



An  
Bord  
Pleanála

## Inspector's Report ABP-304059-19

### Question

Whether the provision of a timber lattice fence type and a retractable awning over the first floor function room smoking area which sits above and behind the glazed roofed car park level beer garden is or is not development and is or is not exempted development.

### Location

The Goat Public House and Paddy Powers Complex, junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin, D14 PY 56.

### Declaration

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

Ref719

Applicant for Declaration

Charles Chawke

Planning Authority Decision

Is development and is not exempted development

**Referral**

**Referred by** Charles Chawke

**Owner / Occupier** Charles Chawke

**Observer(s)** None.

**Date of Site Inspection** 29<sup>th</sup> July, 2019

**Inspector** Robert Speer

## 1.0 Site Location and Description

- 1.1. The site in question forms part of 'The Goat & Grill Public House' located at the junction of Lower Kilmacud Road with Taney Road in Goatstown, Dublin, D14 PY56, approximately 6km south-southeast of the city centre, where the wider complex of buildings occupies a prominent corner position. The property comprises a relatively large public house and restaurant with multiple extensions / additions of varying architectural styles having been constructed over the years. It forms part of a small neighbourhood centre that includes a number of retail units. A car park is located to the rear of the premises with an open field to the southwest of same which is used as pasture.
- 1.2. The site itself comprises an external / roof-top smoking area which is accessible from a first-floor function room or via an open fire escape / stairwell that extends from a ground floor beer garden area. It is positioned between the main building to the northeast and the glazed roof area covering the lower beer garden to the southwest. The smoking area is surfaced in artificial grass and on the day of the inspection was observed to be occupied by a number of tables, bar stools / seats, planters, and a bench seating area. It is partially enclosed by the main building to the northeast, steel fencing / balustrading to the southwest (although a roller-operated screen can be manually drawn down from the canopy structure overhead to fully enclose this elevation), and timber lattice fencing to the southeast and northwest. The canopy support structure for the roof awning extends across the entirety of the floor area with the retractable mono-pitched awning extending in a south-westwards direction.

## 2.0 The Question

- 2.1. On 4<sup>th</sup> February, 2019 Mr. Gary Solan, Architectural Construction Technology, An Tigh, Ballyogan Avenue, Carrickmines, Dublin, D18 V6X9, on behalf of Mr. Charles Chawke, The Dropping Well Public House, Classon's Bridge, Milltown, Dublin 6, submitted a request to Dún Laoghaire Rathdown County Council for a declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, to determine whether the provision of a timber lattice fence type and a retractable awning over the first floor function room smoking area which sits above and behind

the glazed roof car park level beer garden was or was not development and was or was not exempted development.

- 2.2. Having conducted a site inspection, and following a review of the submitted information, in my opinion, the question before the Board can be formulated as follows:

*'Whether the provision of timber lattice-type fencing and a retractable awning over the first-floor function room smoking area at The Goat Public House and Paddy Powers Complex, junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin, D14 PY 56, is or is not development and is or is not exempted development'.*

### **3.0 Planning Authority Declaration**

#### **3.1. Declaration**

- 3.1.1. On 28<sup>th</sup> February, 2019 the Planning Authority issued a declaration which determined that *'the provision of a timber fence around and a retractable awning over the first floor function room smoking area which sits above and behind the glazed roof car park level beer garden at The Goat Public House and Paddy Powers Complex, at the junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin 14'* constitutes development which is not exempted development.
- 3.1.2. Accordingly, pursuant to Section 5(3)(a) of the Planning and Development Act, 2000, as amended, Mr. Chawke (the referrer) has now referred the matter to the Board for determination.

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

##### *3.2.1. Planning Reports*

Details the site context and the relevant planning history before concluding that the provision of a timber fence around, and a retractable awning over, the first floor function room smoking area involves the carrying out of works as defined in Section 2(1) of the Planning and Development Act, 2000, as amended, and also constitutes development pursuant to Section 3(1) of the Act. The report proceeds to consider the

provisions of Section 4(1)(h) of the Planning and Development Act, 2000, as amended, and subsequently states that as the development in question would materially affect the external appearance of the rear of the structure so as to render said appearance inconsistent with the character of the structure or of neighbouring structures, it does not constitute exempted development.

### 3.2.2. *Other Technical Reports*

None.

## 4.0 **Planning History**

### 4.1. *On Site:*

PA Ref. No. 34/14 / ABP Ref. No. PL06D.RL3221. Was determined on 1<sup>st</sup> September, 2014 wherein the Board held that the placement of a deposit/temporary storage unit for postal items at The Goat Public House and Paddy Powers Complex of Lower Kilmacud Road and Taney Road, Dublin, was development and was not exempted development.

PA Ref. No. DLR/54/14 / ABP Ref. No. PL06D.RL3227. Was determined on 30<sup>th</sup> September, 2014 wherein the Board held that the replacement and alterations incorporated into the glazed roofs over the existing beer gardens at a slightly higher elevation at the Goat Bar and Grill, Lower Kilmacud Road and Taney Road, Goatstown, Dublin, was development and was exempted development.

PA Ref. No. D17A/0614. Was granted on 30<sup>th</sup> August, 2017 permitting Charles Chawke temporary permission for a painted wall mural of a goat and a painted sign on a portion of the boundary wall with Taney Road.

PA Ref. No. D18A/0936. Was refused on 22<sup>nd</sup> November, 2018 refusing Charles Chawke permission for the retention of a recently refused Planning Reg. Ref. D17A/0614 Black and Gold painted sign on a portion of the boundary wall at Taney Road, Condition Number 2, measuring approx. 1.83m x 4.20m.

- The sign on the boundary wall for retention is considered to add visual clutter to the area and is considered to be unnecessary, given there is sufficient signage on the premises. It is considered that the sign to be retained is inconsistent with Section 8.2.6.8: Shopfronts, Signage and Advertising, as set

out within the County Development Plan, 2016-2022, and is inconsistent with Policy NC2 of the Goatstown Local Area Plan. The sign for retention results in visual clutter and therefore sets a poor precedent for such development and seriously injures the visual amenities of the area, and is therefore contrary to the proper planning and sustainable development of the area. 2. The proposed development would materially contravene condition number 2 of Planning Permission Reg. Reference D17A/0614 and is therefore contrary to the proper planning and sustainable development of the area

PA Ref. No. D18A/1052. Was refused on 10<sup>th</sup> January, 2019 refusing Charles Chawke permission for the retention of a painted sign approximately 1.22m by 2.44m fixed to a portion of the car park/storeroom boundary wall close to Taney Road and a painted mural on the delivery gates approx. 2.42m by 2.42m set into the Taney Road/storeroom boundary wall.

- The painted sign fixed to a portion of the car park/storeroom boundary wall close to Taney Road, and the painted mural on the delivery gates set into the Taney Road/storeroom boundary wall, for retention are considered to add visual clutter to the area and are considered to be unnecessary, given there is sufficient signage on the premises. It is considered that the signs to be retained are inconsistent with Section 8.2.6.8: Shopfronts, Signage and Advertising, as set out within the County Development Plan, 2016-2022, and are inconsistent with Policy NC2 of the Goatstown Local Area Plan. The signs for retention results in visual clutter and therefore sets a poor precedent for such development and seriously injures the visual amenities of the area, and is therefore contrary to the proper planning and sustainable development of the area.

4.2. In addition to the foregoing, the Board is referred to the enforcement planning history appended to the file (i.e. Ref. Nos. ENF195/13, ENF197/17 & ENF221/18). By way of further clarity, I have also noted and considered the relevance of the various case histories referenced in the grounds of referral.

## 5.0 Policy Context

### 5.1. Development Plan

#### 5.1.1. ***Dún Laoghaire Rathdown County Development Plan, 2016-2022:***

##### *Land Use Zoning:*

The proposed development site is located in an area zoned as 'NC' with the stated land use zoning objective '*To protect, provide for and-or improve mixed-use neighbourhood centre facilities*'.

##### *Other Relevant Sections / Policies:*

##### *Chapter 3: Enterprise and Employment Strategy:*

##### *Section 3.1.2: Strategy, Policies and Objectives*

##### *Section 3.2: Retail and Major Town Centres:*

##### *Policy RET6: Neighbourhood Centres:*

- It is Council policy to encourage the provision of an appropriate mix, range and type of uses – including retail and retail services - in areas zoned objective 'NC' subject to the protection of the residential amenities of the surrounding area.

##### *Chapter 8: Principles of Development:*

##### *Section 8.2: Development Management*

##### *Chapter 9: Specific Local Objectives:*

*SLO No. 2:* To implement and develop the lands in Goatstown in accordance with the Goatstown LAP.

#### 5.1.2. ***Goatstown Local Area Plan, 2012 (extended until 2022):***

##### *Section 3: Development Policy*

##### *Section 3.4: Neighbourhood Centres:*

*NC1:* It is an objective of the Plan that new development located within neighbourhood centres shall incorporate a range of uses that contribute towards the creation of a sustainable community and a vibrant urban village

'The Goat' is the only public house in the local area. It is undoubtedly important in terms of its social function and its contribution to the character of the area and local identity. Historic photographs of the area indicate that a commercial use at this location is long established. It is considered that a public house function should continue to form part of any future development / redevelopment proposals for this area.

Section 6: *Site Framework Strategies*:

Section 6.2: *'The Goat' Site*

## 5.2. Natural Heritage Designations

5.2.1. The following Natura 2000 sites are located in the general vicinity of the site in question:

- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 2.9km northeast of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 3.0km northeast of the site.

## 6.0 The Referral

### 6.1. Referrer's Case

- By way of background, the Board is advised that there is presently a live enforcement file as regards alleged unauthorised development on site with correspondence issued by the Planning Authority on 11<sup>th</sup> October, 2018 asserting that *'The provision of a timber lattice type fence, solid timber fencing a large retractable awning at first floor level, together with the use of the first floor terrace area by members of the public for drinking and / or smoking requires planning permission and in the absence of same is considered to be unauthorised development'*.

In response to the foregoing, the referrer addressed the creation of the beer garden / smoking area as a result of which the Planning Authority subsequently accepted on 12<sup>th</sup> November, 2018 that the beer garden /



smoking area use was statute barred from enforcement action on the basis that it had been in place for at least 10 No. years. Accordingly, it is submitted that the enforcement file should have been closed at this stage and that the Planning Authority's actions are an abuse of process.

- With regard to the retractable awning and screen, it is submitted that the current situation is very similar to that previously considered by the Board in its determination of ABP Ref. No. PL06D.RL3227 and thus regard should be had to same. The reasoning set out in the inspector's report and the decision made in respect of ABP Ref. No. PL06D.RL3227 can be applied to the subject referral i.e. Section 4(1)(h) of the Act is applicable in this instance.
- The provision of the retractable canopy over the upper terrace that serves as a smoking area for the function room, in addition to the erection of the wind break around the terrace, constitutes exempted development on the basis that they amount to development consisting of the carrying out of works for the maintenance, improvement, or other alteration of any structure, being works which affect only the interior to the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.
- It is clear from a cursory inspection of the premises in question that it incorporates an array of architectural styles with varying roof profiles, pitches, external finishes and cladding materials and thus it cannot be considered to provide for any form of architectural coherence. The public house has been in existence for a great many years and has had multiple small additions, changes and repairs carried out to it with the result that there has been some slight loss of the property's architectural theme / clarity. Accordingly, the subject works cannot be considered to be out of context or incongruous to the overall architectural style of the premises or the wider area.
- The works in question are located within the 'heart' of the building and are only partially visible from some vantage points along Taney Road. Therefore, it cannot be argued that said works materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures i.e. they are exempted development

pursuant to Section 4(1)(h) of the Planning and Development Act, 2000, as amended.

## 6.2. **Planning Authority Response**

No further comments.

## 6.3. **Further Responses**

None.

## 7.0 **Statutory Provisions**

### 7.1. **Planning and Development Act, 2000**

7.1.1. Section 2(1) of the Act defines “works” as follows:

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

7.1.2. Section 3(1) of the Planning and Development Act, 2000, as amended, states the following:

*“Development” in this Act means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in use of any structures or other land.*

7.1.3. Section 4(1)(h) of the Act states that the following shall be exempted development for the purposes of the Act:

*‘Development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures’.*

7.1.4. Section 4(2) of the Act states that the 'Minister' may by Regulation provide for any class of development to be exempted development for the purposes of the Act.

## 7.2. **Planning and Development Regulations, 2001**

7.2.1. Article 6(1) of the Regulations states the following:

*'Subject to article 9, development of a class specified in column 1 of part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1'.*

7.2.2. Article 9(1) of the Regulations states as follows:

*'Development to which article 6 relates shall not be exempted development for the purposes of the Act –*

*a) If the carrying out of such development would –*

*(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.*

## 7.3. **Other**

7.3.1. *Relevant Section 5 Determinations:*

ABP Ref. No. 06D.RL.2986. Was determined on 11<sup>th</sup> March, 2013 wherein the Board held that the provision of a partially roofed smoking area to the side and rear at 115-116 Coliemore Road, Dalkey, Co. Dublin, was development and was not exempted development.

ABP Ref. No. 29S.RL.3524. Was determined on 1<sup>st</sup> February, 2018 wherein the Board held that the provision of a partial roof structure to replace an existing canopy and metal clad roof structure in an external beer garden at 47 Temple Bar (a protected structure), Dublin, was development and was not exempted development.

## 8.0 Assessment

### 8.1. Is or is not development

- 8.1.1. Section 3 of the Planning and Development Act, 2000, as amended, defines “*development*” as the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land. In my opinion, the construction of the timber lattice fence and the retractable awning over the first floor function room smoking area has clearly involved an act of development having regard to Section 2 of the Act where “*works*” are defined as:

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior to exterior of a structure.*

- 8.1.2. Accordingly, having established that the construction of the timber lattice fence and retractable awning over the first floor function room smoking area constitute development, the question arises as to whether or not these works constitute exempted development.

### 8.2. Is or is not exempted development

- 8.2.1. Having conducted a site inspection, and following a review of the available information, I would advise the Board that whilst the subject matter of the referral under consideration only concerns the provision of the timber lattice-type fencing and a retractable awning over the first-floor function room smoking area, in my opinion, it is apparent that the aforementioned works are directly related to the use of the external space in question (through the partial enclosure of same) as a smoking area. In this regard, I would suggest that it is appropriate at the outset to consider the planning status of the smoking area.
- 8.2.2. By way of further clarity, whilst it would appear from the Planning Authority’s service of a Warning Letter dated 13<sup>th</sup> August, 2018 that it initially considered the area enclosed by the subject works as comprising ‘*the creation of a beer garden*’, and although the terms ‘smoking area’ and ‘beer garden’ have been used

interchangeably in the various correspondence between the parties concerned, the subject matter of the referral under consideration refers to the space in question as comprising a 'smoking area'. However, in light of the assortment of tables, bar stools and other seating areas provided within the 'smoking area', the likelihood that patrons of the premises may opt to consume their drinks within this space (as evidenced by the presence of some discarded items observed during the course of my site inspection e.g. drink mixers), and the referrer's own admission that the space is used as a 'beer garden / smoking area', I would suggest that this roof terrace is used in practice as some combination of 'smoking area' and 'beer garden' and thus the Board should have regard to same in its determination of the referral.

8.2.3. In the grounds of referral, it has been made clear that following consideration of the referrer's response to the Warning Letter dated 13<sup>th</sup> August, 2018, the Planning Authority accepted that the use of the beer garden / smoking area was statute barred from enforcement action by reason of it having been in place for at least ten years. This is of particular relevance in that whilst the Planning Authority has determined that the beer garden / smoking area has been in use for a period in excess of 7 No. years and thus is immune from enforcement, such a determination does not serve to remedy the fact that the smoking area would nevertheless continue to amount to unauthorised development in the absence of a grant of permission to retain same. Accordingly, given that the smoking area itself constitutes unauthorised development, it would be reasonable to suggest that the subject works (i.e. the provision of timber lattice-type fencing and a retractable awning over same), which serve to facilitate the use of that space and form an integral part of same, cannot be considered to constitute exempted development given that the use itself is unauthorised.

8.2.4. At this point, I would further submit to the Board that the smoking area as constructed, including its enclosure by the subject fencing and canopy / awning, forms part of the public area of the public house and that the consequent intensification of use has material consequences in terms of the proper planning and sustainable development of the area i.e. it is considered that the provision of the smoking area constitutes a material change of use of the roof area in question. Moreover, it is my opinion that the smoking area / beer garden would constitute an extension to the internal seating area of the existing public house and, having regard

to the Supreme Court judgement in *Michael Cronin (Readymix) Ltd - v - An Bord Pleanála* (Supreme Court Appeal No. 304/2010, 30<sup>th</sup> May 2017), an extension is a development that does not come within the exemption afforded by Section 4(1)(h) of the Planning and Development Act, 2000, as amended.

8.2.5. In further assessing the subject development by reference to Section 4(1)(h) of the Act which states that '*development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures*' shall be exempted development for the purposes of the Act, whilst I have considered the Board's previous determination of ABP Ref. No. PL06D.RL3227 on site, it is my opinion that the works in question do not come within the scope of section 4(1)(h) of the Act, on the basis of their not being works for the '*maintenance, improvement or other alteration*' of the structure, but rather being works to facilitate a use that might have material planning impacts on properties in the vicinity.

8.2.6. Finally, having consulted the Planning and Development Regulations, 2001, as amended, with particular reference to Articles 6 & 9 of same, I can find no reference to any class of development which is directly related to or relevant to the works undertaken on the site in question.

### 8.3. **Appropriate Assessment:**

8.3.1. Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## 9.0 **Recommendation**

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the provision of a timber fence around and a retractable awning over the first-floor function room smoking area which sits above and behind the glazed roofed car park level beer garden at The Goat Public House and Paddy Powers Complex, junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin, D14 PY 56, is or is not development or is or is not exempted development:

**AND WHEREAS** Mr. Gary Solan, Architectural Construction Technology, An Tigh, Ballyogan Avenue, Carrickmines, Dublin, D18 V6X9, on behalf of Mr. Charles Chawke, The Dropping Well Public House, Classon's Bridge, Milltown, Dublin 6, requested a declaration on this question from Dún Laoghaire Rathdown Council and the Council issued a declaration on the day of 28<sup>th</sup> February, 2019 stating that the matter was development and was not exempted development:

**AND WHEREAS** Mr. Gary Solan, Architectural Construction Technology, An Tigh, Ballyogan Avenue, Carrickmines, Dublin, D18 V6X9, on behalf of Mr. Charles Chawke, The Dropping Well Public House, Classon's Bridge, Milltown, Dublin 6, referred this declaration for review to An Bord Pleanála on the 22<sup>nd</sup> day of March, 2019:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) the planning history of the site, and
- (e) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- a) the provision of the timber lattice-type fencing and a retractable awning is works and therefore constitutes development within the meaning of sections 2 and 3 of the Planning and Development Act, 2000;
- b) the said works form an integral part of the smoking area which in turn forms part of the public area of the public house and the consequent intensification of use has material consequences in terms of the proper planning and sustainable development of the area;
- c) the use of the smoking area, would constitute development, being the making of a material change in the use of land within the meaning of section 3 of the Planning and Development Act, 2000;
- d) the existing smoking area does not constitute exempted development nor does it have the benefit of a grant of planning permission;
- e) the works do not come within the scope of section 4(1)(h) of the said Act, not being works for the maintenance, improvement or other alteration of the structure but rather being works to facilitate uses that might have material planning impacts on properties in the vicinity;
- f) the said development does not come within the scope of the exempted development provisions of the said Act or regulations made thereunder,

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the provision



of the timber lattice-type fencing and a retractable awning over the first-floor function room smoking area at The Goat Public House and Paddy Powers Complex, junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin, D14 PY 56, is development and is not exempted development.

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Robert Speer  
Planning Inspector

9<sup>th</sup> August, 2019