



An
Bord
Pleanála

Inspector's Report ABP-309724-21

Development

Change of use from retail to concert hall and associated ancillary uses to include retail box office and the sale of alcohol for consumption on the premises and associated site works. The proposed development is within the curtilage of a protected structure – WBC 0151 & NIAH 15503102 refer.

Location

The corner of Mallin Street & Rowe Street Lower, Wexford Town, Co. Wexford.

Planning Authority

Wexford County Council

Planning Authority Reg. Ref.

20201617

Applicant(s)

Lantern Events Ltd.

Type of Application

Permission

Planning Authority Decision

Grant subject to conditions

Type of Appeal

Third Party v. Decision

Appellant(s)

Catherine Jordan

Rebecca Kehoe

Observer(s)

None.

Date of Site Inspection

23rd July, 2021

Inspector

Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located at the corner of Mallin Street & Rowe Street Lower, approximately 50m from Main Street, a short distance from Wexford Town Library and opposite the grounds of the Church of the Immaculate Conception, in a mixed-use area of Wexford town centre more broadly characterised by terraced housing and a network of narrow streets which feed towards Main Street to the northeast. Mallin Street is a one-way route with traffic travelling south-eastwards whereupon it may turn at the junction with Rowe Street Lower or continue straight onto High Street (and onwards past the Wexford Opera House). Its carriageway is of limited width with double-yellow lines on both sides and a single narrow footpath passing alongside the application site. Rowe Street Lower accommodates two-way traffic and extends to / from Main Street with footpaths on both sides and on-street parking available along the southern side of the carriageway. The surrounding area is dominated by traditional two / three-storey terraced housing / streetscapes and includes a variety of commercial / retail uses such as offices, restaurants / cafes, takeaways, a tattooist studio, and assorted shop units, in addition to a considerable residential component.
- 1.2. The site itself has a stated site area of 0.06 hectares, is irregularly shaped, and comprises an amalgamation of buildings that includes a former Wesleyan Methodist Church (a protected structure) with an associated lecture hall in addition to more contemporary additions that are used partly for retail storage (associated with a larger retail unit accessed from Main Street) and as a ticket office for local theatre performances. The former church is described in the National Inventory of Architectural Heritage as an important component of the early 19th Century ecclesiastical heritage of Wexford and encompasses an attached five-bay, double-height, single-cell building based on a rectangular plan with a single-bay, single-storey, gabled projecting porch (a later addition). Notable features are lancet window openings below a cut-limestone date stone with cut-granite sills, twenty-four over twenty-four timber sash windows, and cast-iron railings to the perimeter centred on finial-topped, rosette-detailed, cast-iron "bird cage" piers supporting cast-iron double gates.

1.3. The extent of the development works is limited to the ground floor level of the former church & lecture hall and to the upper floor above the existing shop unit fronting onto Main Street. In this regard, there are 2 No. apartment units in third party ownership situated at first floor level within the former church building, a further apartment above the lecture hall which fronts onto Mallin Street, and another apartment over the proposed bar area.

2.0 Proposed Development

2.1. The proposed development consists of the change of use of part of a retail store to a concert hall (floor area: 514m²) with ancillary uses, including a retail box office, a bar and lounge area for the sale of alcohol for consumption on the premises, and a smoking area. Associated site development works include:

- The insertion of a new wheelchair accessible doorway from Mallin Street into the porch of the former Wesleyan Methodist Church (a protected structure) to provide access to the venue. This doorway will measure 2.1m in height and 1.24m in width. The proposed twin hardwood doors, with tongue and groove detail, will open outwards.
- The rearrangement of internal partitions within the former chapel to allow for the insertion of a ticket booth, office space, toilets, and storage. This will include for the rearrangement of existing modern partitions in the space which functions as retail storage and office floorspace. The remaining architectural details of the windows and internal supporting pillars will be unaffected by these proposals.
- The rearrangement of the northern building to allow for the concert hall & stage areas etc., the installation of toilets, and the excavation of new foundation pads within the standing structure for additional support beams. Sound proofing is to be installed on the walls of the northern building and a small portion of a late 19th Century wall (not part of the protected structure) will be removed.
- The provision of internal sound insulation and noise mitigation measures, including the acoustic lining of the internal structure of the band hall and adjacent spaces such as the fitting of acoustic ceilings to the underside of the

floors serving Apartments 1, 2 & 4 to increase the sound insulation performance.

- The removal of the existing rooflights to the band hall and the making good of the areas vacated by same with a slate finish to match the existing roof.
- The limited excavation of new service trenches within the footprint of the existing buildings.
- The removal of the existing shopfront onto Mallin Street and the provision of an amended door / fenestration arrangement in addition to the erection of new wall-mounted acrylic signage.

2.2. It has been submitted that the development will not involve any large-scale construction works or extensions to the existing buildings, which will remain largely unchanged other than for some internal re-ordering. There will be no alteration to the height of the buildings externally and internal ground and floor levels will remain as they are. It is also anticipated that the alterations proposed, including the insertion of the new wheelchair accessible doorway from Mallin Street, will be reversible.

2.3. It is expected that the concert hall will host up to 90 No. shows per year (normally comprising 30 No. comedy shows, 30 No. seated acoustic music shows, and 30 No. standing music shows) with a maximum capacity of 190 No. seats.

2.4. Typical performances will commence at 20:00 hours and run until 22:15 hours with a hard curfew at 22:30 hours and an interval between 21:00 and 21:15 hours. Doors are to open 45 No. minutes before performances. The bar in the venue will open for 30 No. minutes before performances and during the interval while it will remain closed after the performance.

3.0 Planning Authority Decision

3.1 Decision

- 3.1.1. On 19th February, 2021 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 8 No. conditions. These conditions are generally of a standardised format and relate to issues including adherence to the submitted plans & particulars, external finishes, best conservation

practice, and archaeological appraisal, however, the following conditions are of note in the context of the third party appeals:

Condition No. 2 – Requires the noise reduction measures set out in the Acoustic Assessment to be completed in full prior to first use of the proposed concert hall. Any alterations to the noise reduction measures as a result of structural issues or further proposals to mitigate noise from the rooflights and roof lantern are to be agreed in writing with the Planning Authority. Certification of the completion of the works is to be submitted prior to the first use of the concert hall.

Condition No. 3 – Specifies the noise emission levels applicable in respect of amplified music or other entertainment noise emanating from the proposed development. Final detailed plans and particulars indicating sound-proofing, or such other measures as are required to ensure compliance with this condition, are to be agreed in writing with the Planning Authority prior to the commencement of development (these are to be accompanied by a revised acoustical analysis).

Condition No. 4 - Prohibits the placement of music speakers or sound amplification of any kind on the external walls or roof or within the bar / lounge area.

Requires all entrance doors within the external envelope of the building to be tight-fitting and self-closing.

Requires all windows and rooflights to be double-glazed and tight-fitting.

Noise attenuation is to be provided to any openings required for ventilation or air conditioning purposes.

3.2. **Planning Authority Reports**

3.2.1. *Planning Reports:*

Details the site context, planning history, and the applicable policy considerations before stating that the overall principle of the proposed change of use is acceptable as it should make a positive contribution to the life and vibrancy of the town centre. It is further stated that the proposed development will not have an adverse impact on built heritage or archaeological considerations (noting the designation of the former church building as a protected structure), subject to the imposition of appropriate conditions. With respect to the overhead apartment units, it is considered that the noise mitigation and sound insulation measures detailed in the accompanying Acoustic Assessment will generally be sufficient to preserve the residential amenity of those properties. The report subsequently concludes by recommending a grant of permission, subject to conditions.

3.2.2. *Other Technical Reports:*

Disability Access Officer: Advises of the requirement to obtain a Disability Access Certificate for the works in accordance with Part IIIB, Article 20D/20E of the Building Control (Amendment) Regulations, 2009, S.I. No. 351 of 2009.

Wexford County Fire Service: Recommends that the applicant be advised of the requirement to obtain a Fire Safety Certificate in respect of the development and that no works are to be carried out unless such a certificate has been granted.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

3.4.1. A total of 2 No. submissions were received from interested third parties and the principal grounds of objection / areas of concern contained therein can be summarised as follows:

- The owner of an overhead apartment does not consent to the fitting of an acoustic ceiling to the underside of her property given that it will increase the loading and result in deflection of the floor construction.

- The concert hall and bar area will result in unacceptably high noise levels within the overhead apartments.
- No consideration has been given to the impact of vibration from amplified music etc. on the residential amenity of the overhead apartments.
- The variations and fluctuations in noise levels during performances due to people passing in and out of the lobby and bar area will have a detrimental impact on the residential amenity of the apartments above.
- The proposed development is not compatible with the overhead apartment units and will result in the devaluation of property.
- It is questionable whether the results of the noise monitoring undertaken as part of the Acoustic Assessment Report are representative of typical conditions during normal ('pre-COVID') times.
- Concerns arise as to whether the noise mitigation measures will be sufficient to preserve the residential amenity of the neighbouring apartments.

4.0 Planning History

4.1. On Site:

- 4.1.1. PA Ref. No. W0004968. Was granted on 28th June, 1996 permitting Mr. Jim Byrne permission for a change of use to retail, provision of 3 No. apartments, & a new shop front to Mallin Street.
- 4.1.2. PA Ref. No. W0001954 / ABP Ref. No. PL85/5/44502. Was granted on appeal on 23rd February, 1979 permitting William Jenkins Ltd. permission for alterations to a Methodist Church to form an extension to an existing adjoining retail premises.
- 4.1.3. PA Ref. No. W0001854 / ABP Ref. No. PL85/5/43009. Was granted on appeal on 15th December, 1978 permitting William Jenkins Ltd. outline permission for the conversion of a church to use as a retail premises.

5.0 Policy and Context

5.1. Wexford Town & Environs Development Plan, 2009-2015 (as extended):

Pursuant to the provisions of Part 8 of the Electoral, Local Government and Planning and Development Act, 2013, the lifetime of the Wexford Town and Environs Development Plan, 2009-2015 has been extended and, therefore, the Plan will continue to have effect until 2019, or such time as a new County Development Plan is made. It should be read together with the Wexford County Development Plan, 2013-2019.

5.1.1. Land Use Zoning:

The proposed development site is located in an area zoned as 'Town Centre' with the stated land use zoning objective '*To protect and enhance the special physical and social character of the existing Town Centre and to provide for new and improved Town Centre facilities and uses*'.

Although use as a 'concert hall' is not expressly listed in the Zoning Matrix Table included with Map No. 21: '*Master Plan Zones*', it can be confirmed that comparable uses such as '*civic buildings*', '*culture, recreation & leisure*' and '*public house*' developments are '*Permitted in Principle*' within this land use zoning whereas use as a '*nightclub*' is also '*Open for Consideration*'.

Explanatory Note:

The purpose of this zone is to protect and enhance the special character of Wexford Town Centre and to provide for and improve retailing, commercial, office, cultural and other uses appropriate to the Town Centre which complement its historic setting. It will be the objective of the Council to encourage the full use of buildings and backlands especially the full use of upper floors, preferably for residential purposes, Certain uses are best located away from the principal shopping streets because of their extensive character and their need for large-scale building forms and space requirements.

5.1.2. Other Relevant Sections:

Chapter 3: Development Strategy:

Section 3.4: Masterplan Zones

The proposed development site is located within 'Zone 13A: Town Centre'.

Chapter 6: Community, Culture and Education:

Section 6.2. Culture:

Policies:

C17: The Councils shall promote artistic excellence and innovation, support the work of artists, art organisations and traditional Wexford based arts.

C18: The Councils shall continue to promote the Wexford Festival Opera and the bringing of International Arts to the County. The Councils will also promote international audiences for Wexford based artists and arts projects, and support multi-cultural initiatives.

Objectives:

C4: To work towards integrated development where the economy, environment, cultural life etc. are all considered together, and where artistic and cultural activity is accepted as a vital part of everyday life.

C5: To safeguard the cultural heritage of the Wexford Town.

C6: Support the provision of the infrastructure, physical and human, that is needed for libraries, archives and for all forms of contemporary and traditional arts.

Chapter 7: Tourism:

Chapter 8: Conservation & Heritage

Section 8.4: Archaeological Heritage

Section 8.5: Architectural Heritage

Chapter 10: Design Guidance:

Chapter 11: Development Management Standards

Section 11.05: Architectural Conservation – Protected Structures

Section 11.06: Archaeology

Section 11.10.04: Pubs / Nightclubs / Amusement Centres

5.2. Natural Heritage Designations

5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Slaney River Valley Special Area of Conservation (Site Code: 000781), approximately 200m northeast of the site.
- The Wexford Harbour and Slobs Special Protection Area (Site Code: 004076), approximately 500m northeast of the site.
- The Wexford Harbour and Slobs Proposed Natural Heritage Area (Site Code: 000712), approximately 500m northeast of the site.

5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, 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. *Catherine Jordan:*

- It has not been satisfactorily demonstrated that the proposed mitigation measures will not adversely or significantly impact on the residential amenity of the overhead apartment units in contravention of the development management standards set out in Section 11.10.04 of the Wexford Town & Environs Development Plan, 2009-2015 (as extended).
- It is questionable whether the results of the noise monitoring undertaken as part of the applicant's Acoustic Assessment Report are representative of typical noise conditions during normal ('pre-COVID') times. In this respect, it

may well be reasonable to expect a greater movement of people and an increased level of activity during more normal times and, therefore, the baseline noise levels recorded are at best conservative.

- In addition to the former Wesleyan Methodist Church having been designated as a protected structure, it falls within the Zone of Archaeological Potential which is listed as a Recorded Monument and is therefore protected under Section 12 of the National Monuments (Amendment) Act, 1994. In this regard, given its rich heritage, it scarcely seems appropriate to allow a former church to be used for entertainment with amplified music and thus the proposal is unsympathetic / contrary to the guidance set out under Section 8.5 of the Town Development Plan. The proposal also includes for alteration / demolition works (e.g. the formation of a new doorway through the exterior fabric of the original church building and excavations for new foundation pads etc.) in contravention of Policies BH3 and BH6 of the Plan.
- The development of the proposed entertainment venue (with its amplified music) will adversely impact on the residential amenity of the overhead living accommodation thereby discouraging the use of the upper floors in contravention of Policy BH6.
- Dalton Acoustics Ltd. were commissioned by the appellant to undertake a critical review of the applicant's 'Acoustic Assessment Report' and this has raised several concerns - most notably, a misinterpretation of the "*Noise from Pubs & Clubs Phase II*" study carried out by DEFRA in the UK (May, 2006): Given the reference to the maximum anticipated sound levels associated with the proposed new concert hall / theatre likely being in excess of 90dB_{LAeq} for performances involving amplified music, the applicant's acoustic consultant has cited (referring to the DEFRA study) that sound levels inside noise sensitive dwellings of between 34-37dB_{LAeq} with the windows closed might be considered reasonable, however, it should be noted that these are actually exceedance levels to be avoided (as opposed to a maximum level permissible).
- The existing suspended timber floor to the first floor apartments over the proposed entrance lobby & toilet areas offers very poor acoustic separation in

its current form. While this has been acknowledged by the applicant with mitigation recommended to the effect of affixing a double layer of 'Soundbloc' plasterboard to the ground floor ceiling / underside of the suspended floors, it is not clear whether this would achieve a sufficient reduction from $>90\text{dB}_{\text{LAeq}}$ to below the exceedance levels.

- Although attention has been drawn to the formation of a '*Sound Lobby*' (denoted by an orange dotted line on Appendix II: '*Reference Floor Layout Plan*' of the grounds of appeal) immediately outside the main access doorway from the lobby area into the main concert hall (i.e. directly beneath the appellant's apartment) so as to create an additional layer of acoustic separation between the areas, and while this should mitigate the transmission of airborne sound and / or reverberation as long as the lobby doors remain closed, the reality is that on entering / exiting this doorway during a performance (e.g. to use the toilets / cloakroom or to accommodate late arrivals / early exits), there may be waves of undampened sound hitting the lobby (and the overhead apartments in turn) when the doors open intermittently.
- The Acoustic Assessment Report makes no mention of any mitigation measures for the dividing elements beyond / outside the proposed sound lobby i.e. Sections 'A' – 'C' & 'E' – 'F' of the southern wall of the concert hall (as annotated in Appendix II: '*Floor Plan*' of the grounds of appeal). Notably, as regards sound penetration through Section 'A' – 'B' and into the access / common area serving the overhead apartment units, this latter area is outside of the applicant's ownership, in which case it may only have limited control over sound mitigation interventions.
- There are 2 No. original gothic style windows (corresponding to points 'D' and 'E' shown in Appendix II: '*Floor Plan*') which look directly out onto the roof of the proposed development. While it is proposed to block up the existing rooflights over the concert hall, no reference has been made to any blocking up of the existing lantern window on an adjacent flat roof; along with applying acoustic mitigation / sound reduction measures to the ceiling below, the windows serving the applicant's apartment are single-glazed (and part of a

protected structure) and will still be proximate to the main concert hall and the sound emanating from same during loud ($>90\text{dB}_{\text{LAeq}}$) performances.

- Sound containment measures are only as effective as the weakest point and it has been illustrated that there are several 'weak spots' in the proposed development. It appears that the principal mitigation measure for acoustic attenuation is to rely on the fitting of a double layer of 'Soundbloc' plasterboard to the underside of the overhead apartments:
 - Although this would achieve a noise reduction level of 53dB_{RW5} which might be considered appropriate were the properties on either side of the dividing construction both residential, in the subject instance the lower property is to be part of a live music venue (please refer to Section 7.4 of Appendix IV of the grounds of appeal).
 - No reference has been made to any additional mitigation proposals to deal with any other interface fabric elements / structural-borne noise transmission between the conjoined properties (Section 8.2 of Appendix IV).
- Within the '*Critical Review of the Applicant's Acoustic Assessment Report*' undertaken by Dalton Acoustics Ltd. (Appendix IV of the grounds of appeal), it is noted that the applicant has based its findings on external noise monitoring carried out last December without properly measuring / taking into account the existing internal ambient noise environment between the properties in question.
- There are concerns that the living quality within the overhead apartment will be adversely impacted by the proposed development due to increased noise disturbance.

6.1.2. *Rebecca Kehoe:*

- The appellant, as the owner of an overhead apartment, has not given her consent to use any part of the structure of her property to facilitate the proposed development (i.e. the fitting of an acoustic ceiling to the underside / joists of her apartment floor) and, therefore, the planning application should

not have been validated (in reference to the requirements of Article 22(1)(d) of the Planning and Development Regulations, 2001, as amended).

- The 'Deeds' for the appellant's property (Apartment No. 1, Wesleyan Apartments) confirm that the underlying floor joists form part of her apartment. Therefore, as she has not consented to the use of her floor structure to support the development, the planning application should be invalidated.
- There is a restriction in the 'Deeds' for Apartment No. 1 prohibiting any act in or on the premises which may cause nuisance or annoyance to the owner or occupier of the apartment. In this regard, it is submitted that the proposed development will contravene the terms of contract for the owner / occupier of the apartment.
- The proposed development is in contravention of the restrictions attached to the deeds of the property which prohibit the storage, sale or consumption of alcohol on the premises as well as any alteration to the facade of the Estate.
- The 'Acoustic Assessment' provided with the planning application does not adequately address, and misinterprets, the metrics for the following:
 - The assessment of internal ambient noise levels and the possible impact on same with misinterpretation of published study data and the noise metrics contained therein.
- The accompanying '*Critical Review of the Applicant's Acoustic Assessment Report*' demonstrates that the proposed change of use is not suited to the existing building, with particular reference to the timber floor construction separating the overhead apartments from the concert venue with its associated circulation and bar areas.
- The impact of continuously excessive noise levels will detract from the quality of the living space provided in the overhead apartments to such an extent that those units will not be suitable for habitable purposes (in reference to the noise levels emanating from the development and as the apartment windows will not be able to be opened due to the presence of the smoking area).
- The 'Acoustic Assessment' submitted with the application does not adequately address the following:

- The design for adequate sound-proofing as it has been suggested that normal domestic standards will be sufficient through floors despite a substantial commercial noise source proposed within the same building.

The applicant has misinterpreted the relevant metric for a domestic situation (please refer to the critical review undertaken by Dalton Acoustics Ltd. for the correct levels which also notes that the applicant's assessment has referred to noise from a one-off event and not to noise associated with a concert venue used for multiple events annually).

- The need to consider the extraneous levels and characteristics of entertainment noise or the provision of sufficient mitigation of low-frequency structural noise transfer.
 - The common noise issues associated with smoking areas given the lack of attenuation and the proximity of windows serving residential properties.
- The proposed development is not suitable at the subject building and will have an unacceptable detrimental impact on the residential amenity of the overhead apartments resulting in the devaluation of those properties (as supported by the accompanying correspondence prepared by Bridge Auctioneers, Appendix 'C' of the grounds of appeal).
 - The proposed development will effectively render the overhead apartments uninhabitable for the following reasons:
 - The lack of consent for any use of the floor joists supporting the apartments.
 - Excessive noise (incl. low-frequency noise).
 - The siting of an external smoking area below the windows of an apartment thereby preventing its windows from being opened and resulting in a lack of ventilation.

- A building originally constructed as a church, which accommodates apartments at first floor level with timber joists, is not suitable for conversion to a concert venue with a bar.
- In the event the Board is minded to grant permission, it should address the aforementioned issues through the imposition of conditions as suggested in the '*Critical Review of the Applicant's Acoustic Assessment Report*' compiled by Dalton Acoustics Ltd. For comparison purposes, the Board is referred to its determination of ABP Ref. No. ABP-302507-18 which included the following conditions:
 - Music played on the premises shall be inaudible at the nearest noise sensitive premises. For this purpose, the LAeq level measured over 5 minutes, when measured in a habitable room, garden or open space at a time when an outside area would be expected to be used, when entertainment is taking place in the premises, shall show no increase when compared with the representative LAeq (5 minutes) level measured from the same position, under the same conditions, and during a comparable period with no entertainment taking place.
 - Music played on the premises having a tonal quality shall be inaudible at the nearest noise sensitive premises. For this purpose, the Leq level measured over 5 minutes, in the 50Hz to 160Hz third octave bands inclusive, measured in a habitable room, garden or open space at a time when an outside area would be expected to be used, when entertainment is taking place in the premises, shall show no increase when compared with the representative Leq measured over 5 minutes in the 50Hz to 160Hz third octave bands inclusive, measured from the same position, under the same conditions and during a comparable period with no entertainment taking place.

6.2. Applicant Response

- The applicant has a proven track record for professionalism and excellence in the field of music and event management and promotion. It has operated a

box office from the subject premises since January, 2020 and the proposed development represents the logical additional use of an underutilised building.

- The building in question was originally built as a band hall and is acoustically suited for use as a concert venue.
- The development site is located in Wexford town centre, a short distance from Main Street, where the proposed use is deemed acceptable. It occupies a position between two established venues along what is promoted as the 'cultural spine' of Wexford, namely, the Wexford National Opera House and the Wexford Arts Centre. The general area, which also includes Wexford Library, Wexford Creative Hub, Selskar Abbey and the Westgate Heritage Centre along the path of the old town wall, can be described as vibrant in terms of street level daytime and night-time activity.
- The proposed development is a fitting compliment to the overall cultural landscape of the town.
- Similar to the Opera House and Arts Centre, the proposed development will operate under a 'theatre' licence. It is not a pub or nightclub but rather a venue for a limited number of ticketed events.
- Groups of people will not gather in the area for extended periods of time, although a small number may use the smoking area before performances and during intervals. The bar will not remain open after the finish of events at 23:00 hours and will typically only open for 30 minutes prior to performances.
- The Board is referred to the accompanying revised design proposals, although both options (i.e. the original application and the aforementioned revisions) are feasible and will not result in any impact on the amenity of the overhead apartments. The details and rationale for these revisions can be summarised as follows:
 - The relocation of the WC facilities and associated sound lobby from beneath the first-floor apartments in the Wesleyan Chapel which will have the effect of greatly reducing the number of people who enter this area during events. Increased provision for WC facilities will be made

on the upper level adjacent to the stage area in lieu of those removed from the chapel through the omission of the lounge area.

- The layout of the ground floor space within the former chapel is to be altered so that the only connections between it and the concert hall will be via the main entrance to the theatre and an access to a chair store.
 - A much smaller sound lobby (a free-standing independent structure) will be added to the entrance from the box office to the concert hall. This lobby has been specifically located so that it is directly below the entrance lobby and staircase serving the overhead apartments.
 - The proposed chair store will only be accessed when the concert hall is not in operation and a double set of acoustic walls and doors are to be provided between it and the hall.
 - A second acoustic wall is proposed between the concert hall and the box office / foyer area to ensure that the sound insulation performance of the acoustic lining of the concert hall is maintained.
- With respect to the appellants' critique of the acoustic assessment provided with the application, the Board is referred to the accompanying supplementary report prepared by Acoustic Designs on behalf of the applicant. At this stage, it is important to emphasise that the noise surveys undertaken as part of the acoustic assessment were carried out between the 'Level 5' lockdown restrictions during December, 2020 when the baseline noise environment was as "normal" as could be expected since the advent of the COVID-19 pandemic and, while conservative, the results obtained are an accurate reflection of an average future scenario. In contrast, the '*Critical Review of the Applicant's Acoustic Assessment Report*' compiled by Dalton Acoustics Ltd. was carried out during the Level 5 restrictions and thus is not representative of the baseline noise environment.
 - The survey work which informs the report prepared by Dalton Acoustics Ltd. was carried out during the Level 5 lockdown when there was a general lack of movement of people and traffic and thus is inappropriate and inaccurate. In this regard, the Board is referred to the supplementary report of Acoustic Designs which states that:

'The report of Dalton Acoustics Ltd. proposes a sound level condition that is likely to be unachievable in practice. Their argument is based on sound levels measured during a Level 5 lockdown, during which all entertainment, restaurants, non-essential retail, other services, including many offices, and other businesses, were closed.

At the core of their argument, the Dalton Acoustics Ltd. report presents data from sound level measurements taken in an unoccupied apartment during Level 5 lockdown, claiming that these are "not considered extreme". We strongly disagree with this statement. The sound levels presented were measured during extraordinary circumstances, are exceptionally low, are not typical of an urban bedroom and should not form the basis of an assessment of noise impact'.

Accordingly, the Board is requested to dismiss the Dalton Acoustics Ltd. report as it is based on unrealistic baseline data.

- The appellants' acoustic report has misunderstood / misrepresented the overall approach to the proposed sound insulation arrangements. It implies that the fitting of sound insulation to the suspended timber floor of the apartments is the only mitigation measure proposed, however, the overall noise mitigation strategy will, in practice, include the following:
 - The containment of high sound levels by using sound insulating lining on all areas of the performance space;
 - The provision of a sound lobby structure at the entrance to the theatre, including multiple doorways, to minimise sound leakage;
 - Supplementary sound insulation on the suspended timber floor in the former chapel; and
 - The use of a limiter to control the upper limit of the sound levels in the performance space.
- The revised internal layout option will further reduce the potential for noise from the proposed development to impact on the overhead apartments.
- The supplementary acoustic report provided in response to the third party appeals concludes as follows:

- The conditions attached to the notification of the decision to grant permission, subject to the modifications suggested, will provide for the protection of the residential amenity of surrounding dwellings in a manner that is appropriate, proportionate and achievable.
 - The sound levels in the appellants' acoustic critique were measured during a Level 5 lockdown when all entertainment and non-essential retail etc. was closed. There are also concerns over the editing of the noise surveying results and the failure to highlight the time periods when the venue would be operating.
 - It is not accepted that the sound levels measured by the appellants' acoustic report represent an appropriate basis for the assessment of the noise impact of the proposed development.
 - The appellants have failed to acknowledge the overall sound control strategy and have instead focused on specific matters resulting in a misleading conclusion.
 - It is acknowledged that sound from the proposed development may be audible in the appellants' apartments during some of the amplified music events, however, this will be controlled to an acceptable standard by the sound control measures detailed in compliance with planning conditions.
 - In order to include some provision for smokers, the entrance courtyard onto Rowe Street Lower has been designated as a smoking area. This will only be in use for brief periods and will not be used as part of the venue bar area. In addition, internal secondary glazing is under consideration with a building conservation specialist.
- The Archaeological Heritage Impact Assessment undertaken on behalf of the applicant has established that the proposed development fully accords with the conservation objectives of the Development Plan and is acceptable subject to conditions i.e. archaeological monitoring during construction.
 - With respect to the assertion that no written consent has been given for the use of the overhead floor joists for the structural support of the acoustic

ceiling, it should be noted that the application was validated and considered in full by the Planning Authority. Furthermore, any dispute as regards the right of the applicant to utilise the roof of the ground floor, which incorporates the floor joists of the first floor accommodation, for the purpose of affixing the acoustic ceiling is a civil matter and not an issue to be addressed by the planning system.

- The Deeds and conditions thereof associated with Apartment No. 1 are only relevant and applicable to that apartment and its owner / occupier. They do not apply to the remainder of the building or to any aspect of the structure which forms part of the planning application. It is not legally possible for the applicant to be in breach of conditions imposed on the owner of Apartment No. 1. All statements by the appellants as regards an alleged breach of the Deeds are irrelevant.
- The contents of the auctioneer's valuation undertaken on behalf of the appellants are based on assumptions and / or opinions that have not been researched or validated. Full design details were provided with the application and a failure to properly research the proposal invalidates much of the commentary. For example, the reference to the *'murmur of music until the early hours of the morning'* is in error given that the application clearly details the type of venue proposed and that all performances will cease before 23:00 hours.
- The accompanying correspondence from DNG McCormack Quinn asserts that the proposed development will not adversely affect the open market rental or capital values of the apartments in light of the information available (including the applicant's acoustic assessment) and could instead have a positive impact on property values in the immediate area.
- In relation to the proposed smoking area and its impact on the overhead apartments, all of the windows on the elevation in question are positioned in excess of a whole floor level above the smoking area and were fixed shut as part of conservation works to the facade of the building. None of these windows open.

- The proposed smoking area will only be used for 30 minutes prior to performances and during intervals.
- Venues in close proximity to the site, including the National Opera House and the Wexford Arts Centre, operate in a manner similar to the proposed development under the provisions of a theatre licence. These premises do not have defined smoking areas with patrons instead smoking at the entrance to the venues on the public footpath. While the applicant is amenable to the omission of the smoking area by way of condition, the motivation in providing the smoking area is to keep the venue tidy and clean in terms of managing cigarette ends and to keep patrons safe, secure and under the umbrella of the venue's public liability insurance.
- The Board is referred to the accompanying supplementary noise report and its commentary on the usage of the proposed smoking area, including that it will not be used by large groups of people for extended periods and is unlikely to result in any significant noise or disturbance.
- The proposed development will not have an adverse impact on the residential amenities of surrounding properties due to the inclusion of appropriate mitigation measures.
- The proposal complies with the policy provisions of the Development Plan and will safeguard the sustainable and long-term use of an historic building.

6.3. **Planning Authority Response**

- The Planning Authority is of the opinion that the conditions attached to the grant of permission will satisfactorily mitigate any possible impact on residential amenity at this town centre site.

6.4. **Observations**

None.

6.5. Further Responses

6.5.1. *Response of Catherine Jordan to the Circulation of the Applicant's Submission:*

None received.

6.5.2. *Response of Rebecca Kehoe to the Circulation of the Applicant's Submission:*

- The supplementary acoustic report provided in response to the third-party appeals includes a request to amend Condition No. 3(a) of the notification of the decision to grant permission, however, as the applicant did not lodge a first party appeal with respect to that condition, the Board should not consider the request.
- The applicant's response to the grounds of appeal has:
 - Measured external noise which is not relevant to internal ambient levels as the proposed development is situated directly below the existing apartments.
 - Referred to, and incorrectly interpreted, published guidance by adopting noise levels considered to be undesirable for a one-off event as the design goal for the proposed development.
 - Underestimated the sound insulation requirements of the proposed development, with particular reference to TGD Section E 2014 which states that '*higher levels of sound insulation would be desirable*' if a dwelling is attached to a commercial property (i.e. the subject entertainment venue).
 - Sought to apply the levels / metrics applicable with respect to steady state broadband noise (as opposed to fluctuating, dynamic, tonal and impulsive noise) in an attempt to define reasonable suggested design goals. The use of levels relevant to steady state broadband noise sources with lesser nuisance characteristics is not appropriate in the consideration of entertainment-type noise.
 - Repeatedly suggested that the exceedance levels for steady state broadband noise are applicable in this instance despite their unsuitability in the evaluation of entertainment noise.

- The applicant has acknowledged that sound from the proposed development will be audible in the apartments.
- The fundamental design parameters used in support of the application are not correct for the intended use of the building as a concert venue.
- Contrary to the applicant's submission, the windows to the apartment units can be opened (as shown in the accompanying photographs) as required for compliance with TGD Part F of the Building Regulations, 1997.
- If secondary glazing were to be fitted to the apartment windows thereby preventing their opening, then the units in question would not comply with the Building Regulations as regards adequate ventilation.
- The Deeds of Apartment No. 1 clearly and explicitly state that the floor joists of the apartment belong to the owner of that property.
- The attachment of the acoustic ceiling to the overhead floor joists will reduce the loading the appellant can place on her own floor e.g. furnishings, furniture etc., and may also result in deflection of the apartment floor.
- The appellant, as the owner of an overhead apartment, has not consented to the use of any part of her property to facilitate the proposed development (i.e. the fitting of an acoustic ceiling to the underside / joists of her apartment floor) and, therefore, the planning application should have been invalidated.
- With respect to the suggestion that the apartments overhead could increase in value consequent on the proposed development, it can only be assumed that this statement was made on the basis that the applicant provided partial & inaccurate information to its auctioneer as regards likely noise levels in the apartments and also failed to declare that alterations were being proposed to the apartment (without the consent of its owner) which would result in it being non-compliant with the Building Regulations.
- Experience shows that the patrons of venues such as that proposed tend to congregate in smoking areas before, during, and after performances.
- The 3 No. apartment windows immediately over the proposed smoking area provide ventilation to the bedroom, dining area, and living space of Apartment

No. 1. Each of the windows can be opened and is required to do so to comply with Building Regulations.

- The location of the smoking area will result in excessive noise and odours / smoke entering Apartment No. 1 when its windows are open.
- Noise will continue to occur on site long after performances have finished due to activities such as the removal / stacking of chairs and cleaning etc.
- In the event of a grant of permission, the issues raised in the grounds of appeal should be addressed through the imposition of conditions such as those which were attached to ABP Ref. No. ABP-302507-18.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The principle of the development
- Impact on residential amenity
- Built heritage and archaeological considerations
- Other issues
- Appropriate assessment

These are assessed as follows:

7.2. The Principle of the Development:

7.2.1. The proposed development site is located in a mixed-use area zoned as 'Town Centre' with the stated land use zoning objective 'To protect and enhance the special physical and social character of the existing Town Centre and to provide for new and improved Town Centre facilities and uses', and although use as a 'concert hall' is not specifically listed in the Land Use Zoning Matrix Table included as part of Map No. 21: 'Master Plan Zones' of the Development Plan, it is notable that 'cultural, recreational & leisure' developments are all 'permitted in principle' within this zoning. In this regard, I would suggest that the intended use of the subject site as a concert hall with an ancillary bar service operating under a 'theatre licence' would be

compatible with the broader pattern of development in the area, particularly in light of the site location along what has been described as the 'cultural spine' of the town between the Wexford Arts Centre (a short distance away at Cornmarket) and the Wexford National Opera House (further south along High Street). Support is also lent to the proposal by reference to Section 6.2 of the Development Plan which acknowledges the importance of developing the town's cultural infrastructure and the wider contribution of culture in all its guises in supporting both local need and in assisting economic development. Accordingly, I am satisfied that the overall principle of a concert hall at the location proposed is acceptable, subject to the consideration of all other relevant planning issues, including the impact, if any, of the proposal on the amenities of neighbouring properties and the wider area.

7.3. Impact on Residential Amenity:

- 7.3.1. The primary concern raised in the grounds of appeal is that the proposed development will have a detrimental impact on the residential amenity of the existing apartments within the former chapel building by reason of excessive noise and general disturbance. In this regard, I would advise the Board that I will refer to the appellants' first floor apartments (i.e. those within the former chapel) as Apartment Nos. 1 & 2 for identification purposes given that there are two further apartment units located above the proposed concert / band hall (Apartment No. 3) and the ancillary bar area (Apartment No. 4). In the interests of clarity, it is my understanding that Apartment No. 3 is in the control of the applicant and is to be used to provide accommodation for artists / acts performing in the concert hall whereas Apartment Nos. 1, 2 & 4 are privately owned by third parties.
- 7.3.2. The proposed development involves the reconfiguration of the former chapel to serve as the main entrance to the concert hall with associated service areas including a ticket booth, office, toilets, and storage space. Upon purchase and / or validation of tickets, patrons of the development will pass through this area (beneath Apartments 1 & 2) into the main concert hall in order to attend the music event / comedy performance etc. whereupon they will have the option of availing of the ancillary bar & lounge area located beyond same (trading under a theatre licence and allowing for the sale of alcohol for consumption on the premises). An external smoking area is also to be provided off the single storey entrance lobby alongside Rowe Street Lower.

- 7.3.3. With respect to the broader operation of the venue, it is anticipated that the concert hall will host up to 90 No. shows per year (normally comprising 30 No. comedy shows, 30 No. seated acoustic music shows, and 30 No. standing music shows) with a maximum capacity of 190 No. seats. Doors are to open 45 No. minutes before performances while the bar is only to open for 30 No. minutes before performances and during intervals i.e. it will remain closed after the performance. Notably, while it was initially indicated that typical performances would commence at 20:00 hours and run until 22:15 hours with a hard curfew at 22:30 hours (and an interval between 21:00 and 21:15 hours), it has been submitted in response to the grounds of appeal that the venue will accommodate events up until 23:00 hours.
- 7.3.4. In support of the proposed development, the subject application has been accompanied by an 'Acoustic Assessment' which has sought to establish a baseline ambient noise environment against which the impact, if any, of the proposal will be assessed. This report details that a noise monitoring survey was carried out at a location outside of the existing entrance to the former chapel building on Rowe Street Lower between the 3rd and 7th December, 2020. The timing of the survey was chosen to include evenings when the proposed concert hall would most likely be in operation (i.e. Thursday, Friday & Saturday) and was further selected to coincide with the ending of the COVID-19 Level 5 lockdown (although it is acknowledged that the measured noise levels are likely to be lower than normal as the pubs & restaurants were not open in the evenings thereby reducing the number of people and activities in the area while the nearby Wexford Opera House was not operating at the weekend). The measured sound levels are subsequently presented in Figure 1 for 24-hours in 15-minute periods from midday through to midday the following day with Table Nos. 1(a) and 1(b) summarising the measured dB_{LAeq} and dB_{LA90} noise levels respectively for daytime (0700-1900), evening (1900-2300), and night-time (2300-0700).
- 7.3.5. The 'Acoustic Assessment' proceeds to identify three primary noise sources arising from the operation of the proposed development i.e. noise from heating and ventilation equipment, noise from persons attending performances (including use of the smoking area), and entertainment noise from amplified music, before analysing the potential impact of each and proffering noise mitigation measures with a view to ensuring that the venue does not unacceptably detract from the residential amenity

of the third party apartments overhead. The key aspects of the noise analysis contained in the acoustic assessment can be summarised as follows:

- *Section 3: Equipment Noise Assessment:*

With respect to mechanical noise emanating from sources such as heat exchangers, ventilation equipment, and extractors etc., it was not possible to identify the make or model of the 4 No. air conditioning chiller units mounted on an external flat roof of the existing building or to directly measure the noise from them. Therefore, noise modelling was undertaken pursuant to 'BS 4142:2014: Methods for Rating and Assessing Industrial and Commercial Sound' on the basis of chiller units with a sound power level of 65dB_{LWA} in order to estimate the sound pressure levels at the nearest noise sensitive locations. This modelling calculated the sound pressure level at the windows of Apartments 3 & 4 as 35dB_{LAeq} and 40dB_{LAeq} respectively. It was subsequently determined that the 'worst-case' calculated noise rating level with all of the AC units running would be between 3dB and 8dB below the background noise level of 43.4dB_{LA90} (in reference to the evening hours of 1900-2300 when the concert hall would be in use) as derived from the earlier noise monitoring survey. Accordingly, it has been submitted that although the AC units are likely to be audible when the windows to the apartments are open, the noise level will be below the measured background level and thus is unlikely to disturb residents. In addition, it has been emphasised that the concert hall will be used in the evenings for a limited number of events per year while the AC units will only operate for part of the time and never after 2230 hours.

- *Section 4: Entertainment Noise:*

In the absence of any specific Irish standard for the assessment of noise from entertainment sources (noting that BS4142 is unsuited to any such assessment), regard has been had to the study entitled 'Noise from Pubs and Clubs' (Phases 1 & 2) commissioned by the UK Department for Environment, Food and Rural Affairs (while the document has not been adopted as a formal regulation in either Ireland or the UK, it is considered to be the most relevant publication available and representative of best practice), including the

proposed use of absolute music sound levels inside noise sensitive dwellings of between 34-37dB_{L_{Aeq}5min} with the windows closed. It has been acknowledged that sound / music breakout could potentially impact the overhead apartments with reference being made to the timber floor separating Apartments 1 & 2 from the ground floor use in the former chapel building as well as the concrete floor between Apartment No. 4 and the proposed bar area (Apartment No. 3 is under the control of the operator and is to be used as accommodation for performers thereby negating any assessment). Therefore, a sound insulation survey was carried out between the ground floor and Apartments 1, 2 & 4 with the testing indicating that the existing structure provides a sound reduction of 58dB $D_{nT,w}$ between the bar / theatre and Apartment No. 4, and 45/48dB $D_{nT,w}$ between the entrance area and Apartment Nos. 1 & 2.

In order to satisfy '*Noise from Pubs and Clubs*', a sound reduction target of greater than 60dB has been recommended between the band hall / theatre and the apartments (this assumes that any amplified sound level could exceed 90dB_{L_{Aeq}}). It is also recommended that attention be paid to the low frequency sound insulation performance as this is most likely to transmit through the building. Accordingly, the ground floor layout of the theatre has been designed to minimise the transmission of sound into the apartments with only Apartment No. 3 (under the operator's control) directly connected to the concert hall. The theatre will be separated from the bar and entrance areas by walls & doors which will provide sound insulation thereby reducing the sound levels in those areas directly beneath the apartments and, by extension, in the apartments themselves. A sound lobby has also been designed between the theatre and the entrance area to minimise the transmission of sound when people are accessing the toilets in the former chapel building. Further noise mitigation is to be achieved through the fitting of an acoustic 'Soundbloc' ceiling to the underside of the timber floor of Apartments 1 & 2 with modelling showing an increase in sound insulation performance from 45dB to 53dB_{Rw}. More significantly, the low frequency performance was increased by almost 20dB (it is also anticipated that sound levels in the entrance area from people

entering and exiting the premises will be unlikely to exceed 70dB_{LAeq} and will not have the low frequency energy of amplified music).

With respect to Apartment No. 4 over the bar / lounge area, the separating concrete first floor is expected to provide much greater sound insulation than the timber floor in the chapel building and it is proposed to fit an acoustic ceiling to its underside so as to increase the sound insulation performance from 57dB to 72dB_{RW} (as evidenced by modelling). The bar itself will be separated from the theatre by an acoustic wall with double doors which could provide more than 30dB of sound reduction between the theatre and bar areas (although any opening / closing of doors could reduce this in practice). There will be no loudspeakers in the bar / lounge area to further reduce the exposure of the overhead apartment to high sound levels during amplified performances.

Within the band hall, the fitting of further 'Soundbloc' plasterboard mounted using an acoustic isolation clip system is expected to improve the sound reduction from 48dB_{RW} to 54dB_{RW} with an improvement of c. 20dB in low frequency sound insulation. The rooflights are to be removed and the openings returned to slate on rafters. A sound level limiter will also be fitted to the sound system in the theatre which will be capable of cutting the power if a pre-set level is persistently exceeded (with the calibration and setting of the sound level to be based on appropriate sound levels inside the theatre following completion of construction and fit-out to ensure that the guideline music noise levels are not exceeded inside the apartments).

- *Section 5: Noise from People:*

The likelihood of noise disturbance to the occupants of Apartment Nos. 1 & 2 from people entering / exiting the premises is expected to be low noting that doors will open for 45 minutes from 1915 - 2000 hours while the bar will be closed after performances resulting in the theatre emptying quickly over the course of 10-15 minutes.

The noise monitoring survey established an evening time ambient noise level at the entrance onto Rowe Street Lower of 59dB_{LAeq} (with a background level of 43dB_{LA90}) which is indicative of a reasonable amount of activity in the area

during the evenings. While it has been accepted that it is difficult to estimate the sound level from people entering / exiting a premises, given the short duration and the ambient noise levels it is considered unlikely that disturbance will arise.

Similarly, given the small size & capacity of the smoking area, and as its usage will be restricted to a 45-minute period before shows and during the interval, it is considered to be unlikely to result in the disturbance of local residents.

(With regard to construction noise, the Acoustic Assessment acknowledges that little can be done in practice to reduce the noise impact of activities such as drilling into walls or floors shared by both the concert hall and the apartments, however, it is envisaged that this could be mitigated in part through good practice, including limiting working hours and by coordinating activities to reduce the number of days with higher noise levels).

- 7.3.6. Accordingly, it has been submitted that the proposed concert venue can be developed and operated without detriment to the residential amenity of neighbouring residences, subject to the implementation of suitable sound insulation and noise mitigation measures.
- 7.3.7. In seeking to counter the arguments put forward in support of the development (and in opposition to the grant of permission), both third-party appeals have been accompanied by a 'Critical Review' of the 'Acoustic Assessment' which questions the veracity / applicability of the data used to inform its analysis. At the outset, this critique states that ambient & background noise levels derived from baseline noise monitoring conducted at a streetside location outside of the existing building should not be used as a reference point by which to measure the impact on interior noise levels within the overhead apartments. It proceeds to assert that a more representative dataset can be obtained from the results of a noise monitoring survey commissioned by the appellants which was carried out in the rear bedroom of the unoccupied Apartment No. 2 between 18:11 hours on Thursday, 4th March, 2021 and 15:03 hours on Saturday, 6th March, 2021. That survey recorded considerably lower ambient and background noise levels within the interior of the apartment as follows:

22:00 hours, 4th March – 0800 hours, 5th March: 18dB_{LAeq5minAv} (Ambient)

	17dB _{LAeq5minAv} (Background)
08:00 hours, 5 th March – 2200 hours, 5 th March:	19dB _{LAeq5minAv} (Ambient)
	18dB _{LAeq5minAv} (Background)
22:00 hours, 5 th March – 0800 hours, 6 th March:	17dB _{LAeq5minAv} (Ambient)
	17dB _{LAeq5minAv} (Background)

7.3.8. These measurements are considered by the appellants to be illustrative of a quiet bedroom and provide a more realistic representation of internal ambient levels within the apartments in the context of assessing noise transfer from the proposed development.

7.3.9. The critique continues by asserting that the ‘Acoustic Assessment’ has misinterpreted the findings of DEFRA’s ‘*Noise from Pubs and Clubs*’ (Phase 1 and Phase 2) as the outcome of that study was that the level at which test subjects felt noise was “just unacceptable” for a one-off event within a habitable room with the windows closed was 34dB_{LAeq,5 min} while the range for the first two sources of “unacceptability” was 34-37dB_{LAeq, 5 min}. Therefore, it is the appellants’ position that the levels referenced are not intended to be design levels but are instead an indicator of levels to be avoided. Moreover, attention is drawn to the fact that the study refers to a one-off event and not a situation when there could be multiple events (i.e. up to 90 No. shows per year as proposed). It is further stated that there has been no attempt to design for a worst-case scenario to avoid the negative effects of amplified music ‘*in excess of 90dB_{LAeq}*’ or the typically fluctuating and dynamic nature of entertainment noise which can give rise to greater levels of nuisance due to its tonal and impulsive components.

7.3.10. With regard to the sound insulation proposals and the noise mitigation measures, the review raises concerns that the development is being designed to the (allegedly) misinterpreted levels of 34-37dB_{LAeq, 5min} which would allow for a significant increase over the existing internal ambient levels of c. 18-19dBA recorded in Apartment No. 2 (unoccupied). It is also noted that while the fitting of an acoustic ceiling to the timber floor of Apartments 1 & 2 will apparently increase the sound insulation performance from 45dB to 53dB_{Rw}, TGD Part E of the Building Regulations recommends a minimum sound insulation level of 53dB_{DnT,w} between domestic properties and suggests that a higher standard of sound insulation may be required

between spaces used for normal domestic purposes and communal or non-domestic use. Further concerns are raised as regards the transmission of 'structural-borne' low-frequency noise and its impact on the apartment units.

- 7.3.11. In relation to the smoking area, the review emphasises its location directly below the apartment windows onto Rowe Street Lower and rejects any downplaying of the noise impact arising from its use on an ongoing basis for up to 90 No. times a year.
- 7.3.12. The appellants' critical review of the acoustic assessment subsequently concludes by asserting that the design as proposed would allow for a 20dB(A) increase over the existing noise levels in the apartments (a 10dB increase is subjectively perceived by the human ear as roughly equating to a doubling of the original noise / sound level) while the intermittent, impulsive and tonal nature of the noise at times will result in even greater annoyance for residents. It proceeds to consider Condition No. 3 as imposed by the Planning Authority and states that this will allow entertainment noise to be both audible and intelligible within the apartments while peak noises with intermittent and tonal characteristics could be substantially above the average level for considerable periods of the time sample. The recommendation is then made that the design goal should be 10dB below the LA₉₀ background level when measured in the absence of the entertainment noise to the effect that noise from the development should be inaudible within the apartments.
- 7.3.13. Following circulation of the third-party appeals, the applicant has responded by submitting a supplementary report from its acoustic consultant which rejects much of the appellants' critique of the original acoustic assessment. It states that the appellants' submission has misunderstood or misrepresented the holistic strategy for sound insulation / noise mitigation by primarily focusing on a single aspect i.e. the fitting of an acoustic ceiling to the underside of the overhead apartments. It is further submitted that the sound level condition proposed by the appellants is likely to be unachievable in practice given that the background noise levels detailed in the grounds of appeal were recorded in an unoccupied apartment during a Level 5 lockdown when travel restrictions were in place and all entertainment businesses & non-essential retail etc. were closed. The results of the appellants' noise monitoring are considered to be unrepresentative and not typical of an urban bedroom as they were measured during extraordinary circumstances. For comparison purposes, the sound level in a typical quiet bedroom is consistently given in the available literature

as 30-35dB(A) whereas the appellants have measured a background level of 17-18dB_{LAeq5minAv} in the rear bedroom of an unoccupied apartment during lockdown. In addition, the time periods provided for the measured sound levels do not reflect the normal segmentation of a day into daytime (0700-1900), evening (1900-2300) and night (2300-0700) and fail to consider the operating hours of the proposed development i.e. 1900-2300.

- 7.3.14. The applicant's response also highlights that DEFRA's '*Noise from Pubs and Clubs*' has not been adopted as statutory regulation or guidance with the document discussing work by the Institute of Acoustics which, while considering the issue of inaudibility as an appropriate constraint to avoid sleep disturbance during night-time hours '*if entertainment takes place on a less frequent basis*', failed to produce a formal code of practice. The DEFRA report is further noted as stating that '*the term acceptability can be viewed as a compromise between annoyance and audibility*' and, therefore, the argument is put forward that as the subject site is an historic building with a shared use, some music sound from the proposed development should be considered acceptable inside the existing apartments during the daytime and evening time up to 2300 hours in light of the limited number of ticketed events planned per year.
- 7.3.15. A final submission received from the appellants in response to the circulation of the applicant's supplementary report (as referenced in the preceding paragraphs) continues to assert that the measurement of external noise levels is not relevant to the consideration of any noise impact on internal ambient levels within apartments physically attached to the proposed development. It similarly reiterates that the applicant has sought to rely on design levels applicable in respect of one-off events (as opposed to multiple events per annum) while the sound insulation measures proposed would be insufficient to avoid disturbance to the occupants of the overhead apartments. Further reference is made to the nature of entertainment noise (with its fluctuating, dynamic, tonal, and impulsive components) and the differentiation of same for steady-state broadband noise with known lesser nuisance characteristics.
- 7.3.16. Having reviewed the available information, there is considerable disagreement between the applicant and the appellants as regards the representativeness of the noise monitoring undertaken by each party, the noise design limits applicable, and the adequacy of the sound insulation standards & noise mitigation measures

proposed. In this respect, I am inclined to suggest that neither of the noise monitoring surveys provided by the first and third parties affords a reliable representation of the baseline noise environment against which the impact of the proposed development can be assessed.

- 7.3.17. In my opinion, the results of the noise survey provided with the planning application, which measured noise levels at a streetside location outside of the existing building along Rowe Street Lower, should not be considered to provide for an accurate reflection of the baseline noise environment presently experienced within the internal spaces of those apartments positioned directly over the proposed venue. While I would acknowledge the applicant's admission that the noise levels recorded may be lower than would normally be expected given the influence of the COVID-19 pandemic (notwithstanding the ending of the Level 5 lockdown), I am also cognisant that these noise measurements may have been overtly influenced by noise sources such as passing traffic etc. which would not necessarily have the same impact when heard from within the apartment units. It could also be suggested that the noise measurements should have been recorded outside of the apartment windows overlooking the band hall itself so as to be more representative (e.g. by avoiding the influence of passing traffic etc. and as they would be closer to the source of the entertainment noise). On balance, I am unconvinced that the external measurements provided allow for a reasonable basis on which to assess the noise impact of the proposed development on the overhead apartments.
- 7.3.18. Similarly, with respect to the noise survey which has accompanied the grounds of appeal, I am inclined to concur with the applicant that noise monitoring undertaken in an unoccupied apartment during a Level 5 lockdown (when travel restrictions were in place and entertainment businesses & non-essential retail etc. were closed) cannot be construed as representative of the 'normal' baseline noise environment experienced in that accommodation.
- 7.3.19. Notwithstanding the veracity of the noise monitoring surveys submitted, difficulties typically arise in employing a predictive approach to the assessment of noise impact given that operational surveys will always provide a more accurate assessment than any predictive exercise. Therefore, I am inclined to suggest that it would be reasonable in this instance to consider the appropriateness of siting a concert venue immediately below residential units from first principles and to apply the

precautionary principle with a view to assessing the likely impact of the proposal on the residential amenity of the overhead apartments.

7.3.20. The issue of noise, and more specifically entertainment noise, is somewhat subjective and this is acknowledged in DEFRA's '*Noise from Pubs and Clubs*' which states that any application of an action level 'Absolute L_{Aeq} ' will also need to consider an additional subjective requirement that the entertainment noise itself has a clear audible (to an otologically normal listener) contribution to the overall noise e.g. the songs / tracks would be recognisable to a listener familiar with the noise and any words intelligible. Other contributory factors in the perception and tolerance of noise include how often entertainment takes place at the venue, the duration of any performances / usage, and typically whether or not the noise continues beyond 23:00 hours. In this regard, while the applicant has indicated that performances will typically commence at 20:00 hours and finish at 22:15 hours, it is notable that the guidance provided in '*Noise from Pubs and Clubs*' is more applicable to the assessment of noise arising from one-off / less frequent events rather than a development which is intended to accommodate performances approximately 90 No. times a year. That study found that the noise levels at which test subjects felt the noise was "just unacceptable" for a one-off (entertainment-type) event within a habitable room with the windows closed was $34dB_{LAeq,5min}$ (by way of context it was subsequently noted that an analysis of data from the 2000/2001 National Noise Incidence Study had indicated that only a small percentage of the UK population was then estimated to have internal ambient noise levels above $34dB_{LAeq, 8 hour}$). Therefore, it would be reasonable in my opinion to conclude that more frequent incidences of entertainment noise would likely have a correspondingly greater and more detrimental impact on the amenity of any affected property.

7.3.21. Given the nature of the use proposed and its relationship with the private accommodation overhead, and noting that difficulties have typically arisen in comparable situations where the noise levels and disturbance arising from the normal operation of similar premises (e.g. music and / or late-night venues, nightclubs, public houses, and smoking areas) have resulted in complaints by local residents, in my experience, the siting of a venue such as that proposed and its pattern of usage would be likely to have a negative impact on the amenity and enjoyment of the apartments above. Particular concerns arise with respect to the

potential impact of amplified music and any tonal or impulsive components (including lower frequency or bass noise).

7.3.22. While it may be technically possible to mitigate against the potential impact of entertainment noise by recourse to the measures outlined by the applicant e.g. the installation of sound-proofing, the provision of a sound lobby, and the use of a sound limiter, with further controls imposed by way of condition in the event of a grant of permission, I am nevertheless unconvinced as regards the appropriateness of siting a development such as that proposed immediately below private residential accommodation, the reliance being placed on the mitigation proposed, and the ultimate ability to achieve the desired results.

7.3.23. I would also acknowledge the legitimate concerns raised by the appellants as regards the siting of a smoking area directly below the windows of a private apartment. Although the usage of this area will be intermittent and of limited duration as outlined by the applicant, and while the application site and the apartments themselves are located in a mixed-use town centre area where increased levels of evening / late-night activity would not be unexpected, should the Board be minded granting permission, I would recommend the omission of the smoking area given the potential for disturbance and loss of amenity to the units overhead.

7.4. Built Heritage and Archaeological Considerations:

7.4.1. The proposed development site includes the ground floor level of a former Wesleyan Methodist Chapel at the corner of Mallin Street / Rowe Street Lower, the entirety of which has been listed as a protected structure by reason of its inclusion in the Record of Protected Structures contained in Appendix 2 of the Town Development Plan (RPS No. WBC0151). It is also included in the National Inventory of Architectural Heritage with the former church / chapel considered to be of 'regional' importance by reason of its architectural, artistic, historical & social qualities. It is described as representing an important component of the early nineteenth-century ecclesiastical heritage of Wexford with the architectural value of the composition, 'a solid and plain structure' recalling the contemporary Enniscorthy Methodist Church, confirmed by such attributes as the compact rectilinear plan form; the slender profile of the openings underpinning a contemporary neo-Gothic theme with those openings showing pretty "switch track" glazing patterns; and the high pitched roofline. The

NIAH further refers to the property as having been reasonably well maintained with the elementary form and massing intact together with substantial quantities of the original fabric, both to the exterior and to the interior where contemporary joinery; and decorative plasterwork enrichments, all highlight the modest artistic potential of a church making a pleasing visual statement in Rowe Street Lower.

- 7.4.2. In support of the proposal, the subject application has been accompanied by an *'Architectural Heritage Impact Assessment'* which provides an account of the historical background, architecture, and development of the wider site, including the former church and lecture hall buildings. From a review of the contents of this document, and having conducted a site inspection, it would appear that much of the interior of the ground floor area of the original church has been extensively remodelled over the years with modern interventions, including the removal of part of the northern wall of the building and the insertion of various partitions, likely having been undertaken during the conversion of the property to retail use and the provision of 2 No. apartments at first floor level pursuant to PA Ref. No. W0001954 / ABP Ref. No. PL85/5/44502 & PA Ref. No. W0004968. Although some features of interest remain in situ, it should be noted that the existing entrance porch (through which a doorway is to be opened onto Mallin Street) is a later addition while it is proposed to retain the pair of columns visible on the ground floor which supported an earlier first floor gallery (notwithstanding that the Architectural Heritage Impact Assessment has suggested that the gallery itself was probably a later insertion). Perhaps the most notable feature at ground floor level is the series of west-facing lancet window openings onto Rowe Street Lower although these have all been truncated due to the insertion of the first floor apartments.
- 7.4.3. In its analysis of the impact of the proposed works, the Architectural Heritage Impact Assessment has determined that the provision of the new wheelchair-accessible doorway to the entrance porch of the protected structure is an acceptable and reversible intervention, while the reconfiguration of the ground floor of the former church through the insertion and rearrangement of partitions will not give rise to any adverse impact on built heritage considerations.
- 7.4.4. Having considered the available information, given the general absence of original features within the ground floor interior of the former church, in addition to the evidence of previous alterations to the building fabric and more modern

interventions, in my opinion, the limited scale and extent of the works involved in the improvement of the access arrangements and reconfiguration of the floorspace will not unacceptably detract from the prevailing character or built heritage interest of the protected structure. The works themselves are reversible in part (such as the insertion of new partitions) and will not result in the loss of any notable internal features. While I would acknowledge that no details have been provided of the laying of services such as plumbing and electrical wiring as part of the proposed development, it would appear that the ground floorspace of the building has already been altered / refurbished on a number of occasions and thus the routing of services is unlikely to impact on any original features of note.

- 7.4.5. With respect to the archaeological implications of the proposed works, I would advise the Board that the application site is located within the historic town of Wexford as defined by the Urban Archaeological Survey and is also within the 'Zone of Archaeological Potential' (RMP Ref.: WX037-32) for the town. In addition, the route of the town walls / defences passes through the car park of the Church of the Immaculate Conception to the west with the site location within 'Zone 4' of the wider walls as detailed in the Wexford Town Walls Conservation Plan appended to the Development Plan.
- 7.4.6. Although the proposed development primarily concerns the change of use of an existing property, it will necessitate some excavations within the footprint of the building to accommodate foundation pads to support new structural beams as well as service trenches for new plumbing and drainage works etc. Accordingly, the subject application has been accompanied by an 'Archaeological Heritage Impact Assessment' which acknowledges that while the proposed works are of a small scale, they could potentially impact on unknown archaeological deposits or artefacts within the confines of the site. It is therefore recommended that archaeological monitoring of any sub-surface groundworks or excavations be undertaken by a suitably qualified archaeologist under licence from the Department of Housing, Local Government and Heritage. In this respect, I am satisfied that due cognisance has been taken of the archaeological implications of the proposed works and that the proposal is acceptable, subject to the imposition of appropriate conditions.

7.5. Other Issues:

7.5.1. With respect to the suggestion that the proposed development would breach certain restrictive covenants attached to the deeds of property and that the applicant may not have sufficient legal interest to execute a grant of permission (in reference to the fitting of acoustic insulation to the underside of the apartment floors), it is not the function of the Board to adjudicate on such matters. The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*' and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property interests. It is not the function of the Board to adjudicate on property disputes and should a party consider that any grant of permission cannot be implemented because of property or title issues, then Section 34(13) of Act is relevant.

7.6. Appropriate Assessment:

7.6.1. Having regard to the nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, 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.

8.0 Recommendation

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. Having regard to the nature and intended use of the proposed development, and its relationship with neighbouring residential properties, the Board is not satisfied, on the basis of the submissions made in connection with the application and the appeal, that the proposed development would not seriously injure the residential amenities of neighbouring property by reason of the noise and general disturbance associated with its use. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Robert Speer

Planning Inspector

7th January, 2022