



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314096-22

|                                     |                                                                                                                                                                                                                                                     |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Development</b>                  | Permission for use of semi sheltered outdoor seating area with 4 toilets within carpark to east of public house on a permanent basis. These elements of the site were previously granted a temporary (9 month) permission, under Reg. Ref. 3592/20. |
| <b>Location</b>                     | Harry Byrne's Public House, 107-109 Howth Road, Clontarf, Dublin 3                                                                                                                                                                                  |
| <b>Planning Authority</b>           | Dublin City Council North                                                                                                                                                                                                                           |
| <b>Planning Authority Reg. Ref.</b> | 3146/21                                                                                                                                                                                                                                             |
| <b>Applicant(s)</b>                 | Tom Byrne                                                                                                                                                                                                                                           |
| <b>Type of Application</b>          | Permission                                                                                                                                                                                                                                          |
| <b>Planning Authority Decision</b>  | Refuse                                                                                                                                                                                                                                              |
| <b>Type of Appeal</b>               | First Party                                                                                                                                                                                                                                         |
| <b>Appellant(s)</b>                 | Tom Byrne                                                                                                                                                                                                                                           |
| <b>Observer(s)</b>                  | Patrick McLaughlin<br>Ken Rushe & Others                                                                                                                                                                                                            |

**Date of Site Inspection**

26/06/2023

**Inspector**

Gillian Kane

## **1.0 Site Location and Description**

- 1.1.1. The subject site is located on the southern side of the Howth Road, between the junction with Lawrence Grove and Hollybrook, in the north Dublin suburb of Clontarf.
- 1.1.2. Currently on site is a two-storey public house with a large carpark to the east. Part of the car park is being used for outdoor seating, eating and toilets to serve customers. A lean-to timber frame creates an internal courtyard, above which sits a large fabric umbrella. Within this area is a series of high tables and stools, a vending machine and access to the main public house building. On the outside of the framed structure are a number of high-tables and stools covered by a fabric gazebo type structure. These are separated from the car park by planters and fabric screens.
- 1.1.3. A fire-truck with a lean-to structure sits to the side of the outdoor area. The truck contains pizza ovens.

## **2.0 Proposed Development**

- 2.1. On the 13<sup>th</sup> July 2021, planning permission was sought for the use of a semi-sheltered outdoor seating area, comprising a demountable timber frame structure 61sq.m., and 4 no. toilets with new lean-to roof, all within the car park of an existing public house. The public notices state that these elements of the development were previously granted a temporary 9-month retention permission under Planning Authority reg. ref. 3592/20.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. On the 17<sup>th</sup> June 2022, the Planning Authority issued a notification of their intention to REFUSE permission for the following reason:
  - 1 The applicant has not demonstrated that satisfactory measures have or will be taken to mitigate the potential impact of noise, litter or odour nuisance on adjacent residential properties. The proposed development would therefore, seriously injure the amenities of property in the vicinity, be contrary to the provisions of the Dublin City Development plan 2016-2022 and be contrary to the proper planning and sustainable development of the area.

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

- 3.2.1. **Drainage:** No objection.
- 3.2.2. **First Planning Report:** Primary concern of the Planning Authority is the impact on neighbours, use of a car park for other uses and use of temporary toilets. Applicant should be requested to submit FI.
- 3.2.3. The applicant was requested to submit FI on the 06th September 2022. The applicant requested an extension of 3 months to respond to the request. The applicant responded on 23<sup>rd</sup> May 2022.
- 3.2.4. **Second Planning report:** Applicant has acknowledged the unauthorised operation of a number of facilities on site. Notes that applicant has not addressed the outstanding matter of noise, litter and odour mitigation. Applicant has not demonstrated that the proposed development would not negatively impact adjoining residential amenity. Recommendation to refuse permission.

### 3.3. **Prescribed Bodies**

- 3.3.1. None on file.

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

- 3.4.1. Observers on the planning application raised issues of traffic and parking, noise, litter, impact on streetscape and hours of operation.

## 4.0 **Planning History**

- 4.1.1. Planning Authority reg. ref. **3592/20**: Planning permission granted to RETAIN a semi sheltered outdoor seating area, constructed of a demountable timber frame structure with a low-pitched roof and 4 no. portable toilets all of which are located in the pub car park, to the east of the existing public house. **Condition no. 5** provides that the development shall be demounted and removed from the site within 9 months of the final grant of permission or when the operations recommence within the main building so as to allow patrons to enter the main premises, whichever is sooner, unless a further permission has been granted prior to that date.
- 4.1.2. **Condition no. 6** of that permission stated: The development hereby approved for retention shall adhere to the following: a) Noise levels from the development hereby retained shall not be so loud, so continuous, so repeated, of such duration or pitch or

occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place. In particular the rated noise levels from the development hereby retained shall not constitute reasonable grounds for complaint as provided for in B.S 4142 method for rating industrial noise affecting mixed residential and industrial areas. b) The applicant shall submit to and be approved in writing (Environmental Health Division DCC) a scheme for the control of noise from the premises within one month of the date of this grant of permission. The scheme shall be implemented from that date until the expiry of the permission c) The applicant shall submit to and be approved in writing (Environmental Health Division DCC) a scheme for the control of odours from the premises within one month of the date of this grant of permission. The scheme shall be implemented from that date until the expiry of the permission Reason: In the interests of the protection of residential amenity

## **5.0 Policy Context**

### **5.1. Dublin City Council Development Plan 2022-2028**

- 5.1.1. The subject site is zoned Z1 Sustainable Residential Neighbourhoods, which has the stated objective “to protect, provide and improve residential amenities”. Public house use is ‘open for consideration’ in Z1 zones.
- 5.1.2. Section 15.14.12 of the 2022 refers to the development management standards for licenced premises. The development plan states that 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:
- The amenity of neighbouring residents and occupiers.
  - Hours of operation.
  - Traffic management.
  - Shop frontage treatment and impact on streetscape.
  - Proposed signage

### **5.2. Natural Heritage Designations**

- 5.2.1. The subject site is approx. 0.6km north of the South Dublin Bay and River Tolka Estuary SPA (004024).

### **5.3. EIA Screening**

- 5.3.1. Having regard to nature and scale of the proposed development and the urban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. 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. An agent for the applicant has submitted a first party appeal against the decision of the Planning Authority to refuse permission. The grounds of the appeal can be summarised as follows:

- The Board is requested to note item 3 of the request for further information issued by the City Council on the 9<sup>th</sup> September 2021 and the response of the applicant to that request in May 2022, wherein the applicant confirmed their willingness to accept a condition of wording similar to that of Condition no. 6 of reg. ref. 3492/20.
- The appropriate demonstration of noise, litter and odour mitigation can be addressed by way of compliance. It was not possible to prepare a suitable scheme for the demonstration of noise, litter and odour mitigation measures and agree same with the EHO division of Dublin City Council within the appeal period.
- The Board is requested to grant permission.

### **6.2. Planning Authority Response**

- 6.2.1. The Planning Authority request that the Board uphold their decision to refuse permission. If the Board overturns the decision, they are requested to attach a condition requiring the payment of a section 48 development contribution.

### 6.3. Observations

#### 6.3.1. Patrick McLoughlin, 13 Lawrence Grove:

- House is 50/60m from the car park.
- No-one objected to the exceptional use of the car park during Covid. Continued outdoor drinking has led to noise, litter, nuisance and parking.
- Fully supports the decision of Dublin City Council to refuse permission.
- The number of cars parked on adjoining streets has increased.
- The proposed light wooden walls will not stop noise pollution.
- The car park adjoining Lawrence Grove already has noise from beer barrels, glass recycling and collection.
- Smoke from pizza fire truck and smoking causes air pollution.
- Toilets are too close to residential properties.
- Littering persists. Photos submitted.
- Other outdoor drinking premises available in the area.
- The premises should be returned to pre-Covid operation.

#### 6.3.2. Ken Rushe, Tom & Emma Hynes, Claire & Dermot Duffy, Ken Appleyard, Martin & Monica Walsh, Phillis Farrell, Seamus Fearon, Hugh Gash, John Crangle, Dave Kavanagh, Maurizio Calliva and Christine Demelas:

- The above did not object to the previous planning application as they believed it to be temporary.
- The temporary outdoor area has fulfilled its purpose and should be removed.
- The above strongly agree with the decision of the Planning Authority to refuse permission.
- The applicants failure to address the concerns of the Planning Authority demonstrates their lack of consideration for the residential amenity of the area.

- The applicant has no evidence to support their statement of no negative consequences or that existing disturbances will be resolved. No mitigation measures were submitted with the appeal.
- The development is contrary to the proper planning and sustainable development of the area.
- Photos submitted.

## 7.0 Assessment

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Impact on Residential Amenity

### 7.2. Principle of Development

7.2.1. The subject development to be retained on a permanent basis comprises the use of part of an existing car park for outdoor seating with roof covering, with a separate block of 4 no. toilets. As noted above, permission was granted to retain the temporary shelter and porta-loos in 2020 on a temporary basis – condition no. 5 of Planning Authority reg. ref 2592/20 refers. The condition required their removal or a grant of permission within 9 no. months of the date of the final grant of permission (02 Feb 2021).

7.2.2. The proposed development is essentially an increase in floor area of the existing public house, the difference being that the increased floor area is outdoor, without the benefit of solid walls to contain the noise, odour etc of the intensified use.

7.2.3. Public house use is an ‘open for consideration’ use in Z1 zones. Section 14.3.1 of the 2022 Dublin City Council development plan states that “An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the

permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.”

### **7.3. Impact on Residential Amenity**

- 7.3.1. I note that the applicant was requested by the Planning Authority in September 2021 to (amongst other things) “*submit a scheme that demonstrate noise, litter and odour mitigation measures to the EHO division of the Council consistent with condition no. 6 of plan. Ref. 2492/20*”. Responding to that request the applicant, stated that they would be willing to accept a condition similar to condition no. 6. In their appeal to the Board, the appellant restates their willingness to accept a condition, stating that “the appropriate demonstration of noise, litter and odour mitigation is an element of the scheme which can be addressed by way of compliance and would consider it unreasonable to refuse the subject application on this sole basis”. The appellant states that it was not considered feasible to approach and appoint an appropriate consultant, prepare a suitable scheme and agree same with the EHO division of the City Council within the appeal period.
- 7.3.2. I query why the applicant did not prepare such a scheme in compliance with condition no. 6 of the 2021 application when permission was granted. The applicant should not need to prepare such a scheme “within the appeal period” when the scheme should have been prepared in 2021. The use of the temporary seating area should now be operating within the terms and conditions of a scheme which was agreed with the EHO division of the City Council. I do not understand the appellants reference to their inability to prepare one “within the appeal period” when the scheme should have been operational since 2021, in compliance with condition no. 6. This leads me to presume that the outdoor seating area is currently operating without the benefit of a noise, litter and odour mitigation scheme. One must question the appropriateness of facilitating a permanent use without the benefit of such a scheme, particularly where the applicant has already been given the opportunity to put such a scheme in place.
- 7.3.3. The Board will note the concerns raised by the observers regarding noise, odour, litter and parking nuisance caused by the subject uses.
- 7.3.4. It is considered that the residential amenity of the surrounding properties is being injured by the subject use. The semi-open nature of the seating area and its location

within the former car park, meaning it is closer to the surrounding residential properties, is such that noise, odour and general disturbance are less easily contained. Further, the addition of a fire-truck (for which no permission seems to be in place) for pizza increases the hours of operation of the outdoor space beyond traditional evening use more commonly associated with public houses.

- 7.3.5. The use of outdoor seating / eating areas has been more commonplace since the pandemic. The use of temporary permissions in that instance was appropriate, having regard to the provisos outlined in section 7.5 of the development management conditions, namely that the need for such a use would end.
- 7.3.6. As noted above, section 15.14.12 of the 2022 Dublin City Council development plan details the 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: the amenity of neighbouring residents and occupiers, Hours of operation, Traffic management, Shop frontage treatment and impact on streetscape and Proposed signage. I am satisfied that the noise, odour and other disturbance arising from the subject use is such that the residential amenity of the adjoining properties is being negatively affected.
- 7.3.7. It is considered that the proposed development is contrary to the Z1 zoning of the subject site, is not in accordance with the development plan policy on licensed premises, and therefore is contrary to the proper planning and sustainable development of the area.

#### **7.4. Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area, no appropriate assessment issues arise, and it is considered that 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.

### **8.0 Recommendation**

- 8.1. I recommend permission be REFUSED for the following reasons and considerations:
- 1 It has not been demonstrated that the development to be retained on a permanent basis has not injured the residential amenity of the surrounding premises in terms of noise, odour litter and parking, as required by section

15.14.12 of the 2022-2028 Dublin City Council development plan. The subject development is not in compliance with the Z1 land use zoning objective for the site, which seeks to protect, provide and improve residential amenities. The subject development is therefore considered to be contrary to the proper planning and sustainable development of the area.

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

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Gillian Kane

Senior Planning Inspector

06 July 2023