



An
Bord
Pleanála

Inspector's Report

ABP-313665-22

Development	Retention permission for outdoor seating, planters, screens and awning at public house.
Location	Brady's of Shankill, Dublin Road, Dublin 18.
Planning Authority	Dun Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	D21A/0748
Applicant(s)	Knockfadda Enterprises Ltd.
Type of Application	Retention permission
Planning Authority Decision	Grant retention permission
Type of Appeal	3 rd Party
Appellant(s)	Paula Morgan & Others
Observer(s)	None
Date of Site Inspection	7 th December 2022
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.4337ha, is located on the west side of Dublin Road in Shankhill, Co. Dublin. There is a large, single/two-storey-over-basement public house on the site – of stated 1,617sq.m. Surface parking to the northwest (for a stated 89 cars), serves the premises – and operates on a pay basis. Vehicular entrance to the car-park is on the north side of the public house. Stonebridge Close, a cul-de-sac development of two-storey, terraced houses, is located to the south and southwest of the public house. Access to Stonebridge Close runs to the south of the public house. There is a footpath, grass margin and some mature trees on the opposite side of the access to Stonebridge Close. The entrance to Stonebridge Close is flanked by pairs of metal trellis pillars, surmounted by public lighting. There are double yellow lines on Dublin Road and part of Stonebridge Close, where the carriageways abut the public house site. Immediately to the west of the public house is a two-storey office building. There is outdoor seating located to the front of the premises, on Dublin Road.
- 1.2. The outdoor seating area is in place. It comprises tables & chairs and picnic benches. Part of the area is roofed, with a retractable awning on a fixed metal frame. Planter boxes screen part of the outdoor seating area, whilst windbreakers (advertising alcoholic beverages) are in place on the remainder. The planters and screens had not been set back to widen the footpath, on the date of site inspection.

2.0 Proposed Development

- 2.1. Permission sought on 20th August 2021, for retention permission for outdoor seating area at this public house – to include retractable roof, outdoor seating and tables, screen planters and windbreakers. The total area measures approximately 135sq.m.
- 2.2. Following a request for additional information, revised details were submitted on 12th April 2022 – to indicate-
 - Reduced area of outdoor seating to provide for a clear 2.25m width of footpath along its entire length. The reduced area is stated to be 113sq.m.
 - Loading bay on the south side of the public house.
 - Details of windbreakers and planter boxes (new timber-type).

- Hours of use - Monday to Saturday 10.30-21.30, and Sunday 12.30-21.30.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 29th April 2022, Dún Laoghaire/Rathdown County Council issued a Notification of decision to grant retention permission, subject to 5 conditions – which can be summarised as follows-

1. Development shall be retained in accordance with plans and particulars lodged with the application, as clarified by additional information received on 12th April 2022.
2. External seating area shall not be utilised after 2130 hours – Mon to Sun.
3. No piped music or live music shall be permitted in external seating area.
4. Relates to noise restrictions.
5. Relates to disposal of surface water.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report (dated 7th October 2021), requests further information in relation to four issues. There is a second Planner's Report – dated 29th April 2022.

3.2.2. Other Technical Reports

There is a report from the Drainage Section of DLRCC, dated 16th September 2021, relating to SuDS drainage requirements.

There are reports from the Transportation Planning Section – dated 24th September 2021 and 20th April 2022.

There is a report from the Environmental Health Officer relating to noise – dated 26th April 2022.

3.3. **Third Party Observations**

There are a substantial number of objections to the application – the majority from residents of Stonebridge Close. Included are annotated photographs of parking and deliveries/service vehicles in the vicinity, and annotated architectural drawings.

4.0 **Planning History**

Ref. D21A/0185: Retention permission granted for a timber-enclosed outdoor seating area of 18sq.m) to the front of this public house – on Main Street. This permission was for a period of 12 months only.

There is a substantial planning history pertaining to this site – clearly outlined in the DLRCC Planner’s Report of 7th October 2021.

5.0 **Policy Context**

5.1. **Development Plan**

The Dún Laoghaire-Rathdown County Development Plan 2022-2028, zones the site ‘NC’ – Neighbourhood Centre – ‘To protect, provide and/or improve mixed-use neighbourhood facilities’.

5.2. **Natural Heritage Designations**

There are no Natural Heritage Designations either within or immediately adjoining the appeal site. The development is connected to the public sewerage network.

There are no watercourses linking the site with any such designated areas.

Significant effects are not likely to arise, either alone or in combination with other plans or projects.

5.3. **EIA Screening**

EIA Screening was carried out by DLRCC. I am satisfied that, having regard to the limited scale of the development, within a built-up area, that it would not have any significant impact on the environment.

6.0 The Appeal

6.1. Grounds of Appeal

The 3rd Party appeal from Paula Morgan & Others, of 13 Stonebridge Close, Shankhill, received by the Board on 26th May 2022, can be summarised in bullet point format, as follows-

- Development has been carried out on land that does not belong to applicant.
- The development has been carried out on a right-of-way, detailed in Deeds of Assignment attached to all houses in Stonebridge Close – permission ref. D94A/0494. The applicant's boundary has expanded over the years – depending on the planning application submitted.
- The original pergola erected during the Covid period was a canvas-type structure with windbreakers. However, it was transformed into a fixed structure with steel girders attached to the wall of the public house – effectively creating an extension on land not owned by the applicant.
- It is not acceptable for DLR to claim that the issue of right-of-way is a matter for the courts. The applicant should have been asked to comment on the right-of-way issue by way of additional information request.
- DLR has failed to act on a number of complaints relating to site notices at this premises. Numerous site notices have been erected with confusing dates, and at different locations. This has resulted in permissions being granted without residents being aware they had been made. Yellow site notices should have been erected for retention applications. The notices should have been on fixed structures.
- Despite numerous issues being raised by objectors, only four issues were raised with the applicant by way of additional information. The issue of drainage has not been properly addressed. Wastewater from the kitchen of this public house has been problematic for years past.
- The delivery area to the rear causes traffic chaos in the area. The new pergola area does not leave sufficient space for trucks to use the loading bay on the south side of the lounge. The problems with the loading bay on the

north side of the lounge was not addressed in the request for additional information.

- The applicant is allowed to continually flaunt planning regulations – to the detriment of residents of Stonebridge Close.

6.2. Applicant Response

None received.

6.3. Planning Authority Response

The response of DLRCC, received by the Board on 22nd June 2022, indicated that there were no further comments.

7.0 Assessment

The principal issues of this appeal are addressed under the following headings.

7.1. Site Notices

The appellant argues that site notices erected on this site in the past have been confusing and have resulted in the appellant being unaware of permissions sought at the public house. I would note that in this instance, there is a copy of yellow site notice on the file – dated 20th August 2021. DLR would have inspected the site notice and would have been satisfied that it was in order, before proceeding to grant permission. The Planner's Report (dated 7th October 2021) clearly states that the site notice was in place and legible on 7th September 2021. Following a request for additional information from DLRCC, revised public notices were submitted to the Council – (Irish Daily Star newspaper – dated 8th April 2022) and site notice (dated 8th April 2022). The Board cannot know if site notices were or were not correctly displayed, and for the appropriate period. I note that there is also a copy of the newspaper notice from the Daily Mail of 19th August 2021. The Council was satisfied that the public notices were in order. I would note that objectors were clearly aware of the planning application and additional information submission, judging by the number of submissions received by DLRCC, after the original submission and the additional information submission.

7.2. Ownership of Site

The appellant argues that there is a right-of-way across the area now being used for outdoor seating, in favour of residents of Stonebridge Close. It is stated that this right-of-way is indicated on property Deeds of Assignment for each house. No copies of any such rights-of-way have been included in the file received from DLRCC. I would note that the pair of metal trellis lighting standards are mirrored by another pair on the opposite side of the sole vehicular entrance to Stonebridge Close. Section 5.13 of the Development Management Guidelines indicates that the planning system is not designed as a mechanism for resolving disputes over land, and that these are ultimately matters for resolution in the Courts. The additional information provides for a minimum footpath width of 2.25m along the entire southern side of the site – although this was not in effect on the date of site inspection. The structures for retention are not permanent – and could easily be removed, should it transpire that the applicant does not have sufficient legal interest to maintain the structures on the site. Section 34(13) of the Planning and Development Act, 2000 (as amended) states- ‘A person shall not be entitled solely by reason of a permission under this section to carry out any development’.

7.3. Design & Layout

The external seating area has already been in place for some time – the application for retention having been lodged with DLRCC on 20th August 2021. I note that there is external seating to the front of this public house also – addressing the Dublin Road. There is sufficient room to walk along the footpath to the south of the seating area at present, although the applicant has indicated that the width would be increased to 2.25m; something which has not been done to date. The premises already has an outdoor beer garden to the northwest of the building. The application was, to a certain extent, dictated by the requirements of Covid 19 restrictions in relation to indoor socialising. It is, as yet, unclear, whether such restrictions may be necessary again in the future. The permission granted was a permanent one. The closest house in Stonebridge Close is more than 25m from the outdoor seating area – on the other side of the access road to the housing estate and office building. Hours of operation were restricted by way of condition no. 2; and condition no. 3 restricted entertainment noise and sources. Condition no. 4 restricted the emission of noise from the site. The site is zoned for ‘Neighbourhood Centre’ uses. I would

consider that outdoor seating for a public house could be considered appropriate within such a zoning.

7.4. Traffic & Parking

The appellant objects on the grounds of unauthorised parking, which hinders access for residents to Stonebridge Close. There is only the one vehicular and pedestrian access/egress for Stonebridge Close. The applicant has indicated proposals for deliveries on the south side of the building. There is no proper loading bay at this location – and the area indicated could probably accommodate a small van only. The drawings submitted indicate a ‘Loading Area’ on the northwest side of the building – from the car-park. I note that there is no loading bay in this area. There were vehicles parked on the southern side of the building on the date of site inspection – but whether they were connected with the public house use was not clear. Double yellow lines do not extend along the entire southern side of the public house. It is not clear if this road is taken-in-charge.

Whilst the proposed development will clearly increase the capacity of the public house, I note that the public house is located in the centre of the old village of Shankhill and is accessible by bus and DART. There is a footpath connecting the Dublin Road with the Lower Road to the west – via a dedicated pathway through the car-park. The car-park is operated on a pay-parking basis.

7.5. Other Issues

The development will not result in any greater amount of surface water flowing from the site – where there was already hard paving on the south side of the public house. However, this is an opportunity to implement improved surface water handling – as is evident in the attachment of condition 5 by DLRCC. The appellant has stated that there are problems with kitchen drainage at the public house. Notwithstanding this, DLRCC was satisfied to grant retention permission. The proposed development does not impact on kitchen drainage in any way.

DLRCC did not attach a condition requiring payment of a development contribution.

The free-standing windbreakers are being used to advertise products. A condition should be attached to any grant of permission from the Board to restrict such

windbreakers to plain canvas, butyl or similar. Any proposal to use the windbreakers for advertising, should be subject to a separate planning application.

8.0 Recommendation

I recommend that retention permission be granted for the Reasons and Considerations set out below, and subject to the attached Conditions.

9.0 Reasons and Considerations

Having regard to the zoning of the site in the current Development Plan for the area, the established nature of the public house use and the limited extent of the development for retention; I would consider that, subject to compliance with the attached conditions, the development for retention would not seriously injure the amenities of the area or of residential property in the vicinity, would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained in accordance with the plans and particulars lodged with the application on the 20th day of August 2021, as amended by the further plans and particulars submitted on the 12th day of April 2022, 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. The external seating area shall not be utilised after 2130 hours, Monday to Sunday.

Reason: In the interest of residential amenities.

3. There shall be no piped or live music, or any electronic noise sources (TV, radio etc.) within the external seating area.

Reason: In the interest of residential amenity.

4. (a) During the operational phase of the development for retention, the noise level arising, as measured at the nearest dwelling, shall not exceed:-
 - (i) An Leq 1h value of 55 dB(A) during the period 0800-2200 hours from Monday to Saturday inclusive.
 - (ii) An Leq 15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

- (b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996: 2007; Acoustics – Description and Measurement of Environmental Noise.

Reason: To protect the residential amenities of property in the vicinity.

5. Surface water disposal shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

6. Wind breakers shall be of plain canvas, butyl or similar material; and shall be free of all advertising.

Reason: In the interest of the visual amenity of the area.

Michael Dillon

Inspectorate

12th December 2022.