



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313309-22

#### Development

Retention: The erection of a permanent roof structure to the rear (southeast) outdoor licensed area.

#### Location

Clonliffe House, 43/44 Ballybough Road, Dublin 3

#### Planning Authority

Dublin City Council North

#### Planning Authority Reg. Ref.

3130/22

#### Applicant(s)

Bernard Farrell.

#### Type of Application

Permission for retention.

#### Planning Authority Decision

Refuse.

#### Type of Appeal

First Party.

#### Appellant(s)

Bernard Farrell.

#### Observer(s)

1. Nicu Sova
2. Monica Burch
3. Laura Williams (Ballybough Pride of Place)
4. Claudine Clifford
5. Cretle Maxim

**Date of Site Inspection**

8 February 2023.

**Inspector**

Stephen Rhys Thomas

## Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports .....	5
3.3. Prescribed Bodies .....	6
3.4. Third Party Observations .....	6
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations .....	7
5.3. EIA Screening .....	8
6.0 The Appeal .....	8
6.1. Grounds of Appeal .....	8
6.2. Planning Authority Response .....	9
6.3. Observations .....	9
7.0 Assessment .....	10
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	15
10.0 Conditions .....	16

## **1.0 Site Location and Description**

- 1.1. The site is situated at the junction of Clonliffe Road, Ballybough Road and Poplar Row, in Dublin 3. The site comprises the Clonliffe House (Public House) and its associated yard area to the rear. The pub fronts onto the Ballybough Road and presents a site boundary with advertising hoarding and painted mural to Poplar Row to the north. The rear yard area of the subject site backs onto a short cul-de-sac and parking area associated with residential units at Poplar Row. The residential units at Poplar Row are contained within a five storey apartment building with a three storey return that adjoins the site. A large number of units directly overlook the yard area of the pub. The immediate area to the east of the rear yard area is characterised by a well maintained urban street overlooked by modern apartments in good repair.
- 1.2. The structures it is intended to retain are located within the rear yard area of the public house and comprise a large single storey structure that takes up much of the yard space. A toilet block and outdoor storage area all at ground floor level are also located in this yard space. Other structures to be retained are located at first floor and comprise stair covering and a plant room. A children's play ground is located immediately adjacent to the eastern boundary wall of the rear yard area of the pub. A community centre and outdoor five-a-side soccer pitch is located to the south. Busy urban streets predominate the area and a double track commuter rail line is located at high level to the south.

## **2.0 Proposed Development**

- 2.1. The applicant has applied for permission to retain structures erected on site as follows:
- A roofed structure that covers an area of 186.9 sqm (outdoor licensed area), erected in 2016,
  - Toilet block, 12.5 sqm,
  - Plant Room Area, Cold Room and circulation space, 63.3 sqm,
  - Enclosed Plant Room at first floor level, 49.2 sqm. This area accommodates water tanks and is fitted with a pitched roof.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

3.1.1. Dublin City Council recommend refusal for the following reason:

1. The proposal provides for a significant intensification of the existing public house use on the site, by way of a covered outdoor area and outdoor bar. Having regard to the location in close proximity to residential development, with zoning objective Z1 – ‘to protect, provide and improve residential amenities’ and to the policies set out in Section 14.7 of the Dublin City Development Plan (2016-22) in relation to transitional zones, it is considered that the proposed development, by reason of the proposed intensification of use and additional noise and activity generated both inside and outside the structure, would be seriously injurious to the residential amenities of the area, contrary to Section 14.7 of the development plan and to the proper planning and sustainable development of the area.

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

3.2.1. Planning Reports

The Planning Authority decided to refuse permission for a single reason, the basis of their decision can be summarised as follows:

- The area is zoned Z3 – to provide for and improve neighbourhood facilities. Development of the type proposed may be permitted if compatible with surrounding land uses. Adjoining sites are zoned Z1, where residential amenities are important to preserve. Intensification of the uses proposed are supported in specific locations in the city.
- Despite the production of a noise report that highlights mitigation measures, concerns are expressed at the intensity of use and noise impact for local residents. To permit the development would be contrary to section 14.7 of the Development Plan that relates to transitional areas, refuse permission.

3.2.2. Other Technical Reports

Transportation Planning – no report on file.

Drainage Division - no objection subject to conditions.

### 3.3. **Prescribed Bodies**

Irish Rail – no report on file.

Irish Water – no report on file.

### 3.4. **Third Party Observations**

- 3.4.1. Seven observations were received and all raise issues against the granting of permission. Noise, antisocial behaviour, traffic congestion, parking issues and intensification of use on the site are all mentioned.

## 4.0 **Planning History**

None relevant.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

The site is governed by the policies and provisions contained in the **Dublin City Development Plan 2022-2028**. The plan came into effect on the 14 December 2022.

The subject site is governed by the zoning objective Z3 – To provide for and improve neighbourhood facilities.

Public House is open for consideration in the Z3 zoning objective.

Adjacent properties are subject to zoning objective Z1 - To protect, provide and improve residential amenities.

Relevant policies contained within the Development Plan include:

Section 14.6 Transitional Zone Areas

The land-use zoning objectives and control standards show the boundaries between zones. While zoning objectives and development management standards indicate

the different uses permitted in each zone, it is important to avoid abrupt transitions in scale and land-use between zones. 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 (see also Appendix 3: Achieving Sustainable Compact Growth Policy for Density and Building Height in the City, Chapter 4: Shape and Structure of the City, and Chapter 15: Development Standards for guiding principles regarding criteria such as height, density, urban design).

## Chapter 12 - Culture

### Section 12.5.3 Supporting Cultural Vibrancy in the City

Objective CU038 - Noise Impacts - All applications for short or longer term residential proposals (including hotels) that seek permission adjacent to established late night uses such as nightclubs/music venues/public houses/comedy clubs, shall be required to demonstrate in their application, how, firstly through the use of good design and layout; and secondly, through increased sound insulation; they have ensured their development will not cause negative impacts on the adjoining uses in the future.

## Chapter 7: The City Centre, Urban Villages and Retail

### Section 7.5.7 Evening and Night Time Economy

Objective CCUV36 - New Development - To support uses that would result in the diversification of the evening and night time economy where there is little impact on the amenity of adjoining or adjacent residential uses through noise disturbance and where there are no negative cumulative impacts in terms of other night-time economy uses in the area.

## 5.2. Natural Heritage Designations

### 5.2.1. None relevant to this application to retain structures.

### **5.3. EIA Screening**

- 5.3.1. The scale of the proposed development is well under the thresholds set out by the Planning and Development Regulations 2000 (as amended) in Schedule 5, Part 2(10) dealing with urban developments (500 dwelling units; 400 space carpark; 2 hectares extent), and I do not consider that any characteristics or locational aspects (Schedule 7) apply. I conclude that 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. A First-Party Appeal was submitted to An Bord Pleanála on the 12 April 2022 by the Applicant opposing the Local Authority's decision, the grounds of appeal can be summarised as follows:

- An outline is provided as to the role the public house plays in the community.
- Permission is not sought to intensify the use of the site. During normal operating hours activities are confined to the main building. However, during events at Croke Park, the covered area is used as overflow to accommodate patrons. Management of the venue is upgraded during these times to ensure proper and responsible behaviour on and off the site.
- The outdoor space has always operated as an overflow area and now the roof covering shields view from overlooking residential units and reduces the amount of noise that emanates from the site. A Noise Impact Assessment has been submitted and it concludes that the provision of the structure protects residential amenity. Specifically, noise transfer tests demonstrate that there is a substantial difference in noise within and outside the site. Other mitigation measures are also on site: electronic limiting device and distributed audio speakers. It would seem that the planning authority accepted the findings of the Acoustic Report and the grounds of appeal demonstrate that there is no actual intensification of use.



- Responses are provided to refute the claims made by observers to the planning application, as follows: the Acoustic testing was carried out during a normal period of activity and during an advertised event, noise testing was undertaken outside of Covid restrictions, the audio limiter device is located indoors but controls outdoor speakers, noise monitoring included residential properties at Ballybough Road, baseline noise levels have been assessed in this high noise level environment, Croke Park events have been considered but not relevant.
- Other structures are essential to the public house business on site and did not feature as an issue for the planning authority.
- Fire safety is not considered to a planning matter as it is controlled by the Fire Safety Services Act 1981 and by annual fire safety requirements.

The grounds are accompanied by a diagram detailing the use and history of structures it is sought to retain.

## **6.2. Planning Authority Response**

- 6.2.1. If permitted, attach a section 48 Development Contribution condition.

## **6.3. Observations**

- 6.3.1. Five observations have been submitted and all support the application for retention permission. The good work carried out in the community and the responsible attitude of the owner are all presented in a positive light. In particular, the erection of the temporary roof structure prevents views from residential units into the yard of the public house and this is seen as a good thing.

## 7.0 Assessment

### 7.1. Introduction

7.1.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Principle of Development
- Noise
- Other Structures on Site
- Other Matters

### 7.2. Principle of Development

7.2.1. The use and the structures it is proposed to retain would be open for consideration in the Z3 zoning of which it is an objective to provide for and improve neighbourhood facilities. It is the policy of Dublin City Council to support the evening and night time economy, subject to the protection of residential amenities. I am satisfied that the development it is proposed to retain is compatible with the aims of the Development Plan to improve neighbourhood facilities. The existing public house already operates and it is the additional structures that were erected without permission it is intended to retain. My assessment looks in detail at the impact on the neighbouring residential environment in terms of noise nuisance and visual amenity and these matters are addressed in detail below.

7.2.2. In principle, the provision of a covered entertainment area and ancillary service structures are acceptable subject to compliance with residential amenity policies and objectives contained in the current statutory plan for the area. In particular, the applicant has carried out a Noise Impact Assessment in accordance with *Objective CU038 - Noise Impacts* of the current development plan, it concludes that their development will not cause negative impacts on the adjoining uses in the future. Finally, I consider that the development it is proposed to retain adequately addresses section 14.6 Transitional Zone Areas of the current development plan. In this respect, I note that the reason for refusal advanced by the planning authority

references section 14.7 of the previous plan and this corresponds with section 14.6 of the new plan.

### **7.3. Noise**

- 7.3.1. The appellant prepared a Noise Impact Assessment (NIA) as part of the planning application. The NIA sought to assess the likely noise impact from the use of the structures it is proposed to retain. In addition, the NIA identifies the urban location of the site and notes other noise impacts already experienced in the area, such as traffic noise, pedestrians and rail. The existing noise climate is set out and the locations of measurement locations are illustrated by figure 3 of the report. The actual noise survey took place on a Saturday during the day and evening and when an act was performing in the main building, not the structure in the rear yard. It was found that the main generator of noise at residential receptors during the survey was from road traffic noise and passing rail events. For example at location ATT LOC1 (outside ground floor unit 72 Poplar Row), road and traffic noise was in the order of 53dB(A) at 8.29pm. At ATT LOC3 (third floor balcony of western elevation of Poplar Row Flats) again road and traffic noises were the noise source, when noise levels inside the structure were measured at 68dB(A).
- 7.3.2. The sound insulation properties of the roofed structure (roof tarpaulin and gable wall) were tested and it was found that a notable and significant difference between the internal and external noise environment existed, a difference of between  $\frac{1}{2}$  and  $\frac{1}{4}$  of the original noise generation is experienced outside the structure. According to the report, those residential units to the east and north are most effected by the impact of simulated noise from the covered structure, but so too is the impact of road traffic noise in the area.
- 7.3.3. The NIA states that its methodology complies with the criteria used by Dublin City Council for amplified music and insists that no amplified music events will take place within the covered structure and that an electronic noise limiting device will relegate amplified noise to the background. In relation to conversational noise, the NIA states that it is similar to traffic noise in terms of character. The report states that no electronic audio limiting device is currently in place, but will be if permission to retain the structure is given, and six small speakers will be evenly distributed throughout the covered area. The report states that the following mitigation measures; electronic

noise control, the roof and gable wall structure, and that no live events will take place within the structure, together with ambient levels of noise associated with such an urban area will limit any adverse effects to sensitive receptors, like homes.

- 7.3.4. The planning authority are concerned about the intensification of the use on the site, because a covered area encourages larger numbers to attend the venue, that noise will be an issue that affects local residents. A number of submissions that opposed the initial planning application, also outlined these fears and are critical of the methodology employed by the NIA and that it did not actually survey an event that entailed the use of the covered structure. However, observers to the appeal are supportive of the existence of the covered structure as it suppresses noise and limits overlooking of the area.
- 7.3.5. In terms of the principal issue at hand, that of noise impact from the development as it stands, I consider that the report has been prepared by a competent person and broadly addresses the issues associated with the operation of an entertainment venue in a city centre location where residential units exist alongside commercial properties. However, I do consider that the Noise Impact Assessment falls short in a single area and fails to assess the impact of noise from an actual event that causes the covered structure to be fully occupied and in use. It is stated in the grounds of appeal that for the most part the main public house building is occupied for all manner of events and this is acceptable. The grounds of appeal go on to state that during large scale events held at Croke Park, the covered area is used as an overflow area to accommodate patrons. The NIA models rather than tests an event such as those mentioned in the appeal and this may be to do with Covid restrictions on the use of entertainment venues over the last two years. In any case, the NIA concludes that given the urban location, the extent of road and traffic noise and the limited future use of the covered structure no noticeable impact to residential amenity will result.
- 7.3.6. It is evident from submissions to the initial planning application that noise causes an annoyance for local residents during normal operating conditions and especially at Croke Park events. There is a wider issue at stake in this appeal and the planning authority have identified it in the reason for refusal and that is intensification of use. In my mind, the provision of a large covered outdoor space now brings into use a former yard area and provides a comfortable space for patrons to avail of,

particularly at busy times. With more use comes an increase in noise levels. I note that the noise report places conversational noise on a similar footing to traffic noise. However, I would suggest that customer's sometimes boisterous conversations carrying on to the late evening hours would easily surpass the noise that is emitted by the dwindling flow of passing traffic during the evening. At times of sporting events at Croke Park it would appear that the likelihood of increased patron noise is extended throughout the day, during match times and on into the evening.

7.3.7. The appellant has stated that before the yard area was covered, it was in use by patrons on some occasions and I am satisfied that this may have been the case. However, the area is now covered, sheltered from the vagaries of the weather and the periods of use are more frequent and prolonged in terms of the emission of noise. Observers on both sides have noted that noise is a feature but equally that noise levels have probably lessened since the area has been covered. The results of the NIA seem to confirm the notion of some degree of noise attenuation. It is apparent that this venue has been in use as a public house for some time, and operated as such before residential units were constructed to the east. By the admission of the appellant, over the years, it has become a popular establishment and a varied timetable of events add to its attractiveness. A feature of the establishment is the Croke Park matchday attendance that swells the number of patrons, and they are now accommodated in a covered area. I am not so concerned about the intensification of use pointed to by the planning authority, however, I am concerned that without adequate controls this establishment could become a nuisance for local residents if permitted to operate unfettered.

7.3.8. The NIA report outlines noise management mechanisms and I recommend that all of these measures are carried out in order to preserve the existing residential amenity enjoyed by nearby houses and apartments. However, the effect of noise and general disturbance associated with the adaptable nature of the venue, on the amenities of nearby residents has not been fully addressed by the appellant. However, given the city centre location, proximity to Croke Park and the degree of evening noise which is currently and likely to be generated by such an entertainment venue, I am satisfied that any noise nuisance issues can be addressed and managed by condition. In this respect I recommend that the owner be required to

implement a suitable noise monitoring programme with annual reviews to be agreed with the Planning Authority.

- 7.3.9. I do not recommend a limitation to the general operating hours of the public house, as I believe this falls outside the remit of this application. However, I am satisfied that the use of the covered yard area can be controlled and limited to specific hours of the day and that such a condition would be reasonable and enforceable. Such a measure would accord with the statements made by the appellant that during normal operating hours, activities are confined to the main building, but that the use of the covered area is to accommodate patrons during events at Croke Park. I am satisfied that conditions imposed with a permission would not exacerbate any noise nuisance for neighbouring residents and the imposition of limitations on times of use and on amplified music or other amplification in the covered outdoor area would be likely to address some of the current issues being experienced by residents of the adjoining apartments and address the reason for refusal stated by the planning authority.

#### **7.4. Other Structures on Site**

- 7.4.1. The appellant proposes to retain other structures on the site, and they include: a ground floor toilet block, ground floor plant room/cold room and an enclosed plant room at first floor level. These aspects of the overall development have not excited any particular concern from local residents or the planning authority. Given the rear yard location of all these structures and the tidy appearance of the area as a whole I see no intrusion upon the visual amenity currently enjoyed by local residents of this area of the city. The area is not a designated residential conservation area and the location of protected structures along Poplar Row to the north are sufficiently removed so as not to be impacted upon in this urban setting. I am satisfied that the other structures it is proposed to retain are acceptable from a visual amenity perspective.

#### **7.5. Other Matters**

- 7.5.1. Traffic and parking - The initial planning application raised concerns amongst some observers that traffic congestion and parking issues may arise from the development if permitted. The planning authority have not directly tackled this issue and there is no report from the Transport Planning section of the Council. The site is located in a city centre location, close to public transport, on-street parking as well as relatively

high density residential estates in the immediate vicinity of the appeal site and the wider area. The existing business premises and the surrounding mixed use developments are characteristic of a city centre location, where it is not expected that car parking will always be provided at your destination. In addition, given the entertainment nature of the existing uses on the appeal site, it is highly likely that patrons will arrive on foot, taxi or other forms of public transport. Therefore, given the nature of the existing public house facility and the scale of the proposed structures it is intended to retain, it is not envisaged that a perceptible or inconvenient level of increased traffic generation will result.

- 7.5.2. Fire Safety - The appellant states that fire safety is not considered to be a planning matter as it is controlled by the Fire Safety Services Act 1981 and by annual fire safety requirements and thus need not concern the Board for the purposes of this appeal. The focus of my assessment has been to concentrate on the planning and environmental matters under consideration only and not matters that concern other arms of the Council with respect to fire safety.

#### **7.6. Appropriate Assessment**

- 7.6.1. Given that the development is already connected to the public water supply and drainage networks, and having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed 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. Having regard to the above assessment, and based on the following reasons and considerations, it is recommended that retention permission be granted subject to conditions

### **9.0 Reasons and Considerations**

Having regard to the pattern and character of existing development in the area, the design and scale of the development it is proposed to retain, and the provisions of

the Dublin City Development Plan 2022-2028, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in accordance with the zoning objective for the site, would not detract from the visual amenity of the area, would not seriously injure the residential amenity of surrounding properties, and would not endanger public safety or convenience by reason of traffic generation or otherwise. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be completed and retained in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) No patrons are permitted to use the external covered area after 2200 hours Monday to Sunday.

(b) No live or amplified music shall be permitted in the outdoor covered area.

Reason: In the interests of orderly development and protecting residential amenity.

3. A noise monitoring programme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, to include an annual review undertaken by a qualified acoustic engineer at the nearest noise sensitive location. The developer shall carry out any amendments to the subject development requested by the planning authority subject to the review.

Reason: In the interest of protecting the amenity of the nearby residential properties.



4. During the operational phase of the proposed development, the noise level arising from the development it is proposed to retain, shall comply with the following:

(a) Amplified 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.

(b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be subject to the same locational and decibel exceedance criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at LAeqT.

(c) 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

- (i) during a temporary shutdown of the specific noise source, or
- (ii) during a period immediately before or after the specific noise source operates.

(d) 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.

(e) Any measuring instrument shall be precision grade.

(f) The Noise Management Mechanisms detailed in the ICAN Acoustics Noise and Vibration Consultants Noise Impact Assessment Report submitted to the planning authority on the 24 January 2022, shall be implemented in full. Procedures for the purpose of determining compliance with the Noise Management Mechanisms shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Any detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with the entirety of this condition (items (a) to (f) inclusive) shall be submitted to, and agreed in writing with, the planning authority prior to within six months of this grant of permission.

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.

5. 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.

Reason: In the interest of public health.

6. 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 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.

Reason: In order to safeguard the residential amenities of property in the vicinity.

7. 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.

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.

---

Stephen Rhys Thomas  
Senior Planning Inspector

14 February 2023