Appendix 3).
- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.

- **16.32 Night Clubs/Licensed Premises/Casinos/Private Members’ Clubs**

“In recognition of the importance of Dublin as a thriving and multi-dimensional capital city, there is a need to facilitate the concept of the 24-hour city, particularly in the city centre and other key district centres. Dublin City Council will encourage entertainment/cultural/music uses which help create an exciting city for residents and tourists alike, and which are capable of attracting people in cutting edge industries such as digital media. There is a need to strike an appropriate balance between the role of these entertainment uses in the economy of the city and the following:

- To maintain high-quality retail functions on the primary city centre streets and ensure a balanced mix of uses
- To protect the amenities of residents from an over-concentration of late night venues.
- Noise emanating from and at the boundaries of these establishments are issues which will need to be addressed in planning applications for such establishments. Noise insulation and reduction measures, especially relating to any mechanical ventilation or air-conditioning, will be required to be submitted with any such planning application.
- The development of ‘superpubs’ will be discouraged and the concentration of pubs will be restricted in certain areas of the city where there is a danger of overconcentration of these to the detriment of other uses.
- In cases where new uses, including uses such as casinos and private members’ clubs, extensions to the existing use or variation in opening hours of a public house are proposed, the onus is on the applicant to demonstrate that such proposed development will not be detrimental to the residential, environmental quality or the established character and function of the area.

Matters that shall be taken into account by the planning authority in assessing planning proposals for these uses and extensions to such uses include, but are not limited to the following:

- The amenity of neighbouring residents and occupiers
- Hours of operation
- Traffic management
- Shop frontage treatment and impact on streetscape
- Proposed signage.

## 5.2. **Natural Heritage Designations**

None

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The appeal is submitted by nearby resident Linda Hickey, 8 Lennox Street. Grounds of appeal are summarised as follows:

- Previous conditions regarding noise abatement related to residences to the rear of the site and do not address noise nuisance to Lennox Street. Applicant has not complied with these previous specifications.
- Dublin City Council failed to take appropriate account of third-party concerns.
- Environmental Health Office do not deal with noise complaints from patrons in outdoor smoking areas therefore reference to absence of such complaints within the planner's report irrelevant.
- Requirement for a specific plan for abatement to address the concerns of residents of Lennox Street. A decibel test should be carried out to ensure appropriate measures can be enforced.



## 6.2. Applicant Response

The applicant did not respond to the grounds of appeal

## 6.3. Planning Authority Response

The response of the Planning Authority asserts that the reasoning on which the Planning Authority's application is based is set out in the Planner's report.

## 6.4. Observations

Submission from Transport Infrastructure Ireland notes location within area set out in Section 49 Luas Cross City (St Stephen's Green to Broombridge Line) Contribution Scheme.

## 7.0 Assessment

7.1. Having inspected the site and reviewed the documentation on file, I consider that the key issue raised within the appeal can be considered under the following broad headings:

- Principle of Development
- Impact on Residential Amenity. – Noise
- Appropriate Assessment Screening

## 7.2 Principle of Development

7.2.1 On the matter of the principle of development, I note that the initial temporary permission for smoking area was granted for a 3-year period in 2008 (4332/08) while temporary 3-year permission for change of use of open yard to use as beer garden and outdoor dining area was granted initially for a temporary 3-year period in 2011 (3828/10). Notably the zoning objective pertaining at that time was Z4 Mixed Services facilities where public house was a permissible use. As outlined above under the current zoning objective public house is neither permissible nor open for

consideration within the Z10 zoning. I note the comments of the Dublin City Council planning officer in assessment of 3848/10 regarding the appropriateness of a temporary permission in order to enable monitoring of the impact of the proposal on the amenities of properties in the vicinity and so as not to prejudice the redevelopment of the site and to secure a long-term sustainable use on site. A first party appeal of the decision 238352 related to conditions only – financial contribution and duration of temporary permission. I note the reporting inspector also reiterated noted the appropriateness of obtaining a sustainable use for the land in order to stem the continued vacant use prevailing at this location. Therefore, a temporary use that would not inhibit an appropriate long-term sustainable use for the site was recommended and within the Board's decision the duration of the permission was increased from 2 to 3 years.

7.2.2 The initial permission for beer garden use in 2011 has subsequently been extended in a somewhat piecemeal and haphazard fashion as outlined at Section 4 above. I note that concerns with regard to the policies and objectives to intensify use on these underutilised lands were reiterated in the report of the Planning Inspector in case PL242235 in 2013 (Retention of the big blue bus) and the issue of principle of use on the site was deemed acceptable subject to an assurance that the existing activities and permissions on site would not prejudice comprehensive redevelopment when circumstances permit.

7.2.3 It is apt to reflect on the significant time lapse between initial applications for the “temporary” uses on the site and numerous and piecemeal renewal permissions in the interim. The documentation provided on the current appeal file fails to provide any information with regard to the medium / long term plans and prospects for the site. I have some concerns with regard the apparent lack of any progress on this matter given the zoning objective Z10 which envisages a relatively intensive form of development and range of uses including a significant supply of housing and employment space. Notwithstanding these concerns, I note that the existing use on the site is clearly a vibrant enterprise with its own unique character within an area notable for the extent of dereliction. In light of the provisions within the development

plan regarding 'non-conforming use' and provision for temporary uses to promote active land management for vacant sites, I consider that the principle of development for a further limited period is acceptable. However, I would consider that efforts to secure a long-term sustainable use for the site should be intensified by the relevant parties.

### **7.3 Impact no residential amenity – Noise**

7.3.1 The impact on residential amenity arising from noise is the key issue raised within the grounds of appeal and in submissions by local residents to the Planning Authority. I note an apparent change in the characteristics of noise emanating from the site whereby in submissions in respect of previous permissions (in particular 242235) the key concerns raised (by nearest noise sensitive location - residents to the east of the site) related to the chatter of people as opposed to music noise. Given the significant redevelopment of the land to the east such residential amenity impacts do not currently arise and third-party submissions are from residents of Lennox Street, however future occupation of redeveloped lands should be considered in the assessment of noise.

7.3.2 The third-party appellant and other third-party submissions to the local authority refer to amplified music noise nuisance arising on the site. Submissions also submit that the applicant failed to provide for noise mitigation as previously proposed. The first party provides no information with regard to noise levels arising and does not respond to the grounds of appeal which is somewhat disappointing given previous undertakings regarding sound insulation and noise attenuation. I further note that the planning report on file provides no information regarding monitoring of noise levels over time. I consider that in order to make a case for the continuation of the use on this site supporting evidence to include measurements of the noise environment by reference to existing and future residential layouts should be provided together with detailed noise mitigation measures as appropriate. The Development Plan clearly places the onus on the developer to demonstrate that the any proposed development will not be detrimental to the residential quality of the area. I

recommend that the Board should therefore issue a request for additional information to determine the acceptability of any such impact arising.

#### **7.4 Appropriate Assessment**

7.4.1 The site is not within a Natura 2000 site. Having regard to the nature of the development and nature of the receiving environment, and proximity to 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 a European Site.

#### **8.0 Recommendation**

8.1. Having regard to the foregoing I recommend that the Board request the following further information:

- Clarify the precise details of the nature of the use proposed to be retained for a temporary period on the site.
- Submit a detailed noise assessment to include details of the existing background noise levels measured at different periods to determine level of noise typically and occasionally arising from the use and any proposed mitigation measures to reduce noise nuisance by reference to impact on local residential areas and in the context of acceptable noise limits for residential areas. Details of the method used to compile the report and examples of the calculations and assumptions made should be clearly set out.
- Outline medium /long term plans in relation to the site in the context of the desirability to secure a long-term sustainable use for the site in accordance with the zoning objectives of the Dublin City Council Development Plan 2016-2022.

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Bríd Maxwell  
Planning Inspector

15<sup>th</sup> April 2019