



An
Bord
Pleanála

Inspector's Report ABP-312069-21.

Development	Retention for the change of use of yard area to outdoor dining to side of public house.
Location	98 Strand Street, Skerries, County Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0481.
Applicant	SPM Establishments Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant	SPM Establishments Ltd.
Observer	Una McGealy
Date of Site Inspection	1 st March 2022.
Inspector	Philip Davis

Contents

1.0 Introduction.....	3
2.0 Site Location and Description	3
3.0 Proposed Development	4
4.0 Planning Authority Decision	4
4.1. Decision	4
4.2. Planning Authority Reports	4
4.3. Prescribed Bodies	5
4.4. Third Party Observations	6
5.0 Planning History.....	6
6.0 Policy Context.....	6
6.1. Development Plan.....	6
6.2. Natural Heritage Designations	7
7.0 The Appeal	7
7.1. Grounds of Appeal	7
7.2. Planning Authority Response	8
7.3. Observations	8
7.4. Further Responses.....	9
8.0 Assessment.....	9
9.0 Recommendation.....	15
10.0 Reasons and Considerations	15

1.0 Introduction

This appeal is by the applicant against the decision of the planning authority to refuse permission for the retention of an outdoor dining area in a prominent public house in the heart of Skerries, Co. Dublin. The grounds of refusal relate to intensification of use and residential amenity.

2.0 Site Location and Description

2.1. Strand Street, Skerries

The appeal site is located on Strand Street, the northern end of the wide main street of Skerries. Strand Street varies in width from a narrow residential lane close to Skerries Harbour before widening into what was the town square at the obelisk near the junction of Thomas Hand Street, before widening into a wide main street for about 0.7 km. On either side are a mix of primarily 2-storey commercial, retail and residential buildings, mostly dating from the 19th Century with some modern insertions. The appeal site is a public house on the corner site between Strand Street and the mostly residential Thomas Hand Street, which runs west from the town square.

2.2. Appeal site

The appeal site is a 2-storey public house known as the Bus Bar on the corner of Strand Street and Thomas Hand Street. It is on a site with an area given as 0.076 hectares. The pub is a two storey 3-bay typical late 19th century terrace structure with an A-gable facing Thomas Hand Street. There is a covered smoking, service area to the front (facing east) and an outdoor dining area on the north gable (Thomas Hand Street) side. This area has a retractable awning and block wall to one side, with a timber faced wall facing Strand Street. There is also a smoking area to the rear of the public house. There is what appears to be a residential building adjoining to the south, and further residential buildings to the west along Thomas Hand Street.

3.0 Proposed Development

The proposed development is described as for the change of use of yard area to outdoor dining to the side of the existing public house, complete with single storey kitchen and retractable awning and an outdoor smoking area to the rear of the existing public house.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to refuse permission for the reason that (to summarise); it would represent a significant intensification of use on the site and would generate a significant level of dis-amenity through noise and odour and disturbance to adjoining residents.

4.2. Planning Authority Reports

4.2.1. Planning Reports

- The zoning and planning history are outlined. Notes range of past permission and refusal on the site dating back more than 20 years.
- Notes two submissions objecting on a wide range of amenity issues.
- Notes that the retention is sought for an area (c.155sqm) formerly used for storage which has now been paved and is partially enclosed with a timber structure and flat roof and is used as a pizza area and includes a cooking area. Retention is also sought for a smoking area to the rear (c.72 sqm).
- States that Public House is 'permitted in principle' under the TC zoning, and the smoking area is considered acceptable in principle. It is considered that the pizzeria is associated with the bus Bar in that it is accessible from it and within the blue line boundary. Restaurant/café use class is 'permitted in principle'.
- Serious concerns are outlined regarding the impact of the developments on the residential amenity of the adjoining areas. Notes that no floor plans of the

areas proposed for retention have been provided. It is stated that the side area is in effect an outdoor pizzeria restaurant and beer garden (stated to be around 138sqm). It is noted that the pizzeria website advertises takeaway – this is not stated in the application document. It is also noted that a wood fired pizza oven has been installed on site.

- Given the nature of the area the proposed retention is considered to be a significant intensification of use on the site which will adversely impact on the residential amenity of the adjoining area.
- It is noted that the Conservation Officer had concern about some external finishes – it is considered that this could be addressed by way of condition as there are no fundamental objections on conservation grounds (the area is within an ACA and close to protected structures).
- There are no traffic implications having regard to the location.
- Notes no objections on water services grounds.
- Having regard to the nature and scale it is considered that no NIS is required.
- It is noted that there are no floor plans of the area for retention in the submission document and some confusion in the plans regarding red and blue lined areas.
- Refusal recommended.

4.2.2. Other Technical Reports

Water Services: No objection subject to conditions.

Transportation: No objection.

Conservation Officer: No objection but notes a number of issues relating to existing finishes not being in keeping with the area.

4.3. Prescribed Bodies

Irish Water: Requested a condition that a connection agreement with Irish Water be signed prior to commencement of development.

4.4. Third Party Observations

Two submissions from nearby residents were received, both strongly objecting on grounds relating to noise, odours and related amenity issues.

5.0 Planning History

F06A/0491 and **F03A/1249**: Permission granted for the demolition of structures on site and the construction of a 2 and half restaurant and apartments (never completed).

F01A/1489 and **F99A/0504**: Permission refused for demolition and construction of shop and apartments.

6.0 Policy Context

6.1. Development Plan

The site is in an area zoned 'TC' – to '*protect and enhance the special physical and social character of town and district centres and/or improve public facilities*' in the 2017-2023 Fingal Development Plan. The site is within the ACA for the town centre and is within the core retail area. There are two protected structures in the vicinity. A number of objectives relating to this highlighted as relevant by the planning authority include DMS04; ED53 and ED54.

DMS04: Assess planning applications for change of uses in all urban and village centres on their positive contribution to diversification of the area together with their cumulative effects on traffic, heritage, environment, parking and local residential amenity.

ED53: Control the provision of non-retail uses, especially at ground floor level, in the main streets of towns and villages shopping centres and local centres to ensure that injury is not caused to the amenities of these streets and centres through the loss of retail opportunities.

ED54: Prevent an over-supply or dominance of fast food outlets, takeaways, off licences and betting offices in the main streets of towns and villages, shopping

centres and local centres to ensure that injury is not caused to the amenities of these streets and centres through the loss of retail opportunities.

6.2. Natural Heritage Designations

The appeal site is within the urban area of Skerries. The Skerries Islands SPA (001218) is off-shore in several zones around the islands in the Irish Sea – the closest such designated area of island/sea is approximately 1 km east of the site.

6.3. EIAR

Having regard to the nature of the proposed development, its relatively small scale within an area zoned for housing, and the absence of any sensitive receptors in the immediate vicinity, the development would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded and a screening determination is not required.

7.0 The Appeal

7.1. Grounds of Appeal

- A number of plans and photographs are attached with the appeal indicating table layout and circulation spaces. It is stated that the dining area has seating for c.42 people. It has a perimeter canopy roof with a retractable roof in the central area. It is stated that the small pizza kiln is in compliance with the Councils Public Health requirement.
- It is claimed that apart from the two submissions, there have been no complaints made to the Gardai or the Council from ongoing operations.
- It is argued that the open area provides improved facilities for a public house that has been on the site for over 150 years. It is argued that relocating the smoking area to the rear (to facilitate the pizza garden) will result in no significant amenity impact.

- It is argued that the walling and canopy will dampen any noise generated by a dining area, which it is submitted was previously used as a smoking area. It is argued that as the area is open it will not have the same demand profile as a full restaurant.
- With regard to the two letters of objection, five letters of support from local residents are attached. It is argued that the nature of the area – i.e. commercial with significant traffic at the junction – will mean no significant additional noise or other disturbance will impact on nearby residents.
- It is denied that there has been any issue with odour associated with the restaurant. It is noted that there are a number of takeaways in the area.
- The submission addresses in some detail the specific issues and allegations of previous nuisance events in the two observations.

7.2. Planning Authority Response

- The planning authority requests that ABP uphold its decision to refuse permission.

7.3. Observations

Una McGealy of 35 Thomas Hand Street

- It is submitted that the lands are not within the ownership of the applicant.
- It is submitted that there have been numerous local complains about noise from the pub since the applicants (SMP Establishments Ltd) took over in 2018. It is claimed that there has been a significant increase in noise since the restaurant/beer garden started in April 2019 (significant details outlined).
- It is stated that the site was previously used for selling vegetables – it is stated that there was no noise or other amenity issue associated with this.
- It is submitted that there has been a significant increase in dirt and pollution associated with the pizza oven.

- States that the bins to the rear are not properly sealed or managed by the applicants with the result of a strong smell. It is argued that this has only arisen since the food operation commenced in the pub.
- It is argued that while the pub is licensed the dining/beer garden is not and so no alcohol should be permitted.
- It is submitted that there are privacy issues with the use of the rear as a smoking area, and the operators have let anyone access the rear of her house.
- Concerns are raised regarding fire safety issues.
- It is argued that the proposed development is a significant intensification of use.
- It is submitted that her property would have seriously diminished in value due to the operations.
- With regard to the letters of support attached with the application, these are acknowledged, but it is submitted that they are not directly adjoining the public house.

7.4. Further Responses

None.

8.0 Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following general headings:

- Legal issues
- Principle of development
- Pattern of development
- Amenity
- Traffic
- Drainage and flooding

- Conservation issues
- Appropriate Assessment
- Other issues

8.1. Legal issues

The planning authority noted what was considered to be inadequate floor plans for the proposed development with the submission (additional plans were provided in the appeal) and noted some ambiguities in the application, including the failure to describe take-out for the pizza operation (it is unclear as to whether a take out is in operation but the planning authority noted that this was advertised on its website). The observer has also questioned whether the alcohol license extended to the eating area and questioned the status of the applicant to make the application. The planning authority did not request additional information on the basis that they did not consider the overall proposed development to be acceptable.

I share the concerns outlined by both the planning authority and the observer about the details submitted with the application. Some can certainly be considered non-planning issues with regard to S.34(13) of the Act, as amended, and others could be addressed through condition. But I consider that if the Board is minded to grant this permission a number of details would have to be clarified. These include:

- Full floorplans indicating the relationship of the outside restaurant element with the existing public house.
- Details of existing licensing hours and hours of opening for the restaurant element.
- A new site notice including provision for takeaway if this is part of the intended use.

I will address the issues in more detail in the section below, but I consider that only a limited permission could be granted (with elements deleted through condition) on the basis if the application and details submitted.

8.2. Principle of development

The appeal site is within the zoned town centre of Skerries and the public house is a very long established use. It appears that the lands to the side were formerly ancillary to the pub and were used for informal trading and possibly outside smoking. There is a previous grant of permission for the demolition of the public house and its replacement with retail/apartments.

The site is within an area zoned town centre, TC' – to '*protect and enhance the special physical and social character of town and district centres and/or improve public facilities*' in the 2017-2023 Fingal Development Plan. Bars and related restaurants are generally permitted in such areas. Related policies state that it is policy to control non-retail uses to ensure that injury is not caused to the amenities of these streets and to prevent an over-supply of certain uses.

Having regard to the zoning designation of the area and the long history of the use of the site as a public house, I consider that proposals to add dining (indoors or outdoors) are appropriate in policy terms and important to reinforce the traditional use of town/village centres. Notwithstanding this, any such proposals must be addressed within the policy context of protecting the amenities of existing residential uses and having regard to the ACA designation and other planning and environmental objectives.

8.3. Pattern of development

The appeal site is within the historic town centre of Skerries. Strand Street is the traditional main street of the town and extended from the old harbour south, parallel to the coast, with the promenade area to the east developing in the early 20th Century. The town has medieval origins, but the layout of the area appears to be mostly late 18th and 19th Century and is typical of country towns of the period with a wide market main street. The appeal site is next to what was the town square with an obelisk, next to the former courthouse, although it is mostly now used just for traffic circulation and carparking with limited appeal for anyone not driving a car, but its potential as an urban space is obvious.

Strand Street lacks a major retail anchor, but has a mix of shops and small businesses, including takeaways, small grocery stores and a few more upmarket

small shops. The main retail units are on the eastern side of the street. Strand street has residential uses mixed in with the commercial uses along its entire stretch, with Thomas Hand Street being mostly terraced houses. The street is wide, with extensive on street parking all along its length. The street is relatively heavily trafficked as it is the main link between the national road network and the popular harbour and promenade area of the town.

8.4. **Amenity**

The appeal site is a tight corner landholding with an irregular shape, presumably the result of various alterations and additions over its history as a public house. It has a coherent frontage to Strand Street, but on the Thomas Hand Street side it has incorporated a semi-derelict small commercial structure, a boarded up single storey cottage, and extends to the rear of one cottage facing the street. While the busy nature of the local roads (Thomas Hand Street in particular is quite heavily trafficked) and the built-up nature seems to protect most residential uses in the area from the ongoing activities in the pub/restaurant, the immediate neighbours are exposed directly to any additional ambient noise or other amenity issues associated typically with a public house.

As noted above, the public house is very long established, and the existing and proposed use is consistent with such an area and with the zoning designation. A pub will always generate noise and odours outside daytime hours, and this is appropriate and normal. The key question in this appeal is whether the items for retention represent an intensification over and above what is reasonable in such an area, and whether the design of the proposals take all practicable means to minimise amenity impacts on adjoining residential uses.

The planning authority clearly has two key issues with the application – the intensification of use of the pub, and a lack of clear information in the application documentation as to how the pub/restaurant is operated. The applicant has submitted additional useful information, and clearly some items are outside the control of the planning authority, including details of air pollution from the pizza oven, alcohol licensing, and the public health aspects of the bin storage/control. The planning authority have decided that there is an onus on the applicant to demonstrate that the alterations are within what would be considered ‘reasonable’

for an established public house in this context. There are obvious issues with noise from an unenclosed restaurant and bringing the smoking area to the rear, and thus closer to the residential properties. There are of course limits to how much noise can be controlled when it is in unenclosed or partially enclosed areas.

On balance, I concur with the overall conclusion of the planning authority. I do not consider that the use of the side of the pub for an outdoors dining area is in principle unacceptable in this context, but given the sensitivity of the site and the close proximity of dwellings, in particular that of the observer, there should be a strong onus on the applicant to provide more details of how the proposals integrate together, in particular with regard to late night noise, potential pollution from the pizza oven, and how waste is stored and managed within the site.

The option is available to the Board to request that the applicant provide more details on these issues, but I do not recommend this approach. A suitable redesign which would allow for what is undoubtedly an attractive extra facility for the town would likely be quite substantial and require a new application. I therefore concur with the decision of the planning authority and recommend that the Board broadly reaffirms this reason for refusal.

8.5. Traffic

The Bus Bar is at a relatively busy junction at the obelisk, with a bus stop just to the south. There is extensive on-street parking in front of the public house and along Strand Street (there is no street parking on Thomas Hand Street). The traffic section states that they do not consider that there are any traffic implications for the proposed development as there is sufficient room for deliveries and no indication of a shortfall of parking in the area. I note that as it was not part of the application, the issue of short term parking for pizza takeaway pick-up was not considered.

8.6. Drainage and flooding

There are no indications of any flooding implications of the proposed development and Irish Water stated that it had no objections.

8.7. **Conservation issues**

The site is within an ACA for the centre of Skerries and there are two protected structures nearby, most prominently the Obelisk. The pub is a typical terraced structure of the period and context. It is an important part of the local streetscape but in itself does not have significant conservation value.

The Conservation Officer for the Council had no objection but raised concerns about external finishes for the boundary and their relationship to the protected structures. The planning authority concluded that this was an issue that could be addressed through condition (for appropriate rendering/colouring). I concur with this conclusion.

8.8. **Appropriate Assessment**

The appeal site is within the urban area of Skerries. The Skerries Islands SPA (001218) is off-shore in several zones around these islands – the closest such designated area of island/sea is approximately 1 km east of the site. The site is connected to the town wastewater treatment system and there are no indications that the proposed development would impact overall waste or surface water arisings. There are no pathways for pollution from the site to the designated habitats and the species associated with the SPA would not forage or nest on the site which has no natural or non-natural habitat for such birds.

Having regard to the long term use of the site, its location within the urban area, and the minimal physical works required, I conclude that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.9. **Other issues**

I do not consider that there are any other significant issues arising in this appeal.

9.0 Recommendation

I recommend that the Board refuse permission for the retention of the development for generally the reasons and considerations outlined by the planning authority.

10.0 Reasons and Considerations

Notwithstanding the location of the proposed development within a TC zoned area, it is considered that the development to be retained would result in a significant and unacceptable intensification of use on the site and the Board is not satisfied that the proposals, as submitted, would mitigate potential amenity impacts in an acceptable manner. The proposed development for retention would therefore seriously injure the residential amenities of the area, depreciate the value of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.

Philip Davis
Planning Inspector

19th May 2022