



An
Bord
Pleanála

Inspector's Report ABP-303510-19

Development	Change of use from retail to public house
Location	The Ivy House, 114 Drumcondra Road Upper, Drumcondra, Dublin 9
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	3889/18
Applicant(s)	Shane Carthy.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Rory O'Hagan
Observer(s)	None
Date of Site Inspection	13 th May 2019
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site is located close to the City Centre in Drumcondra Village on the eastern side of Drumcondra Road – a four lane carriage way incorporating two-way lanes separately for traffic and buses in addition to cycle ways. The site is at the northern end of parades of predominantly commercial frontage development on the same side of the road and opposite the Skylon hotel and DCU Campus further south.
- 1.2. The site is on a corner of the main road and a service lane which extends along the rear of the commercial development to the south and has a number of shed type premises and a vacant house in the applicant's ownership. The site is adjacent to a pair of semi-detached dwellings nos. 116 and 118 to the north – The rear garden of no. 116 is immediately adjacent and partially wraps around the rear boundary. All Hallows Square town house development on the mature grounds of All Hallows college to the east.
- 1.3. There is a three storey detached property on the site with five bays symmetrically balanced– the principal building dates in style from the Edwardian era with a later extension including the subject single storey extension to the side on what appears to be the original earlier entrance alongside the lane to the house to the rear (old 6-inch map). The key elements are the original red brick facade with stone pilasters and detailing and decorative parapet which are all intact. Upper floor windows have been replaced with uPVC and modifications have been made to entrance openings and 'shopfront' windows.
- 1.4. The property is substantially occupied by a public house which is accessed from the Drumcondra Road and also from the lane to the south where there are benches. Internally, there is a large open style lounge area which extends into a restaurant area and opens out to a beer garden to the rear and the side. There is a bar area with access only off the lane. The lounge and bar areas are not interconnected for patrons.
- 1.5. The beer garden has seating and retractable open sided canopies and lighting. A raised decked area at about 500mm above the ground adjoins the boundary wall and a printed sign prohibits standing on it.

- 1.6. The upper floor levels provide ancillary areas for catering, staff facilities (first floor 170sq.m.) and office and other rooms at second floor (108 sq.m.) as per drawings.
- 1.7. The subject development area relates to two retail units -one of which is part of the ground floor of the original premises and one of which relates to a single storey extension annex to the side. Both of these shop frontages have been boarded up and painted to integrate with the façade of the public house premises. There is no interconnection with the original premises. Upper floor access is located between the lounge and retail entrances.
- 1.8. At time of inspection, around 7.30pm in the evening there were about 20 patrons throughout the lounge, bar and beer garden.
- 1.9. The adjacent dwelling no 116 is occupied and had two cars parked outside. A taxi was parked across the entrance.

2.0 Proposed Development

- 2.1. It is proposed to **change the use of vacant retail premises into a public house** so as to extend the existing public house use from a total ground floor area of 539 sq,m to 670 sq.m. based on the ground floor drawings. The application form states a total floor area for public house is **871 sq.m.** The main elements of proposal include:
 - Demolition of single storey elements to side and rebuilding over same footprint with horizontal alignment with principal elements of existing façade.
 - Interconnection between two retail units to provide second open plan lounge and interconnection with existing lounge and with existing bar via a new corridor.
 - New toilet arrangements and modification to existing bar/toilet layout to provide interconnection.
 - Façade alteration include a new shopfront extending across existing retail units in a unified manner and new window openings along the laneway frontage. Blocking up of one of the pub doors from lane.
 - Internally lobby is proposed.
- 2.2. Further information clarifies
 - Hours of operation are currently up to 2.30 a.m. on Thursday, Friday and Saturday - no expansion of events anticipated.
 - Cleaning and anti-litter measures.

- Noise control includes customer activity management and dispersal, locked max music amps, (no levels given) locked windows and lobbies at access points
- Details of mechanical ventilation to be provided, vent to 1m over eaves. New ventilation duct work extending from the roof of the ground floor kitchen and across the first-floor kitchen and up to the chimney pot height 4.7m from northern boundary.
- Revised shopfront details where over-cladding of original architectural features is removed indicates pressed metal canopy detail for downlighters and details of finishes. Drawings show: Window detail modifications along lane

3.0 Planning Authority Decision

3.1. Decision

Following a request for further information and submission of details to the satisfaction of the planning authority, a decision to Grant permission subject to 10 conditions was made on 28/1/19.

Condition 1- standard compliance

Condition 2 - omits proposed changes to shopfront of former retail unit and provides for a window in keeping with the character of building

Conditions 3,4, 5, 8 and 9 - refer to drainage, construction management, and protection of roads ad footpath

Condition 6 - refers to construction and operational noise

Condition 7 - refers to control of fumes and odours

Condition 10 - restricts advertisements/signage

3.2. Planning Authority Reports

- 3.2.1. Planning Reports: In the initial report it is noted that the development is acceptable in principle and a comprehensive range of policies and objectives are cited in respect of district centres, super pubs and shopfront design and the need to protect amenity.
- 3.2.2. The previous proposal 4832/05 permitted potential capacity for 600-710 patrons in the entire public house and the additional net 80 sq.m. would increase this by capacity by up to 160 patrons.

- 3.2.3. While noting the development plan policy for superpub this is stated to be not defined. However, the total floor is not considered excessive having regard to size of other large suburban pub, nor it is considered to contribute to excessive concentration of such uses having regard to 6 others within 1km and catchment.
- 3.2.4. The loss of retail is not an issue as it not Level 1 or 2 retailing.
- 3.2.5. Further information was requested in respect of noise, hours of operation, nature of use in premises with expanded area, sanitation, noise control of customers, music plant, ventilation and shopfront design in context of council policy.
- 3.2.6. Other Technical Reports
- Roads Streets and Traffic: Attention drawn to overhanging onto laneway. Subject to addressing this among standard condition there is no objection
 - Drainage: No objection subject to conditions
 - EHO: no report

4.0 Planning History

4.1. The site:

PA ref 653/00 refers to permission for renovations and extension to the Ivy House Public House, to include alterations to the front elevation, provision of a two storey extension to the side alleyway with a separate bar entrance, a seating and storage extension to the rear, and alterations to the existing flat roof. Condition 7 states

The rear (east) of the site shall not be used as a sitting out area for the public or as a beer garden without the receipt of a prior grant of planning permission from the planning authority or An Bord Pleanala on appeal. Reason: To protect the amenities of the area.

PA 2397/00 refers to permission for Change of use from ground floor Beauty Salon and first floor office accommodation to Public House/Restaurant use, the relocation of the existing clock sign on the front elevation to the side elevation, additional signage at high level on the front elevation, provision of security shutters to the side elevation, removal of the existing boiler house in the rear yard and renovation to the existing Beer Garden. Conditions include:

The east boundary of the beer garden shall be provided with screen planting along its entire length. The beer garden shall not operate or be used by the public after 10 pm (22.00 hours) Monday to Sunday inclusive. Reason: To protect the amenities of the area, including the amenities of residents of future residential development on adjoining lands to the east.

The sound levels of any loudspeaker announcements, music or other material played or projected in the premises shall be controlled so that it is not audible in outside of the premises or in adjoining premises. REASON: To protect the amenities of the area.

PA ref 2459/04 refers to permission retention of shopfront including fire exit doors at ground floor of the Ivy House subject to: The proposed development shall be carried out in conformity with the terms and conditions of the decision to grant planning permission under Reg Ref 0653/00 and Reg Ref 2397/00, save as amended to conform with the revisions indicated in the plans lodged in connection with this application. Reason: In the interests of orderly development.

PA ref 2470/00 refers to permission retention of reduced extension other than that previously approved.

PA ref. 4832/05 refers to a refusal for extension which included first floor terrace.

4.2. Nos. 116,118,120 Upper Drumcondra Road, Dublin 9: An Bord Pleanala Ref.

249201 refers to a refusal of permission for reconstruction, alteration and reuse existing building and construction of new 4-storey building to provide 27 apartments, cafe/bistro, car parking.

Having regard to the siting, scale, mass and height of the proposal and the proximity of the development to adjoining property, it is considered that the proposed development would constitute overdevelopment of the site, would result in an unacceptable level of overlooking, would have an excessively overbearing effect on adjoining property and would result in an unacceptably low level of residential amenity for adjoining residents and future occupants. The proposed development fails to integrate or be compatible with the design and scale of the adjoining buildings and as a result, would seriously injure the visual amenities of the streetscape and would have an adverse impact on the character of Upper Drumcondra Road. The proposed development would, therefore, by itself and by the precedent it would set for other development, seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

Furthermore, it is considered that the proposed development would provide a poor standard of residential accommodation which would result in an unacceptable level of residential

amenity for future occupants, would be contrary to the Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities, to the provisions of the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.

4.3. Large pubs in city: An Bord Pleanala ref 249126 refers to permission for superpub type application in the city (Harcourt street) and which included works to a protected structure. It was for 1256 sq.m. of gross floor area including ancillary areas. (against decision to refuse by PA due its nature and overconcentration of such uses in area and impact residential amenity). Condition of permission restricted use to 11pm:

2. The bar/restaurant shall not be used as a nightclub and shall only be used between 0800 hours and 2300 hours.

Reason: In the interest of residential amenity

3.(a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than three dB(A) during the period 0800 to 2300 hours and by more than one dB(A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeq.T.

(b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be subject to the same locational and decibel exceedance criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at LAeqT.

(c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either

(i) during a temporary shutdown of the specific noise source, or (ii) during a period immediately before or after the specific noise source operates.

(d) When measuring the specific noise, the time (T) shall be any five-minute period during which the sound emission from the premises is at its maximum level.

(e) Any measuring instrument shall be precision grade.

Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. An acoustical analysis shall be included with this submission to the planning authority.

Reason: In order to protect the amenities of property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.

5.0 Policy and Context

5.1. Development Plan

5.1.1. The site is in an urban village location that is classed as a **district centre** where Land-Use Zoning **Objective Z4: To provide for and improve mixed-services facilities** applies. Land-Use Zoning **Objective Z1** (residential) applies to the adjacent land to the north and east.

5.1.2. Section 14.7 refers to **Transitional Zone Areas**

.... In dealing with development proposals in these contiguous transitional zone areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones. For instance, in zones abutting residential areas or abutting residential development within predominately mixed-use zones, particular attention must be paid to the use, scale, density and design of development proposals and to landscaping and screening proposals in order to protect the amenities of residential properties.

5.1.3. Drumcondra is a **district centre but not a 'key District'**. The development plan states that:

The District centres, which include urban villages, provide a far higher level of services than neighbourhood centres. They have outlets of greater size selling goods or providing services of a higher order, and their catchment area extends spatially to a far greater area than that of neighbourhood centres (see Chapter 7 and Appendix 3 for details of policies, standards and the retail strategy). As the top tier of the urban centres outside the city centre, key district centres have been identified which will provide a comprehensive range of commercial and community services. These centres often attract large volumes of traffic and should, therefore, be well served by public transport. To maintain their role as district centres, new development should enhance their attractiveness and safety for pedestrians and a diversity of uses should be promoted to maintain their vitality throughout the day and evening. In this regard, opportunity should be taken to use the levels above ground level for additional commercial/retail/ services or residential use with appropriate social facilities.

5.1.4. Section 16.32 provides assessment criteria for **Licensed Premises** among other late-night uses. It states that:

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 and proposed signage.**

- 5.1.5. Section 16.24.2 and Policy CHC 1 aims to protect and retain traditional shopfronts and to encourage new and contemporary shopfronts that are well designed. Should relate to the proportions and upper floor and not obscure original features.

5.2. Natural Heritage Designations

- 5.2.1. The site is approximately 2km from the South Dublin Bay and Tolka River Estuary SPA (site code 004024) and approximately 4km from North Bull Island SPA and about 4.8km from the South Dublin Bay SAC (00210).

5.3. EIA Screening

- 5.3.1. Having regard to nature of the development comprising change of use and works to a small element of an existing commercial development in an urban area, it is considered that 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. Corr and Associates on behalf of the neighbour in the adjacent dwelling has lodged an appeal which is based on the impact of nature of use and its intensification on residential amenity. Concerns specifically relate to noise (day and night), littering, broken bottles, antisocial behaviour and obstruction of driveway. Noise has not been adequately addressed and should be subject a comprehensive acoustic assessment.

6.2. Applicant Response

- The proposal development is further way from no.116 than the existing bar
- There are no grounds for believing there would additional noise or nuisance
- The public house is very well run with no records of Garda visits consequent on complaints
- No objections have made to application for license for public house
- No evidence of customers blocking driveway.
- Noise control is addressed in further information and conditions of permission.
- The location is commercial as well as residential
- A retail activity could have the activity as a public house premises.

6.3. Planning Authority Response

- None

7.0 Assessment

- 7.1. This appeal relates to the expansion of a public house in a commercial area that is immediately bound by residential development that is protected by residential zoning. The key issues relate to: Principle of development, Impact on residential amenity and Shopfront design

7.2. Principle of development

- 7.2.1. The site is located in a designated 'District' centre. Mixed uses are provided for and a public house is a permissible use and consolidation within reason is to be expected. The proposed expansion area relates to 131 sq.m. with a net floor area increase 80 sq.m. In this case the public house has however increased incrementally over years as evident in the planning history. The total floor area is stated to be 817 sq.m. which is considerably larger than the original ground floor footprint which excludes the beer garden. This raises two issues of principle, firstly the scale of the pub and secondly the loss of two retail units both of which could potentially alter the character of the area.
- 7.2.2. In respect of the first issue, development plan policy seeks to restrict super pubs. While District zones cater for larger scale businesses, Key Districts and City Centre locations are, I consider reasonably, identified in section 16.32 as the appropriate location for larger premises of the scale and nature proposed. All permissions are predicated on meeting a range of criteria and in this case, the transitional zone context also applies - being adjacent to residential property, accordingly, impact on residential amenity is the most salient consideration.
- 7.2.3. In respect of the latter issue, I note that the area is served by an array of day and night time uses and I do not consider the range of services and day time vibrancy of the locality would be seriously impacted by the loss of retailing uses and would not therefore conflict with development plan in this regard. In fact, the replacement of the boarded-up frontage with transparent glazing potentially enhances the streetscape.

7.3. Impact on residential amenity.

- 7.3.1. The appellant is concerned about noises and disturbance as a consequence of the intensification of use of the public house. Sources of noise can emanate from patrons both internally and externally at entrances to street and when moving in and out of the beer garden/smoking areas, and this is I consider direct result of numbers of patrons. Other noise that are more easily regulated by limits relate to the internal operation in relation to music, public announcement, mechanical systems for ventilation and extraction, and external operation such as keg delivery. Other

sources of nuisance can relate to odours from cooking and external bin storage and anti-social behaviour.

7.3.2. The impacts are dismissed as it is argued by the applicant, among other reasons that the subject floor area for expansion is located to the front of the premises with the extant public house intervening between the neighbouring residential properties and the proposed new public house area. While this may be, the issue is that the extension together with the open plan layout with a new public linking of the bar to lounge via the extended area allow for a large scale single venue attracting multiple large groups at the same time. A significant intensification of use is I consider, likely, consequent on the revised layout access and extension. It is helpful to compare with a recent city centre proposal for a large pub. I refer to a recent case by the Board (249126) in Harcourt Street where 1256 s.qm was permitted on appeal. The scale and operation was considered a superpub and while granted it was not immediately adjacent to residents although residential amenity was the reason for conditions. The use was restricted to closing at midnight. In this case the context is more residential and family based - I noted children playing the nearby gardens in All Hallows Square backing onto the site. I also note the premises operates until 2.30 a.m. a number of nights and that the beer garden to the rear and abutting residential property/zone on two sides is open until midnight. There is no lobby between this area or the bar area onto the lane. These factors would likely be significant sources of noise for premises with a capacity of what is not unreasonably estimated to be up over 700 persons. And furthermore, given the proximity to the university across the road it is not unreasonable that the premises are likely to cater frequently for these large crowds. While I accept that the busy 4 lane carriage way is a source of background noise, the adjacent house is vulnerable to the likely increase in patronage and noise particularly associated with coming and going and external gathering in the beer garden which next to the appellant's property at the back where it very quiet. Other additional noise is likely in the other open areas to the south in both the private yard and public lane and to the front.

7.3.3. The applicant also refers to crowd management and use of shut windows and lobbies to control noise, however the existing situation and plans is such that there is a single set of doors opening from the vast open plan lounge/restaurant directly to the beer garden. At time of inspection these were left open. While I note the

management efforts to disperse crowds, this intensification is likely to be a source of increased nuisance, the control of which is not unreasonable to expect in this transitional zone and having regard to the proximity residences.

7.3.4. While I note the reference to licensing consent, this does not necessarily translate to being acceptable under the planning code which is more permanent and allows for consideration of broader amenity issues in the context of land use and amenity.

7.3.5. On balance I consider the proposed development by reason of scale, nature and intensity and associated noise and disturbance would seriously injure residential amenity of neighbouring properties. Having regard to policy for transitional zone in which this site falls, I consider refusal on the basis of such an impact would be reasonable.

7.4. Shopfront

7.4.1. I concur with the approach by the planning authority generally in seeking the retention of the traditional shopfront elements and the integrity of the original façade. The proposal to deviate from the original symmetry and detailing and to integrate half of the original ground floor façade with the extension jars with the overall symmetry. There is no issue with a contemporary treatment of the extension. This would be addressed by condition in the event of a permission.

7.5. Appropriate Assessment

7.5.1. In view of the scale and nature of the proposed development substantially relating to a change of use and some rebuilding works in an urban area and the nature of issues under appeal, I do not consider the issue of appropriate assessment arises.

8.0 Recommendation

8.1. Based on my inspection and examination of the submissions on file I recommend that permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

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| 1. | <p>It is the policy of the planning authority as set out in section 14.7 of the Dublin City Development Plan 2016-2022 to ensure that, when considering development proposals in contiguous transitional zonal areas, developments, which would be detrimental to the more sensitive zone, are avoided and that particular attention is paid to the use, scale, density and design of development proposals in order to protect the amenities of residential properties. Having regard to the nature and scale of the public house in its entirety as a consequence of the proposed development and its location directly adjoining residential property, it is considered that the proposed development would seriously injure the amenities of adjoining residential property and residential property in the vicinity by reason of noise and general disturbance. The proposed development would, therefore, be contrary to the provisions of the development plan and to the proper planning and sustainable development of the area.</p> |
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Suzanne Kehely
Senior Planning Inspector

15th May 2019