



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308077-20

<b>Development</b>	Retention of a white canopy structure, bar and metal clad roof structure over existing beer garden and metal clad awning to existing smoking area at the rear
<b>Location</b>	The Neptune Public House, Main Street, Blackrock, Co Louth
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	191013
<b>Applicant(s)</b>	Brinto Taverns Limited.
<b>Type of Application</b>	Retention permission.
<b>Planning Authority Decision</b>	Refuse Retention Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Brinto Taverns Limited.
<b>Observer(s)</b>	N/A.
<b>Date of Site Inspection</b>	3 <sup>rd</sup> of December 2020.

**Inspector**

Stephanie Farrington

## **1.0 Site Location and Description**

- 1.1. The appeal site, which has a stated area of 0.0686ha, includes the existing 2 storey Neptune Public House at the junction of Main Street and Sandy Lane, Blackrock, Co. Louth and associated open areas and buildings to the rear and side of the building.
- 1.2. The application drawings submitted in conjunction with the application illustrate that a bar is provided at ground floor level with residence above. The external areas to the rear and side of the public house include a beer garden with bar area, seating area and smoking area. The beer garden area is enclosed by a canopy structure and other open areas are enclosed by corrugated tin roofing.
- 1.3. Access to the external yard area is provided directly from the ground floor of the pub and via an existing separate entrance to the side of the pub.

## **2.0 Proposed Development**

- 2.1. The proposal comprises retention permission for an existing white canopy structure, bar and metal clad roof structure over existing beer garden and metal clad awning to existing smoking area to the rear of the existing public house.
- 2.2. The existing and proposed hours of operation of the premises are detailed in response to question 10 of the planning application form as follows:
  - Monday – Thursday 4pm to 11.30pm
  - Friday – Saturday – 12.30pm to 12.30 am
  - Sunday – 12.30pm to 11pm

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Louth County Council issued a decision to refuse retention permission in accordance with the following reasons and considerations:

1. The Planning Authority notes that no evidence has been submitted which indicates that the new bar has the benefit of planning permission. Accordingly,

the Planning Authority are precluded from granting permission for the retention of structures within an area which does not have the benefit of planning permission on the grounds that it would involve works and provision of structures which would reinforce and intensify the use of the bar area which is considered unauthorised.

2. The applicant has failed to submit surface water design calculations detailing how surface water from hard standing areas are discharged to pre-development levels. As such, the proposed development would materially contravene Policies WS10 and WS11 of the Louth County Development Plan 2015-2021.

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

#### **3.2.1. Planning Reports**

##### **Initial Planner's Report**

The initial planner's report recommended a request for further information. The following provides a summary of key points raised.

- It is noted that the existing beer garden and smoking area do not have the benefit of planning permission. It is premature to consider granting permission for the canopy structure, bar and metal clad roof structure which relate to unauthorised uses.
- Scope of application should be extended to include retention permission for the beer garden and smoking area use.
- The beer garden area includes an outdoor sound system, live music stage and outdoor TV screen which are not referred to within the public notices. There are concerns in relation to the impact of these activities on the residential amenity of property in the vicinity.
- The development has increased hardstanding area which increases surface water run-off. Applicant is requested to submit surface water design calculations detailing how surface water from hard standing areas has been discharged to pre-development levels.

Planners Report dated 29<sup>th</sup> of July 2020

- Response to Further Information fails to address the substantive issues raised relating to unauthorised use as a new bar area, associated outdoor sound system, live music stage and outdoor tv screens.
- Applicant has failed to provide details of surface water design calculations.
- Recommends a refusal of planning permission.

#### 3.2.2. Other Technical Reports

None.

#### 3.3. Prescribed Bodies

None.

#### 3.4. Third Party Observations

None.

### 4.0 Planning History

PA Ref 19/219 – Application submitted in March 2019 for retention permission for a white canopy structure, bar and metal clad roof structure over existing beer garden and metal clad awning to existing smoking area at the rear of Neptune pub. A request for further information was issued in May 2019. No response was submitted within the 6-month statutory time period and the application was deemed withdrawn in November 2019.

#### Enforcement Proceedings:

PA Ref 18 U158 – Warning letter issued in relation to unauthorised beer garden and smoking area at the rear of Neptune Public House, Sandy Lane Corner, Main Street, Blackrock.

## 5.0 Policy Context

### 5.1. Development Plan

#### Dundalk and Environs Development Plan 2009-2015

- 5.1.1. The Dundalk and Environs Development Plan 2009-2015 (as extended) is the current statutory plan for the Blackrock Area.
- 5.1.2. The site is located within the village of Blackrock and zoned for “BRV” (Blackrock Village) purposes within the Dundalk and Environs Development Plan 2009-2015. This zoning objective aims *“to provide for mixed use development to support its role as a local service and seaside resort”*.
- 5.1.3. Public house is listed as a use which is permitted on lands zoned for BRV purposes.

#### 5.2. Louth County Development Plan 2015-2021

- 5.2.1. Section 2.16.4 of the Louth County Development Plan outlines that the statutory development plan for the urban and surrounding environs area of Dundalk is currently the Dundalk & Environs Development Plan 2009-2015.
- 5.2.2. The Louth County Development Plan 2015-2021 will be an over-arching Development Plan for the entire county including Dundalk and Drogheda. Whilst Development Plans are currently in place for both Dundalk and Drogheda, following the adoption of the new Louth County Development Plan 2015-2021, the existing respective development plans for the urban areas of Dundalk & Drogheda will be reviewed and ultimately replaced by Local Area Plans. The local area plans for Dundalk and Drogheda will be sub-sets of and will be consistent with the provisions of the Louth County Development Plan 2015-2021.
- 5.2.3. Objective SS 3 of the County Development Plan seeks *“to review the Dundalk and Environs Development Plan 2009 – 2015 and to prepare a Local Area Plan for Dundalk and Environs which will be consistent with the provisions of the County Plan”*.
- 5.2.4. Section 10.6 of the Louth County Development Plan relates to Surface Water Drainage. The following policies are of note:

- WS 10 To ensure that the incorporation of Sustainable Urban Drainage Systems (SuDS) measures in all developments is mandatory. An integrated approach to drainage will be adopted and all development proposals shall be accompanied by a comprehensive SuDS assessment which will address run-off quantity, run-off quality and impacts on habitat and water quality. Best practice guidance is available from the Greater Dublin Strategic Drainage Study and development proposals will be required to meet with design criteria (adjusted to reflect local conditions) and material designs therein.
- WS 11 To ensure that all discharges shall be attenuated to green field levels whereby both flow rate and volume of discharge of runoff from developments to receiving waters shall mimic in so far as possible pre-development levels.

### **5.3. Natural Heritage Designations**

The site is located 0.45km to the west of the Dundalk Bay SPA (Site Code: 004026) and SAC (Site Code: 000455).

## **6.0 The Appeal**

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

A first party appeal has been received from ODM Building Surveyors and Engineers Ltd. on behalf of the applicant. The following grounds of appeal are set out:

- A history of the premises is provided. The applicant acquired the premises in 2016 and outlines that the beer garden and smoking area to the rear are covered by the licence.
- First reason for refusal is not lawful or valid. It infers that the new bar area does not have the benefit of planning permission. The scope of the application seeks retention permission for the new bar within an area which has the benefit of an intoxicating liquor licence and has been used ancillary to the bar for in excess of 100 years.
- The use of a beer garden is authorised by virtue of its long use commencing prior to 1964.

- Warning letter issued by Louth County Council made it clear that the enforcement process related to the beer garden and smoking area and not to the bar area.
- No enforcement steps have been taken pursuant to Section 153 issued in relation to the beer garden and smoking area in 2018. Two years later the planning authority cannot now seek to serve an enforcement notice in respect of a beer garden and smoking area. The provision of a bar within an authorised beer garden does not constitute a change of use.
- In terms of the second reason for refusal, it is stated that no additional hardstanding areas have been constructed on the appeal site. Post development surface water run off is the same as pre-development levels as no additional hard standing areas are proposed. Reason for refusal is invalid.
- The Council's decision fails to provide any lawful or valid reasons for refusal.

## **6.2. Planning Authority Response**

A response to the first party appeal has been received by Louth County Council. The following provides a summary of key points raised.

- Reference is made to the unauthorised nature of the structure and enforcement proceedings. An application for retention does not mean a favourable decision will issue. Enforcement proceedings are separate under the legislation to that of development management.
- Enforcement proceedings were halted for the duration of the consideration of the proposal. New bar is located within an area which does not have the benefit of planning permission for a beer garden. In order to regularise the structures, the use also needs to be regularised.
- In responding to the appellants argument that the beer garden has been in situ for a period in excess of 7 years, the planning authority's response outlines that the length of use of the beer garden does not authorise the use.
- Requests An Bord Pleanala to uphold the decision of the planning authority to refuse permission.



## 7.0 Assessment

7.1.1. Having examined the application details and all other documentation on file and inspected the site, I consider that the main issues in this appeal are as follows:

- Compliance with Zoning Objective
- Unauthorised Development
- Visual Impact
- Impact on Residential Amenity
- Drainage
- Appropriate Assessment

### 7.2. Compliance with Zoning Objective

7.2.1. The site is located within the village of Blackrock and zoned for BR (Blackrock Village) purposes within the Dundalk and Environs Development Plan 2009-2015 with an objective “to provide for mixed use development to support its role as a local service and seaside resort”.

7.2.2. Public house is listed as a use which is permitted on lands zoned for BRV purposes within Table 2.4 of the Development Plan. The Neptune public house use is long-standing on this site. The architectural drawings illustrate that the upper floor of the building is in residential use.

7.2.3. No change of use is proposed as part of the subject application, the beer garden and smoking area uses on site are identified as existing within the public notices. The application relates exclusively to retention of works including new bar, canopy and metal clad roof structure.

### 7.3. Unauthorised Development

7.3.1. Louth County Council’s first reason for refusal outlines that the proposed development includes works and the provision of structures that would reinforce and intensify the use of the area to the rear of the public house which is considered unauthorised. It is stated that the planning authority is precluded from granted planning permission for the retention of structures which does not have the benefit of planning permission.

- 7.3.2. A case is made within the application and appeal documentation that the use of the area to the rear of the public house as a beer garden and smoking area is established and has operated in this manner for a period in excess of 7 years. It is stated that the area is covered by a licence and while a warning letter was issued in relation to the beer garden and smoking area use in 2018 no enforcement proceedings were undertaken.
- 7.3.3. At the outset, in considering the grounds of appeal, I refer to the development description of the proposal. The application as submitted relates to retention permission for an existing white canopy structure, bar and metal clad roof structure over existing beer garden and metal clad awning to existing smoking area to the rear of the existing public house.
- 7.3.4. In reviewing the development description, I note that the scope of the subject application relates exclusively to retention the physical works carried out within the open area to the rear of the public house and the uses of beer garden and smoking areas are identified as existing.
- 7.3.5. While this area is described as an existing beer garden and smoking area within the public notices, the planning authority's first reason for refusal refers to the unauthorised use and outlines that the physical structures which are proposed for retention both reinforce and intensify such uses.
- 7.3.6. On review of the planning history, I note that there is no record of the beer garden and smoking area use being authorised to the rear of the public house. The applicant was specifically requested to extend the scope of the application to include reference to the use of the open area with Louth County Council's request for further information but failed to avail of this opportunity.
- 7.3.7. Having reviewed the application documentation and visited the site I agree with the conclusions of the planning authority that the works for which retention permission is sought including a canopy, new bar and formal seating areas would both reinforce and intensify the use of the open area to the rear of the public house as a beer garden and smoking area.
- 7.3.8. I note the case made by the applicant that the beer garden and smoking area use is existing and has been in situ for a period in excess of 7 years and in such instances the planning authority is precluded from enforcement proceedings. I also note the

reference that the extent of the liquor licence extends to include the beer garden and outbuildings associated with the public house. However, in this regard I would highlight that the length of time of operation of a use does not authorise the use. I furthermore note that enforcement and licensing proceedings are covered by separate legislative requirements and do not overrule the requirement for planning permission.

- 7.3.9. I consider that retention of the physical structures would facilitate the consolidation and intensification of this unauthorised use and consider that in such instances the Board is precluded from granting planning permission. I recommend that retention permission is refused on this basis.

#### 7.4. Visual Impact

- 7.4.1. Internally the existing beer garden includes a bar area and mix of seating areas including wooden benches and dining chairs.
- 7.4.2. The existing canopy structure is visible from the Sandy Lane as illustrated within the attached presentation document. I do not consider that the structure represents an incongruous feature in the streetscape or detracts from the visual amenity of the area. I have no objection to the principle of the proposed canopy in visual terms.

#### 7.5. Impact on Residential Amenity

- 7.5.1. A number of residential properties are located within the vicinity of the appeal site at Sandfield Gardens the west. This area is zoned for “Residential 1” purposes within the Dundalk and Environs Development Plan with an objective *“to protect and improve existing residential amenities and to provide for infill and new residential developments”*. Policy TC 4 of the Development Plan seeks to protect existing residential amenities of primary residential areas within the town centre and to resist the conversion of dwellings to uses other than residential.
- 7.5.2. The impact of the use of the beer garden on the amenity of these properties is, in my view, a central consideration in assessing the proposal. The existing beer garden does not impact on adjacent residential properties in terms of overlooking or overshadowing. The key potential impact associated with the development is noise.
- 7.5.3. The scope of the application as submitted relates exclusively to the physical works associated with the beer garden use including the canopy structure and bar and no

assessment of the impact of the overall use on the amenity of adjoining residential properties is presented. As earlier detailed, a case is made within the first party appeal and application documentation that the use of the area as a beer garden and smoking area is established. The hours of operation are detailed within the planning application form but no further details of the use of the area is provided.

- 7.5.4. I consider that the works which are proposed for retention within the subject application result in an intensification of the use of the area to the rear of the public house and this use should be considered in terms of its impact on adjacent residential properties.

## 7.6. Drainage

- 7.6.1. Louth County Council's second reason for refusal relates to information deficiencies in relation to surface water design calculations within the application which demonstrate how surface water discharge from the hard-standing area are discharged to pre-development levels.
- 7.6.2. The reason for refusal states that the proposal would materially contravene policies WS10 and WS11 of the Louth County Development Plan 2015-2021 in this regard. These policies are detailed in Section 5 of this report and collectively they relate to SUDS measures and provision of run off on site to predevelopment greenfield rates.
- 7.6.3. A case is made within the first party appeal that no additional hardstanding areas have been constructed on the appeal site. It is stated that post development surface water run-off is the same as pre-development levels as no additional hard standing areas are proposed. In this regard, it is stated that the planning authority's second reason for refusal is invalid.
- 7.6.4. I note the reference in the planning authority's reason for refusal to material contravention of Policies WS10 and WS11 of the Louth County Development Plan 2015-2021. I consider the reference to material contravention of Policies WS10 and WS11 of the Louth County Development Plan to be misplaced in this particular instance.
- 7.6.5. Having regard to the scope of the application as currently presented which relates to retention of a bar area, canopy and roofing and to the substantive issues identified in

Section 7.3 above in relation to the proposed use I do not consider it necessary to include a reason for refusal relating to surface water drainage levels.

#### 7.7. Appropriate Assessment

- 7.7.1. Having regard to the minor nature of the development for which retention permission is sought within a serviced urban area, the absence of a pathway to and the separation distance to any 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. I recommend that retention permission is refused for the development in accordance with the following reasons and considerations.

### 9.0 **Reasons and Considerations**

1. On the basis of the information provided in connection with the planning application and appeal, it appears to the Board that the development for which retention permission is sought relates to an unauthorised beer garden and smoking area use and that the development proposed for retention including the new bar, canopy structure and metal clad roof would facilitate the consolidation and intensification of this unauthorised use. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.

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Stephanie Farrington  
Planning Inspector

10<sup>th</sup> of December 2020