



An  
Bord  
Pleanála

## Inspector's Report ABP-313643-22

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<b>Development</b>	Retain glazed structure behind pub
<b>Location</b>	The Comet, 243-245 Swords Road. Santry, Dublin 9
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3444/22
<b>Applicants</b>	Inishelm Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellants</b>	Inishelm Ltd.
<b>Observers</b>	None
<b>Date of Site Inspection</b>	9 <sup>th</sup> June 2023
<b>Inspector</b>	Stephen J. O'Sullivan

## **1.0 Site Location and Description**

1.1. The site is in an suburban area c 5km north of Dublin's city centre. It has a stated area of 1,921m<sup>2</sup>. It consists of the curtilage of a public house that stands in a parade of shops in a two-storey terraced building from the mid 20<sup>th</sup> century. It includes a parking area behind that terrace. An area of 129m<sup>2</sup> behind the pub has been enclosed by a structure of glass and metal panels with a retractable roof. At the time of inspection benches and tables had been set out inside and immediately outside that structure. The southern side of the parking area behind the pub adjoins the back gardens of houses along Larkhill Road. Single storey storage buildings lie along the north-western edge of the parking area adjoining the back gardens behind houses on Shanowen Drive.

## **2.0 Proposed Development**

2.1. It is proposed to retain the structure at the back of the pub.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority refused permission for one reason which stated that the development would give rise to unacceptable noise, nuisance and disturbance that would seriously injure the amenities and depreciate the value or property in the vicinity and be contrary to section 16.32 of the 2016 development plan due to the scale and nature of the structure to be retained, and its proximity to houses on Larkhill Road, Shanowen Drive and Swords Road Road.

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

### **3.3. Planning Reports**

The structure to be retained would be 43% bigger than the permitted smoking area at this location. The application was not accompanied by any information to demonstrate that the development would not injure the amenities of neighbouring houses contrary to section 16.32 of the development plan. The concerns of the

Environmental Health Officer were noted. The structure occupies a transitional zone between the neighbourhood centre and the more sensitive residential properties to the rear of the site. Given that the structure is in place significant alterations could not be required by condition or further information. It was recommended that permission be refused.

#### 3.3.1. Other Technical Reports

The Environmental Health Officer would have concerns in relation to the noise break out from the structure to be retained given the façade structure specification. It would reduce the amenities of property in the vicinity and permission should be refused.

### 4.0 Planning History

PL29N. 244790, Reg. Ref. 2221/15 – The board granted permission in July 2015 for a smoking area at the back of the pub. This permission was not implemented.

Reg. Ref. 3340/15 – the council granted permission in October 2015 to change part of the pub to a restaurant and takeaway

### 5.0 Development Plan

- 5.1. **Dublin City Development Plan 2022-2028** –The site is zoned under objective Z3 to provide for and improve neighbourhood facilities. Section 14.7.3 states that such centres can form a focal point for the neighbourhood and it is important that they be maintained and strengthened where necessary Section 15.14.12 of the plan refers to licensed premises and states *inter alia* that where extensions to existing uses are proposed the onus is on the applicant to demonstrate that it would not be detrimental to the residential quality of an area. Section 14.6 says that in contiguous transitional zone areas it is necessary to avoid developments that would be detrimental to the more environmentally sensitive zone.

#### 5.2. Natural Heritage Designations

None

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The proposed development would be in keeping with the neighbourhood zoning of the site and would further its objective Z3 to provide a focal point for the community. After the Covid pandemic many customers of the pub prefer to use a more open and less intense seated area, particularly those who are elderly or immunocompromised.
- The development will not injure residential amenity. The structure to be retained is a significant distance of more than 40m from nearby residential dwellings and is screened by the storage buildings on the applicant's site. The proposal is not for an outdoor smoking area but for an enclosed seated area whose use would be less intense. The glazed walls will contain noise. There have been benches and tables in this area for 21 years. There have not been complaints from neighbours or endorsements on the publican's license in that period. The applicant would accept a permission whose duration was limited to 5 years.
- There have been several precedents where the council or board has granted permission for extensions and retractable roofs to the rear of pubs in mixed use areas close to dwellings including PL29N 239125, Reg. Ref. 3844/10 where the board permitted a smoking area with a retractable canvas roof to the rear of the Brian Boru pub in Dublin 9 and ABP-307928-22 where the board granted permission for an extension to Corrigan's pub in Dublin 6

### 6.2. Planning Authority Response

The response refers to the reports from the planner and environmental health officer on the application

## 7.0 Assessment

- 7.1. I note the council's concerns about the development to be retained as expressed in the reports of its planner and environmental health officer. They have a reasonable

planning and environmental basis. The open area behind the pub adjoins residential properties zoned to protect their amenities under objective Z1 of the development plan. The rather flimsy nature of the structure to be retained and its capacity to be opened to the air means that it would not contain noise to the same extent as an actual building. There was a limited amount of information in the application to support a conclusion that its retention would not injure the residential amenity of the adjacent properties which did not discharge the requirements of section 16.32 of the development plan in force at the time (which are repeated in section 15.14.12 of the current plan).

- 7.2. Nevertheless in the particular circumstances of the appeal site I would prefer the position put forward in the appeal. The structure to be retained does provide a social facility for the neighbourhood, albeit on a commercial basis. Since the pandemic there is a greater demand for those drinking or dining out to do so in facilities that provide some shelter but have more connection with the outdoors, especially during the summer months. The development to be retained therefore makes a positive contribution to the role of the neighbourhood centre in providing focal point for the local community. It is not merely in keeping with the Z3 zoning site as a neighbouring centre, it promotes the achievement of that zoning objective.
- 7.3. As pointed out in the appeal, the neighbouring houses are at least 40m from the structure whose retention is proposed. The houses to the south of the site along Larkhill Road have unusually long back gardens of 30m or more. The gardens behind the adjoining houses along Shanowen Drive and the Swords Road also have long gardens of 20m and there are structures erected along the shared boundary which would further screen activity on the site from those residential properties. I am satisfied that the separation and relative orientation between the structure to be retained and the houses in the vicinity is adequate to protect the amenities of the latter property from the activity contained in the former structure. Therefore the development would not seriously injure the amenities or depreciate the value of property in the vicinity. This conclusion assumes that the public house is operated in a responsible and reasonably considerate manner in accordance with its licence. A refusal of permission in this case would not reduce the potential threat to the amenities of neighbouring houses if the public house was not property run, as noise from activity at the back of the premises would be more disturbing if the structure

whose retention is proposed was removed. The granting of a temporary permission on the basis of uncertainty of the impact of a development is not normally considered good practice and is not recommended here. However the board might consider such a condition warranted having regard to the insubstantial nature of the structure to be retained.

- 7.4. The nature, scale and location of the proposed development mean that it would not have to potential to have any effect on any Natura 2000 site and no appropriate issues arise in connection with it.

## 8.0 Recommendation

- 8.1. I recommend that permission be granted subject to the conditions set out below.

## 9.0 Reasons and Considerations

Having regard to the zoning of the site as part of a neighbourhood centre under objective Z3 of the Dublin City Development Plan 2022-2028, to the established use of the site as a public house, and to the size of the structure whose retention is proposed and its separation from neighbouring houses, it is considered that the development would not seriously injure the amenities of property in the vicinity of the site and would comply with the provisions of the development plan. It would therefore be in keeping with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed 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..

**Reason:** In the interest of clarity.

2. No amplified music or other specific entertainment noise shall be permitted in the structure whose retention is permitted or elsewhere on the site outside the main building. Any amplified music or other specific entertainment noise from

within the main building shall be audible on residential properties adjoining the site.

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

3. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

I confirm that the report represents my professional planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

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Stephen J. O'Sullivan

Planning Inspector, 10<sup>th</sup> June 2023