



An
Bord
Pleanála

Inspector's Report

ABP-310877-21

Development	Retention of rear bar area and associated toilet accommodation at ground floor level and permission to install a timber screen wall.
Location	Kennedys Public House, 132, 134 Lower Drumcondra Road, Drumcondra, Dublin 9, D09 A4P8
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3142/20
Applicant(s)	Martin Tynan
Type of Application	Retention Permission and Planning Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party Appeal
Appellant(s)	Donal Windrim, Michael Windrim, Cynthia Lennon
Observer(s)	David Windrim, John Tooher
Date of Site Inspection	24 th September 2021
Inspector	Susan Clarke

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1.0 Site Location and Description

The site is located at 132/134 Drumcondra Road Lower, Drumcondra Dublin 9, D09 A4P8 and has a stated area of 655.7sq m. The site is located on the western side of the Drumcondra Road Lower, south of the Tolka River. The neighbouring buildings in the vicinity of the application site primarily accommodate mixed commercial uses, however the area west and southwest of the site primarily accommodates residential development. The site backs onto Victoria Lane, a cul-de-sac service lane.

The existing building is a two storey, commercial mid-terrace property which accommodates a public bar known as Kennedy's. The public house has been in situ since the early to mid 1900s at 134 Drumcondra Lower. The area subject to this application is located to the rear of the site abutting 1 Hollybank Road and 130 Drumcondra Lower. The subject area was being used as a storage space at the time of my site visit and was not accessible to the public.

2.0 Proposed Development

The proposed development comprises:

- Retention permission for an existing rear bar area and associated toilet accommodation at Ground Floor Level (34 sq m); and
- Planning permission for the erection of a new timber screen wall (1,500mm) along the southern and western boundary walls of an existing smoking area.

Further to a request for further information, it is proposed to extend the timber screen wall from the smoking area onto the roof of the rear bar (see Dwg. No. OLF06 PL100, Rev. B).

3.0 Planning Authority Decision

3.1. Decision

The Local Authority issued a Notification of Decision to Grant Permission and Grant Retention Permission on 21st June 2021, subject to nine standard conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports (29th September 2020 and 21st June 2021)

There are two Planning Reports on file dated 29th September 2021 and 21st June 2021, respectively. The Planning Officer in the former report refers to the policy context for the development. The premises was not considered to be a superpub nor was it considered that there was an overconcentration of pubs in the area. The Report recommended further information be requested requiring a revised noise impact assessment showing noise monitoring on Victoria Lane and Hollybank Road over 24 hours indicating when the rear bar and smoking area was in use and when it was closed; confirmation if the rear bar is to be used as a smoking area; clarify the hours of operation for the whole premises; and liaison with Irish Water regarding a 3000mm combined drain running under the extension to be retained.

The latter Planner's Report (21st June 2021) refers to the further information and unsolicited information submitted and considered that, having regard to this additional information recommended permission should be granted subject to nine conditions.

3.2.2. Other Technical Reports

Engineering Department Drainage Division (2nd September 2020): No objection subject to conditions.

Transport Planning Division: None received.

Environment and Transportation – Traffic Noise and Air Quality Unit (Email 24th September 2020): The proposed mitigation measures for the outdoor smoking area should ensure there is a negligible noise impact. Concerns raised in relation to the rear bar including what openings are included to the roof and sides. The Planner's Report (21st June 2021) prepared subsequent to the submission of the RFI Response, notes that the Air Quality Monitoring and Noise Control Unit confirmed via email on 3rd June 2021 that the Unit had no objection to the proposal subject to condition.

3.3. Prescribed Bodies

Irish Water (25th September 2020): Requests further information is sought in respect to a combined drain running under the site. Further correspondence (dated 25th February 2021) from Irish Water on file notes that comments in respect of the

application have been requested from the utility body, and the issue has been raised with the Escalation's Department for investigation.

3.4. **Third Party Observations**

A number of observations from local residents were made to the Local Authority opposing the proposed development. The key points from the Observations can be summarised as follows:

- The adjoining land's Z2 zoning needs to be taken into account in the assessment of the application.
- Concerns regarding the impacts from noise emanating from the rear bar area on the residential amenity of the surrounding area.
- The status of the enforcement proceedings initiated by Dublin City Council are unclear.
- Legal challenges in relation to the renewal of the licence for the public house have been initiated.
- As the application relates to retention permission, the impacts from noise are known.
- The noise report does not provide any predicted noise levels following the implementation of the proposed mitigation measures.
- The proposed mitigation measures are not adequate to reducing the sound levels of the required db level.
- Noise levels significantly exceed traffic noise, which is much less intrusive as it is a constant monotonous sound compared to noise from the bar.
- The timber screen will be visually incongruous and will interfere with the building line.
- The planning status of the smoking area is unclear.
- The site coverage is 100%, contravening the Development Plan.
- The development will result in a major intensification of use, damaging the residential amenity of the area.

- Five car parking space required under Reg. Ref. 172/68 have not been provided for on-site.
- The proposed development will result in littering.
- There are already significant parking issues on this end of the street and added capacity as a result of this development will bring yet another inconvenience to residents with young children.
- The rear bar was built without planning permission and a Fire Safety Certificate was not obtained.
- Strong objection to the installation of speaker systems which would allow music to emanate from the front bar of the premises into the smoking area.
- The premises is built over a public sewer line and as such queries have been raised if the development is compliant with Building Regulations.
- The proposed development will devalue properties in the area.

4.0 Planning History

Subject Site

DCC Reg. Ref. 172/68: The details of this case are not available online, however it is understood from the documentation on the subject file that the permission related to alterations to the premises, which included for the provision of five on-site parking spaces.

Neighbouring Sites:

DCC Reg. Ref. 3889/18; ABP-303510-19: Planning permission for 1) Change of use of vacant unit (part of 114 Drumcondra Road Upper) at ground level from retail to public house, 2) the demolition and reinstatement of 50m² single storey side extension, 3) refurbishment and alterations of a further 81m² of the existing ground floor, 4) new shopfront treatment at street level, and 5) signage and ancillary site works granted on 23rd May 2019.

ABP Reg. Ref. 310860: Planning permission sought for 1,614 no. Build to Rent apartments, and associated site works at Holy Cross College, Clonliffe Road, Dublin 3 and Drumcondra Road Lower, Drumcondra, Dublin 9. The case is due to be decided

in November 2021. This proposed SHD development includes for an access directly onto Drumcondra Road Lower, opposite Hollybank Road.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

The site, and the units located north and south of same, is subject to land-use zoning “Z4” (District Centres) which has the objective “to provide for and improve mixed-services facilities”. The residential units located along Hollybank Road are zoned Z2 (Residential Neighbourhoods, Conservation Areas), while the residential units along Botanic Avenue are zoned Z1 (Sustainable Residential Neighbourhoods).

“Public house” uses are permissible on Z4 zoned lands and are open for consideration on Z1 zoned lands. “Public house” is neither listed as a permissible nor open for consideration use on Z2 lands.

Section 14.7 of the Development Plan refers to Transitional Zone Areas and states *inter alia* “In dealing with development proposals in these contiguous transitional zone areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones. For instance, in zones abutting residential areas or abutting residential development within predominately mixed-use zones, particular attention must be paid to the use, scale, density and design of development proposals and to landscaping and screening proposals in order to protect the amenities of residential properties”.

5.2. Night Clubs/Licensed Premises/Casinos/Private Members’ Clubs

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

There is a need to strike an appropriate balance between the role of these entertainment uses in the economy of the city and the following: (a) to maintain high-

quality retail functions on the primary city centre streets and ensure a balanced mix of uses; and, (b) to protect the amenities of residents from an over-concentration of late night venues.

Noise emanating from and at the boundaries of these establishments are issues which will need to be addressed in planning applications for such establishments. Noise insulation and reduction measures, especially relating to any mechanical ventilation or air-conditioning, will be required to be submitted with any such planning application.

In cases where extensions to the existing use of a public house are proposed, the onus is on the applicant to demonstrate that such proposed development will not be detrimental to the residential, environmental quality or the established character and function of the area.

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

- (a) the amenity of neighbouring residents and occupiers;
- (b) hours of operation;
- (c) traffic management;
- (d) shop frontage treatment and impact on streetscape; and
- (e) proposed signage.

Section 16.36: Where it is considered that a proposed development is likely to create a disturbance due to noise, a condition may be imposed by the planning authority on any planning permission limiting the hours of operation and level of noise generation.

5.3. Natural Heritage Designations

None.

6.0 The Appeal

A Third-Party Appeal was submitted to An Bord Pleanála on 16th July 2021 by Donal and Michael Windrim of 2 Hollybank Road and Cynthia Lennon of 8 Hollybank Road,

Drumcondra, Dublin 9. The Appeal includes a peer-review conducted by IAcoustics of the Applicant's Noise Impact Assessment (which was prepared by ICAN Acoustics).

The grounds of appeal can be summarised as follows:

- The bar area will result in serious injury to residential amenity by reason of noise and general disturbance.
- The proposed noise mitigation measure in the form of a raised wall will not be effective in reducing noise from the development but will detract from the visual amenity of the area.
- There is a long history, over several years, of concern amongst the local residents about the unauthorised development that has taken place on the subject site.
- The Appellants acknowledge the presence of the long-established public house, the significance of the facility for the general community in the vicinity and the recognition in the development plan of the established commercial premises at this location.
- During a period of 50 years, the original pub never gave rise to noise or disturbance issues for the surrounding residents and area.
- The five car parking spaces required under Reg. Ref. 172/68 have never been provided.
- The application form fails to refer to Reg. Ref. 172/68 and as such the application should be invalidated. In this regard, Appendix B to the Appeal states that the Appellants have sought legal advice regarding the validity of the application and have been advised that on the basis of recent High Court authority that Dublin City Council (and consequently the Board) had no jurisdiction to entertain it, because of the failure to complete the application in accordance with the requirements of the Planning and Development Regulations 2001 (as amended) including specifically Article 22 and Form No. 2 of Schedule 3, as well as the standard application form of Dublin City Council which is and is required to be (by Article 22(1)) "a form substantially to the like effect" as Form No. 2 of Schedule 3. It was well known to the Applicant that the land was subject to a grant of planning permission in 1968 (which required the land to be used for car parking purposes), since that issue was aired in the context of disputes with local residents in the

context of licensing applications. It is noted that in the *Atlantic Diamond Limited v An Bord Pleanála* [2021] IEHC 322, the judge ruled that An Bord Pleanála did not have jurisdiction to entertain the application as neither details nor copies of enforcement notices were not included in the SHD application form.

- No permission is sought or has been obtained in the past for the use of the outdoor area in the rear yard as a smoking yard or for the erection of the roof to part of the smoking area or retractable roof. The proposed development is deficient in its description of the use of the site.
- Retention of the smoking area should also have been sought, which forms an integral element of the overall development on site.
- A key aspect of the proposed development is to build a self-contained building to be used as part of the public house but not attached to it. This approach to provide additional capacity to the existing public house is fundamentally flawed and no logic is provided in the application why this strategy has been adopted instead of providing an extension to the public house. If an extension was required, this should have been done by extending the building rather than developing a standalone building. Noise mitigation measures would not be required had an extension been provided. The standalone structure has resulted in a haphazard development.
- As a result of the proposed development, the site coverage will be 100%, which is in excess of the Development Plan standards.
- There is extensive evidence available of the noise levels arising from the development.
- The conclusions of the noise report are in direct conflict with the experiences of the appellants. The noise levels from the bar are seriously injurious to the residential amenity of the houses directly opposite the rear bar and smoking yard as well as houses in the general locality.
- The significance of the smoking area has been underestimated.
- Not only will the proposed timber screen be visually unattractive and unlikely to be effective in terms of noise reduction, given its L-shaped nature, the orientation along

the southern boundary of the smoking yard and the narrow width of the smoking yard, this yard will be permanently in shadow.

- The rear bar building has not been in existence since before 1920 as claimed by the Applicant but was built in 2017-2018.
- There is extensive precedent for planning permissions to be refused for buildings proposed to be built over existing pipes of the city's sewage network (Reg. Ref. 2001/11/PL29N.239098).
- The Appellants commissioned a peer-review of the noise assessment report. The review concluded:
 - 1) The noise surveys in ICAN reports were both undertaken at times when the rear bar was not in operation and hence are not representative of the noise levels experienced by the Appellants.
 - 2) The ICAN reports is based entirely on unsubstantiated patron noise data obtained at a different, unidentified premises under conditions which have not been documented in the report.
 - 3) As a result of the reports' deficiencies, the conclusions cannot be relied on.
 - 4) The main noise mitigation measures will not prevent the occurrence of adverse noise impacts on nearby residents.
 - 5) The smoking area was not modelled in the study.
 - 6) The ICAN report did not properly address the concerns of the planning authority as the onus is on the Applicant to demonstrate no adverse noise impact arising from the development.
 - 7) Condition No. 4 attached to the Local Authority's decision does nothing to protect the amenity of residents because it is based on flawed modelling.

6.1. Observations

Two Observations from local residents were received by the Board in the applicable response period from Mr John Tooher and Mr David Windrim, respectively. The Observation from Mr Windrim includes photographs and video clips of the subject site.

The key points from the Observations can be summarised as follows:

- Concerns in relation to the integrity of the mitigation measures contained within the Noise Impact Assessment report and their ability to alleviate the noise from the subject site.
- It is unclear if the noise assessment takes account of the existing sound levels of noise from Fagan's pub, and therefore the cumulative impact of the levels of noise from the proposed rear bar to give a clear indication on an acoustic report of the disturbance that No. 5 Hollybank Road will be subjected to seven days a week.
- Consideration should be given to the noise of customers within or outside the legal hours of operation.
- The NIA does not state that the noise traffic levels are within the morning to early morning and therefore are not a valid comparative considering that the rear bar has a license to operate Monday-Thursday until 11.30pm and Friday-Saturday until 12.30pm and Sunday until 11pm.
- The materials for the proposed timber screen are not acoustic rated panels and will do little or nothing to reduce the sound in the proposed rear bar and will only act as a "visual screen".
- The proposed rear bar area is surrounded on three sites by residential dwellings. The proposed rear section of the pub is operating in a residential area.
- Previous to new ownership, the rear of the property was not used in scale as part of the commercial business. Requests that ABP considers the traditional area of the operation of the pub.
- The proposed wooden fence is not in keeping with the local architecture which is zoned Z2.
- Query whether the Local Authority when making its decision took into account the effect on the residents who are already living between an existing rear smoking area which is 16m away from Fagan's pub. The proposed rear bar of Kennedys pub will be 11m away from 5 Hollybank Road.
- The proposed hours of operation of the rear bar will have a serious negative impact on social wellbeing and general mental health of the local residents. The noise

has caused serious disruption to daily lives of local residents. The intrusive noise can be experienced throughout the day.

- It is acknowledged that there is background noise from traffic in the area which is considered to be acceptable. However, the high volume of chatter, shouting, chanting, etc. from patrons is impacting the residential amenity.
- The NIA is based on modelling rather than actual measured data collected at times when the rear bar was in operation and as a consequence the smoking yard would also be busy and noisy.
- No sound from the rear bar or smoking area during the emulation was heard by Mr Windrim that was similar to the sound heard when the bar is operating, and as such he argues that it is impossible to make an accurate assessment of the likely noise levels from the development. The results are at odds with local residents' experiences.
- No noise data from the smoking area is included, which is local residents' biggest concern particularly as the doors from the rear bar into the smoking yard will always remain open.
- The timber fence will not inhibit smoke from the rear section coming into the gardens of 5 Hollybank Road, which will be situated an average distance of 13.5m from two smoking areas.
- The applicant states that the rear bar will not be used as a smoking area. However the enforcement of this appears to be outside of the remit of the Planning Authority unless specifically referred to in a planning condition that would allow the Environmental Health Officer some basis upon which to investigate the use of the space when in operation.
- Emails/reports from the Environment and Transportation – Traffic Noise and Air Quality Unit are not available on the Planning Authority's website. It is considered a significant oversight by the Planning Authority to exclude these reports from public access and comprises the integrity and transparency of the planning process under Section 38 of the Planning Acts.
- The proposed development is not fully in compliance with the policies and objectives of the Development Plan.

- The development is built over a public sewer and precedent exists for the Local Authority and the Board for refusing development on these grounds.
- The rear bar was constructed in what used to be the rear garden of the original premises in 2017/2018. Photographic evidence of the construction is included with Mr Windrim's Observation.
- The expansion has resulted in 100% usage of the available space contravening the Development Plan. It will result in a major intensification of use on the site.
- Ongoing enforcement action by the Local Authority is noted.
- Parking and traffic congestion has not been addressed by the Applicant or Local Authority. The intensification of use of the site has led to a significant worsening of the parking situation.

6.2. Applicant Response

A First-Party Response to the Third-Party Appeal was received on 17th August 2021. The Response includes an Affidavit from former proprietor Michael Kennedy in relation to the site's history; a statement from Frank J. Kenny of Kenny Kane Associates in relation to the licensing of the premises; and a response from ICAN Acoustics to noise matters raised in the Third-Party Appeal. The key points can be summarised as follows:

- The Applicant wishes to highlight that the proposed development is designed for intermittent use on occasional busy days and evenings, noting the unusual setting of Kennedys in being a part of the Croke Park fabric. It is a focal point in the community.
- The building itself is an established outhouse structure that has been part of the public house's premises for a hundred years. The perimeter walls of the rear bar have always been part of the existing pub. It is not a new structure. Whether a public house has two or three areas is clearly not a material planning matter. The service area is not isolated from the core of the operation.
- Due to Covid 19 restrictions etc, all premises such as these will require additional space to operate with any efficiency.

- The planning application does not refer to the existing, established smoking yard and indeed represents a valuable investment in improving facilities and amenities for patrons of the establishment. It is not proposed that the rear bar will be used as a smoking area.
- The rear bar is an integral part of the public house and not a separate building.
- The development is acceptable in principle under the zoning 'District Centre'.
- In relation to site coverage, Section 6.6 of the Development Plan notes that site coverage is primarily conceived as a tool to control building height. It is hyperbolic to describe the proposal as excessive.
- It is noted that two pubs in the area (Quinn's and the Big Tree) have closed, which is a major loss of capacity to the overall area.
- An SHD application (ABP Ref. 310860) has been lodged to redevelop the site of the archbishop's palace directly opposite the public house for 1,614 new homes.
- The smoking area has been in use since 2004 when the smoking ban was introduced.
- An Affidavit is enclosed from the former proprietor which notes that the back bar was installed in early 2006 and has been used on many occasions.
- The subject site and smoking area are within the curtilage of the licenced premises and is fully licenced and has been since 1960 as per licensing mapping held in the district court.
- The HSE has inspected and approved/certified on an annual basis that the premises is acceptable.
- The NIA was deemed acceptable by the Planning Authority.
- IAcoustics' peer-review contains a number of inaccurate and unsubstantiated statements.
- A revised copy of drawing PL100 Rev C has been added to this submission which indicates the roof plan showing the existing and proposed openings on the roof.

- The Applicant contacted Irish Water regarding a 3000mm combined drain running under the extension, however only received an email in response that the utility company was experiencing high levels of enquiries.
- The loads generated by this type of structure on any large main buried as far down as this one, would be negligible and very unlikely to cause any structural damage.
- The bar has been in existence since before 1920 and if there was going to be any issue with the structure it would have occurred long before the present time. Reference to Cassini 6 inch map is made which illustrates structures at this location.
- Planning permission was granted at 2a Hollybank Road for partial demolition of a commercial building and construction of a two bed two storey town house (Reg. Reg. 2141/12/ABP Ref. 240531) over a sewer.
- The concept that a planning permission should be deemed invalid, arising from not citing a 53 year old permission on the application form is extraordinary and entirely without precedent. Furthermore, the citing of the recent Atlantic Diamond JR case is without context and completely irrelevant.
- It is not clear that the condition attached to Reg. Ref. 172/68 required the said spaces to be provided on-site or indeed that the nature of this condition rendered it impossible to implement the permission itself. Such a condition does not restrict or affect the current application before the Board.
- The Response includes a submission from ICAN Acoustics in relation to the noise matters raised by the Appellants. The key points can be summarised as follows:
 - ICAN Acoustics has clarified that the noise levels recreated inside the rear bar area to be retained were emulated at 70-75db(A). The noise levels emulated were based on actual measurements conducted inside a public house in Athenry, Galway on 20th April 2018. The measurements represented an area of 35 sqm which had a comparable number of seats and bar area. The area was at full occupancy, which Diarmuid Keaney of

- ICAN Acoustics witnessed and they are completely satisfied that it represents a worse-case scenario for patron noise in the bar to be retained.
- The proposed noise barrier that the IAcoustics Report criticises is the sole mitigation measure they offer and specify at an NCT Centre in Tallaght (Reg. Ref. SD20A/0261). As such, the assertion that the mitigation measure is not effective is strongly disagreed by ICAN Acoustics.
 - ICAN Acoustics has scientifically shown that the residential amenity will remain protected.
 - A worse-case scenario was modelled using two separate baseline noise studies on Hollybank Road and a third study on Victoria Lane. As such, ICAN Acoustics are entirely satisfied that all residential properties in the area will remain well protected.
 - The noise modelling predictions include an L-shaped barrier around the smoking area that offers protection to residents on both Hollybank Road and Victoria Lane.
 - ICAN's report is based on scientific fact, witness measurements, prediction and worst-case emulation at the site. The data has been presented in such a manner that would stand up to scrutiny and is following the Code of Ethics/Conduct described in professional organisations, the Association of Acoustic Consultants of Ireland, the Institute of Acoustics and Engineers Ireland. ICAN are full members of all organisations.
 - In respect to fan noise and tonality, this has no relevance to the subject application. Notwithstanding this, a comprehensive assessment on alleged fan noise was conducted on 12th October 2019 and found not to be tonal. The noise emissions on full demand are lower than night-time noise limiting levels used by the EPA and Planning Authorities.
 - The acoustic screen is only one mitigation measure proposed; ten measures in total have been proposed.
 - DCC's Air Quality Monitoring and Noise Control unit stated no objections to the development subject to condition.

7.0 Assessment

Having examined the application details and all other documentation on file, including the Third-Party Appeal, Observations, and First-Party Response, inspection of the site, and having regard to relevant local/regional/policies and guidance, I consider that the main issues in this appeal are as follows:

- Unauthorised Development,
- Land Use Zoning,
- Noise Impacts,
- Residential Amenity,
- Irish Water Infrastructure,
- Validity of the Application, and
- Appropriate Assessment.

Each of these issues is addressed in turn below.

7.1. Unauthorised Development and Procedural Matters

At the outset, I reiterate that the subject application comprises:

- Retention permission for an existing rear bar area and associated toilet accommodation at Ground Floor Level; and
- Planning permission for the erection of a new timber screen wall (1,500mm) on the southern and western boundaries of the smoking area and on the roof of the rear bar.

Notwithstanding this, there are many matters raised in the Third-Party Appeal and Observations to the smoking area located between the rear bar and the main public house, and its impacts on the area's residential amenity. The current planning application seeks to regularise matters on foot of an enforcement notice which I understand to relate to "the removal of the unauthorised structure and associated bar" (E1222/17) (and to seek permission for a timber screen). The subject application does not relate to the use of the smoking area. In my opinion, the Board should limit its assessment to the subject development (i.e. the rear bar and toilets, and timber screen). Any potential unauthorised development or compliance with planning

permissions, including Reg. Ref. 172/68, are matters for the Local Authority to consider. Furthermore, issues relating to compliance with non-planning regulations, including *inter alia* Building Regulations, Fire Safety Certificate, Publican's Licence, etc. will be evaluated under separate legal codes, and as such in my opinion, need not concern the Board for the purposes of this appeal.

7.2. Land Use Zoning

The subject site is zoned Z4 'District Centre' which has the objective "to provide for and improve mixed services facilities". The neighbouring areas are zoned Z2: Residential Neighbourhoods (Conservation Areas), Z1: Sustainable Residential Neighbourhoods, Z9: Amenity/Open Space Lands/Green Network, and Z12: Institutional Land (Future Development Potential). "Public house" uses are permissible on Z4 zoned lands. Similar to the Local Authority, I would not consider the public house to be a superpub nor is there an over-concentration of public houses in the area. While noting Section 14.7 of the Development Plan (Transitional Zone Areas), I consider the principle of the development to be acceptable in terms of land use zoning, subject to normal planning consideration.

7.3. Noise Impacts

The issue of noise is a central component of the Third-Party Appeal and Observations. The Appellants and Observers state that the proposed development will adversely impact the area's residential amenity. I refer the Board to the video footage contained on the USB key submitted with Mr Windrim's Observation which supports the concerns set out by local residents that the noise generated from the rear bar and smoking area associated with the existing premises is incompatible with the area's residential amenity. It is advised that prior to the installation of the rear pub, there were no noise issues associated with the premises. (Notwithstanding this, I note that the First-Party Response includes a signed Affidavit from the former proprietor who states that the smoking and drinking area has been in use since the introduction of the smoking ban in 2004.) A number of concerns are raised in relation to the accuracy of the Applicant's Noise Impact Assessment and the effectiveness of the proposed mitigation measures particularly the timber screen.

As per Section 17.34 of the Development Plan (Night Clubs/Licensed Premises) it is stated that: "*Noise emanating from and at the boundaries of these establishments are*

issues which will need to be addressed in planning applications for such establishments. Noise insulation and reduction measures, especially relating to any mechanical ventilation or air-conditioning, will be required to be submitted with any such planning application.” In this regard, a Noise Impact Assessment (dated 28th July 2020) was prepared by ICAN Acoustics and submitted with the planning application. The NIA states “While the focus of this study considers the potential noise impact of the proposed 34m² ground floor bar at the rear of Kennedy’s Bar, there will be a secondary noise benefit associated with an L-shaped noise barrier in terms of the ongoing protection of the residential amenity in the area. This in our view will be a further enhancement in the management and control of noise.” The NIA included a baseline noise study on Hollybank Road in November 2018 and associated noise predictions. The study concluded that the proposed development would have no impact on the residential properties within the area subject to the implementation of mitigation measures. The measures include *inter alia*:

- L-shaped noise barrier to be installed on the southern and western boundaries of the smoking area.
- No audio speakers to be installed at the smoking yard. Should a television be installed, it is proposed that there would be no sound system installed in the smoking area.
- Should indoor speakers be installed in the rear bar, it is proposed that the sound would be routed through a compressor/limiter to ensure that the sound system would be only used for background music and TV audio amplification. The system can be configured to ensure that the door between the new rear bar and smoking area can remain fully open to allow access to the bar area.
- Replacement of skylight panels with 10mm glass in the rear bar.
- Mechanical ventilation of the rear bar and toilets to avoid noise breakouts from natural ventilation. The location and design of the ventilation system is not specified.
- Acoustic lobby between the inner existing rear bar and the door leading out to Victoria Lane, subject to fire considerations.

The study states that the noise climate on Hollybank Road is dominated by traffic noise from Drumcondra Road and Hollybank Road itself and this dictates the noise climate

throughout the day. It is stated that in a worst-case scenario with the smoking yard at capacity and with the rear bar in operation, the noise levels are likely to range from 37-48db(A) without any noise mitigation in place. The study states that the EPA reported noise levels in the order of 55-59dB at night. In addition, the Lden (day, evening night) traffic noise level for Hollybank Road has been reported by the EPA as being 60-64,Lden. This aligns with the NIA findings (traffic recorded at 56-58dB, LAeq,5min) and as such it is argued that the likely noise change is insignificant and, when the facility is in operation there will be no increase in noise levels for the nearest noise sensitive locations.

The Local Authority required by way of an RFI that the NIA be revised to show noise monitoring on Victoria Lane and Hollybank Road over 24 hours, indicating when the rear bar and smoking area was in use and when it was closed. Due to Covid-19 restrictions, it was not possible to conduct noise monitoring when the rear bar and smoking area was in use. As such noise levels were based on actual measurements from a comparable public house in Athenry, Co. Galway on 20th April 2018. The revised NIA states that the noise levels recreated inside the rear bar were emulated at 70-75dB(A). The revised report includes baseline noise monitoring from the rear of 1 Hollybank Road at Victoria Lane and outside 2&4 Hollybank Road. The revised NIA states that in a worst-case scenario with the smoking yard at capacity and with the rear bar in operation, the noise levels are likely to range from 37-48db(A) without any noise mitigation in place. This is lower than the EPA's recorded traffic noise in the area. The revised NIA states *"It should be noted that even without mitigation, the predicted noise levels are unlikely to be of any notable significance; however in the interests of best practice, an L-shaped noise barrier is being considered part of the development's proposed design strategy"*. In addition, the revised NIA included for the installation of timber screens on the roof of the rear bar to provide further visual screening of the flat roof areas over the proposed enclosed bar area to be retained. It is predicted that whilst the installation of timber screens will not reduce noise levels at the rear of 144 Drumcondra Road Lower, it will result in a 3-5dB(A) reduction at noise-sensitive receptors in the vicinity, including a 5dB(A) at 1 Hollybank Road. With the implementation of the mitigation measures the noise levels are likely to range from 33-43db(A). The predicted noise level at the rear of 1 Hollybank Road at Victoria Lane is 43db(A) and 40db(A) at the rear of 144 Drumcondra Road Lower.

I consider the revised NIA to be robust and note that the author is competent in this area of expertise. Having regard to the Covid-19 restrictions which limited the use of public houses, I consider the approach of utilising noise levels recorded from a similar scenario in Athenry in 2018 to be a reasonable and practicable approach. Whilst I do not dismiss the Appellants and Observers' local knowledge and experience of the noise levels in the area, it would appear from the evidence submitted with the application, in particular the revised NIA (including for the implementation of the mitigation measures), that the proposed development will not result in significant increases in noise levels that would adversely impact the area's residential amenity. Whilst I note that concerns have been raised in relation to the accuracy of the NIA and robustness of the mitigation measures, in particular the proposed timber screen, I note the EPA's noise monitoring results for the area. Whilst the site abuts residential development, the area exhibits background noise levels indicative of its inner suburban location and on a main route for vehicles and pedestrians, on a main traffic route thoroughfare. I note from the Planner's Report (dated 21st June 2021) that the Local Authority's Air Quality Monitoring and Noise Control Unit confirmed via email on 3rd June 2021 that the Unit had no objection to the proposal subject to condition.

Whilst concerns were raised in relation to the haphazard nature of the development as a result of the rear bar being separated from the main building by the smoking area, in my opinion, the separation distance between the smoking area and 1 Hollybank Road with the rear bar acting as a buffer, helps alleviate noise emissions from this area. Notwithstanding this, this planning application does not include the permission for the smoking area. I note that the Applicant has advised that the rear bar will not be used as a smoking area.

I note that the hours of operation for the public house including the rear bar are stated in the revised NIA to be 10:30am-11:30pm Monday to Thursday, 10:30am-00:30am Friday and Saturday, and 12:30pm -11:00pm on Sundays. Furthermore, the Applicant states that the rear bar will only be used on occasions as an overflow bar when the pub is busy and as part of the restaurant offering. While the development will be part regulated by the terms of a Publican's Licence, I consider that should the Board be mindful to grant permission for the proposed development, that in order to ensure that the residential amenity of adjoining properties is protected, that a suitable condition

which limits the opening hours should be included, and which also effectively monitors the level of noise generated.

In conclusion, I do not recommend that planning permission is refused on grounds related to noise emissions.

7.4. Residential Amenity

As stated above, the site is in close proximity to a number of residential properties. The Appellants and Observers argue that the development will adversely impact on the area. I have outlined my considerations above in respect to noise impacts from the development. In terms of visual impact, it is argued that the proposed timber screen will reduce the area's visual amenity and is not in keeping with Georgian character of the area. The proposed timber fence will be located on the southern and western boundaries of the smoking area and on the roof of the rear bar. The site's southern boundary is setback from Hollybank Road by 130 Drumcondra Road Lower. I note the Applicant's point that the screen will restrict views of the flat roof areas over the rear bar. Furthermore, I note that there are no windows on the eastern elevation of 1 Hollybank Road overlooking the site. Should the Board be minded to grant permission for the development, I recommend that a condition be attached to the permission restricting the erection of any signage or advertising on the structure. Having regard to the material, height and scale of the screen, I do not agree that the proposed development including the timber screen will adversely impact the area's visual amenity.

Concerns were raised in relation to overdevelopment of the site and the development resulting in a site coverage of 100%. The Development Plan states the site coverage is a control for the purpose of preventing the adverse effects of over-development, thereby safeguarding sunlight and daylight within or adjoining a proposed layout of buildings. Site coverage is a tool particularly relevant in urban locations where open space and car parking standards may be relaxed. The Development Plan provides an 'indicative' site coverage of 80% for areas zoned Z4. Having regard to the fact the rear bar is a single storey structure, and the site's orientation in relation to the residential development, I do not consider that the proposal will result in any overbearing impacts or overshadowing on nearby residential development. Furthermore, no overlooking will occur. The Development Plan does not specify a

public open space standard for lands zoned Z4 (unlike other zonings in the Plan). Having regard to the site's long established commercial use, the single storey rear bar, and the location of the development in an inner suburban area, I do not consider that the scale of the development will adversely impact the area's residential amenity. Furthermore, having regard to the size of the development, in my opinion, it will not result in a significant intensification of use that would adversely impact the area's residential amenity.

In terms of traffic generation, the rear bar measures 34 sq m and forms an extension to a long-established public house. Having regard to the size and nature of the development, the Road Traffic Act, and the provision of public transport in the area, I do not consider that the proposal will result in traffic and car parking congestion.

With respect to the points raised in relation to noise and smoke travelling from the smoking area to nearby gardens, I reiterate that planning permission has not been sought for this area as part of this planning application. The Board in my view should confine its deliberations to the current application.

On balance, I consider the proposed development by reason of scale, nature and intensity, and associated noise and disturbance would not seriously injure residential amenity of neighbouring properties. As such, I do not recommend that planning permission is refused on grounds related to the development adversely impacting the area's residential amenity.

7.5. Irish Water Infrastructure

Irish Water advised that there is a 3000mm combined drain running under the rear bar. Whilst the Local Authority requested the Applicant to liaise with the utility body and provide confirmation from that body that the details of the development were satisfactory, Irish Water did not respond due to a high volume of enquiries. I note precedent exists from the Local Authority and An Bord Pleanála to both grant and refuse permission for development that is located above such infrastructure. Whilst the Observations include photographs of the construction of a structure at the same location as the rear bar, the Applicant highlights that there has always been a structure at this location with reference to Cassini 6 Inch Map. In addition, the signed Affidavit from the former proprietor states *"I say that the back bar extension that is currently there was extended by about 30sq. metres as there was already a garage structure*

on this site of about 30 sq metres since the 1940's or before even, extending out to the rear meeting 6 Victoria Lane and meeting the boundary of 1 Hollybank Road at the rear". Furthermore, I note the Applicant's arguments that the loads generated by this type of development would be negligible and unlikely to cause structural damage. I agree with the Local Authority's considerations in respect to this issue. I am not aware of any particular issue relating to the subject drain or wastewater network in the area. In summary, I do not consider it reasonable or fair to refuse permission solely on this matter due to Irish Water's failure to engage the Applicant within the statutory planning timeframes.

7.6. Validity of the Application

The Appellants highlight that the Applicant failed to reference Reg. Ref. 172/68 in the Planning Application Form when submitting the application to the Local Authority. I understand from the documentation on the subject file that the permission related to alterations to the premises, which included for the provision of five on-site parking spaces. The Appellants argue that the permission was known to the Applicant as it was raised in previous correspondence in relation to an Objection to a renewal of Kennedys licence in the Dublin District Licensing Court. It is argued that this omission should invalidate the planning application. In this regard reference is made to the *Atlantic Diamond Limited v An Bord Pleanála* [2021] IEHC 322. On the contrary, the Applicant argues that reference to the planning permission is meaningless. It is stated that *"It is not clear that the condition required the said spaces to be provided on-site, or indeed that the nature of this condition rendered it impossible to implement the permission itself. What is clear, is that such a condition does not restrict or affect the current application before the Board."* I question the relevance of the planning permission to the proper planning and sustainable development considerations of the subject application having regard to the date of the permission and the significant amendments to planning policy, in particular to car parking standards. In terms of the validity of the application, I am satisfied that there is sufficient information in respect of the proposed development for the purposes of the planning application and decision. I reiterate that the implementation and/or compliance with the previous permission is a matter for the Local Authority.

7.7. Appropriate Assessment

Given the nature and scale of the proposed development and the location of the site in a serviced area and the relative distance to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

8.1.1. I recommend that planning permission be granted, subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the zoning objectives for the area in the Dublin City Development Plan 2017-2023, the established use on the site, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the wider area in terms of excessive noise and general disturbance or traffic congestion, would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development in the area.

10.0 Conditions

1.	The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 25th day of May, 2021 and unsolicited information on 15 th June 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.
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	Reason: In the interest of clarity.
2.	<p>The main public bar and proposed rear bar shall be jointly operated as a single public house and the proposed rear bar shall not be sold, let, operated or otherwise transferred or conveyed, save as part of the main existing public bar.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>The rear bar to be retained shall not operate outside of the following hours:</p> <p>Monday to Thursday 10:30am to 11:30pm</p> <p>Friday and Saturday 10:30am to 12:30pm</p> <p>Sunday 12:30am to 11pm.</p> <p>Reason: In order to protect the amenities of residential property in the vicinity.</p>
4.	<p>(a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 0800 to 2200 hours and by more than 1 dB(A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeq.T.</p> <p>(b) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either</p> <p>(i) during a temporary shutdown of the specific noise source, or</p> <p>(ii) during a period immediately before or after the specific noise source operates.</p> <p>(c) When measuring the specific noise, the time (T) shall be any five minute period during which the sound emission from the premises is at its maximum level.</p> <p>(d) Any measuring instrument shall be precision grade.</p>

	<p>Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority prior to use of the premises. An acoustical analysis shall be included with this submission to the planning authority.</p> <p>Reason: In order to protect the amenities of residential property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.</p>
5.	<p>(a) All entrance doors in the external envelope shall be tightly fitting and self-closing.</p> <p>(b) All windows shall be double-glazed and tightly fitting.</p> <p>(c) The rooflights over the rear bar shall be fitted with solid glazing as specified in the Noise Impact Assessment (dated 21st May 2021) submitted with the application.</p> <p>(d) Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes. Details indicating the proposed methods of compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To protect the residential amenities of property in the vicinity.</p>
6.	<p>Notwithstanding the provisions of the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the timber screen or within the curtilage of the site, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the visual amenities of the area.</p>
7.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400</p>

	<p>hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of property in the vicinity.</p>
8.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
9.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

Susan Clarke
 Planning Inspector

5th November 2021