



An
Bord
Pleanála

Inspector's Report

ABP-314846-22

Development	Alteration and extension of an existing licensed premises including a new bar and seating area, a new outdoor lounge seating area and new doors in the front elevation etc.
Location	Fowler's Pub & Restaurant, 10-12 New Street, Malahide, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0490
Applicant(s)	DCD Pubs Ltd.
Type of Application	Permission (s. 34)
Planning Authority Decision	Grant Permission with Conditions
Type of Appeal	Third Party (s. 37)
Appellant(s)	Mary Lynch
Observer(s)	None
Date of Site Inspection	30 th June 2023
Inspector	Philip Maguire

1.0 Site Location and Description

- 1.1. The appeal site is located along and to the western side of New Street in the historic core of Malahide, Co. Dublin, north of its junction with Main Street (R106) and Church Road (R124), at 'The Diamond'. New Street is characterised by cafés, restaurants and public houses but also includes retail and residential uses. Rear access is via Old Street, which is primarily a residential street, although includes a return frontage to St. Sylvester's Church, which is listed in the Record of Protected Structures (RPS). The site also lies within the Malahide Historic Core Architectural Conservation Area (ACA).
- 1.2. The appeal site has a stated area of 0.063ha and a frontage of some 18m along New Street. It consists of Fowler's gastropub which presents as a traditional pitched roof, six-bay, two-storey building with east-facing front elevation. The building extends to the rear with flat and hipped roof structures and smoking area. The New Street elevation includes three separate access points at ground floor level, two of which include marble surround shopfronts and the third with metal gates and a retractable awning above. Traditional six-over-six sash windows and façade flag signage were also observed. New Street has recently been narrowed to one-way traffic. Whilst this has allowed for street furniture within the carriageway, including parasols, wind breakers and planters to the front of the appeal site, and adjacent to some semi-mature street trees, it has resulted in the removal of a number of on-street parking spaces.

2.0 Proposed Development

- 2.1. Planning permission is sought for the alteration and extension of an existing licensed premises including a new bar and seating area, a new outdoor lounge seating area and new unisex bathrooms at first floor level; and new doors in the front elevation.
- 2.2. The proposal represents a *de facto* extension of the floor space of the existing public house via a change of use of a first-floor storage room at the front of the building to a new bar service area which could cater for c. 30 seated patrons as illustrated on the proposed floor plan. The bar would be accessible via an existing stairwell with direct access off New Street where it is also proposed to remove the existing metal gates and replace them with new hardwood fire escape doors with glazed fanlight above. I note that the existing awning has not been illustrated on either elevational drawing.

- 2.3. It is also proposed to change the use of the adjoining flat roof to the rear of the bar to an outdoor lounge area which could cater for c. 62 seated patrons as illustrated on the proposed floor plan. This would involve the removal of an existing deck and balustrading, and the erection of timber panelling along the adjoining site boundaries and around the existing plant area, including water tanks and air conditioning units, which are to be retained. The panelling along the northwestern boundary would be c. 2.8m high and span c. 5.5m. The panelling along the southeastern boundary would be c. 2.6m high and span c. 12.2m. Panelling along the southwestern boundary of outdoor lounge area is also proposed in addition to a timber pergola and new planting.
- 2.4. The outdoor lounge area would be accessible via the proposed bar which would involve the removal of part of the rear wall of the original building. Sliding doors are indicated along this interface. Separate access for patrons to the outdoor lounge area would also be provided via the corridor running from the existing stairwell. This would involve the removal of an existing corridor door. Access for patrons to the outdoor lounge would also be possible via the existing mezzanine lounge and stairwell to the rear extension. An additional fire escape point is also proposed within the core of the original building. This would require the removal of an existing window in the rear wall.
- 2.5. The unisex bathrooms involve a change of use of a first-floor storage room which is accessible via the main corridor and directly opposite the proposed bar. All new drainage is to tie into existing soil vents in the ground floor bathroom below. The application form indicates that the total floor space of proposed works is 232.90sq.m.
- 2.6. In addition to revised drawings etc., a further information response included:
- Daylight Analysis and Overshadowing (H3D, 11th August 2022)
 - Lighting Report (Bushell Interiors, 4th August 2022)
 - Noise Impact Assessment (Amplitude Acoustics, 5th August 2022)

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to **grant** permission for the proposed development on 20th September 2022, subject to 11 no. conditions.

3.1.2. Conditions of note include:

Condition 2 This permission solely relates to the development specified in the development description and does not refer to any items evident on site but not included on the submitted plans.

Reason: In the interest of clarity.

Condition 4 No public address system, amplified music, TV's or bands shall be permitted within the proposed outdoor lounge seating area.

Reason: To protect the amenities of adjoining properties.

Condition 5 The proposed outdoor lounge seating area shall not be occupied by the public outside of the following hours:- 11.00 hours to 22.30 hours seven days per week. 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 protect the residential amenities of property in the vicinity.

Condition 6 The developer shall comply with the following requirements of the Planning Authority;

a. All noise mitigation measures as per Amplitude Acoustic report shall be adhered to in full.

b. Amplified music shall not be permitted in the outdoor areas.

Reason: In the interest of the proper planning and sustainable development of the area.

Condition 7 The developer shall comply with any future requirement of the Council in relation to adjusting the lighting or fitting appropriate additional louvres to deal with remaining glare issues that may arise for surrounding residents but may only become apparent when the installation is commissioned.

Reason: In the interest of the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planning Report (29/10/21): Concluded that the principle of the proposal is acceptable however given its nature and location, in proximity to established residential properties, it considered that the applicant submitted insufficient information. Particular concerns related to the existing awning above the gates to be replaced; the visual impact of the proposal in terms of its integration, particularly that of the panelling and pergola; the residential amenity impact of the proposal, particularly in relation to noise with a noise impact assessment and noise mitigation plan recommended; the requirement for additional plant and extent of the proposed lighting; and landscaping details. Further information was requested on this basis.
- Planning Report (08/09/22): Basis for the Planning Authority decision. It considered the applicant's response to the further information (FI) request and concluded that the proposed development accords with the policies and objectives of the Development Plan and would integrate appropriately within the surrounding context without undue impact on the visual or residential amenities of the area. Condition 11 (security bond) and Condition 12 (financial contribution in lieu of open space provision) were omitted by hand.

3.2.2. Other Technical Reports

- Conservation (14/10/21 / 23/08/22): No objection / Clarification of FI.
- EHO (19/08/22): No objection subject to conditions.
- Parks (25/08/22): No objection.
- Roads (undated): No objection subject to conditions.
- Water (28/09/21): No objection subject to conditions.

3.3. Prescribed Bodies

- Irish Water (19/10/21): No objection subject to conditions.

3.4. Third Party Observations

3.4.1. The Planning Authority received a total of 3 no. third-party observations from:

- M Dunne (4 New Street)
- M Lynch (2a Old Street)
- W Sherry (5 Old Street)

3.4.2. Issues raised in respect of noise are similar to the grounds of appeal – see section 6.1 below. Other concerns included the level of detail provided in terms of cross sections, boundary detail etc.; existing enforcement issues and the display of signage.

4.0 Planning History

4.1. Appeal site:

PA ref. F10A/0426: Permission **granted** in March 2011 for new shop front including windows, doors and signage, and a single-storey extension at first floor level over existing flat roofed and pitched roof areas to the rear etc. Condition 2 restricted the permission to that as described in the statutory notices. Condition 5 restricted additional roof plant unless permitted by way of a separate planning permission. Condition 10 imposed a similar restriction on additional signage and fixtures.

PA ref. F08A/1087: Permission **granted** in February 2009 for basement store etc. Condition 2 restricted the use to storage only.

PA ref. F05A/0062: Permission **granted** in July 2005 for changes to front elevation of existing licensed premises etc. Condition 2 omitted the brick dressing to the first floor and stone quoins. Condition 3 omitted the proposed awnings.

PA ref. F98A/1147: Permission **granted** in February 1999 for retention of changes to previously permitted single-storey extension to rear and side of licensed premises (PA ref. F97A/0091), including extension and alterations at first floor level.

PA ref. F95A/0686: Permission **granted** in May 1996 for new shop front and gateway, extension of existing conservatory lounge bar at rear and retention of 'beer garden'. Condition 2 restricted the use of the service yard/open area as a beer garden.

4.2. Adjacent sites:

J. Gibney & Sons, 5-6 New Street (30m northeast)

PA ref. F20A/0559: Permission **granted on appeal** (ABP-309228-21) in May 2021 for extension to first floor kitchen, change of use of part of first floor office to kitchen store, retention of revised location for wheelchair accessible toilet etc. Condition 2 restricted a public address system, amplified music, TV's or bands within the outdoor area. The installation of sound amplification in the outdoor area, or projection into this area from other areas of the premises, or installation of any TV screens etc. was also restricted. Condition 3 restricted occupation of the outdoor area by the public outside of the hours of 11.00 to 22.30 seven days per week etc. Condition 5 required the submission and agreement in writing of a noise monitoring programme prior to commencement. The programme was to include an annual review and the developer was required to carry out any amendments to the subject development requested by the planning authority subject to the review. Condition 4 is most pertinent however:

- (a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 0800 to 22.30 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 exceedence 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.*

Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority within 3 months of the date of this order. An acoustical analysis shall be included with this submission to the planning authority.

PA ref. F15A/0140: Permission **granted on appeal** (ABP ref. PL06F.246483) in August 2016 for change of use of existing first floor level flat roof to landscaped roof garden, bar, servery etc. Condition 3 restricted a public address system, amplified music, TV's or bands within the outdoor area. The installation of sound amplification in the outdoor area, or projection into this area from other areas of the premises, or installation of any TV screens etc. was also restricted. Condition 4 required the submission and agreement in writing of a noise monitoring programme. The programme was to include an annual review and the developer was required to carry out any amendments to the subject development requested by the planning authority subject to the review. Condition 7 restricted occupation of the outdoor area by the public outside of the hours of 11.00am-10.30pm seven days per week with any deviation in exceptional circumstances with prior approval from the planning authority.

Gilbert & Wright, 1 Ross Terrace (65m northeast)

PA ref. F23A/0044: Permission **granted** in May 2023 for retention for a new door at ground floor, and timber fence including double gate along yard boundary. Condition 2 restricted the use of the side entrance to deliveries only. Condition 4 restricted the use of the enclosed yard as a smoking area or beer garden.

4.3. Other:

PA ref. SFL/019/22: Licence **granted on appeal** (ABP-312656-22) in September 2022 for 10 tables, 30 chairs, 1 awning, 4 parasols and 8 wind breakers etc. to the front of the appeal site. The licence expired on 31st May 2022 (Condition 6).

5.0 Policy Context

5.1. Fingal Development Plan 2023-2029

- 5.1.1. The current Development Plan came into effect on 5th April 2023. The Planning Authority decision of 20th September 2022 was made under the previous Plan for the period 2017-2023. This appeal shall be determined under the current Plan.

5.1.2. The appeal site is zoned 'TC' Town Centre with a zoning objective to *'Protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities'*. A 'Public House' is amongst the development types 'permitted in principle' in this zoning.

5.1.3. The main objectives relevant to the proposal are set out in chapters 2 (Planning for Growth), 7 (Employment and Economy), 10 (Heritage, Culture and Arts) and 14 (Development Management Standards) of the Written Statement.

5.1.4. The following sections are relevant to the proposed development:

- 2.7.2 – Role of Each Settlement (Malahide)
- 7.5.1 – Employment and Economic Development
- 7.5.2 – Tourism
- 10.5.2 – Architectural Heritage
- 14.4.5 – Town and Village Centres
- 14.4.5 – Shopfront Design
- 14.17.7 – Car Parking
- 14.17.11 – Pay and Display
- 14.19.3.3 – Architectural Conservation Areas
- 14.20.17 – Noise

5.1.5. I consider the following policy is particularly relevant:

CSP35 Promote the planned and sustainable consolidation of the existing urban form and protect the unique identity of Malahide. The need to upgrade and support the development of the town centre will be balanced with the need to conserve its appearance as an attractive, historic village settlement and to retain the existing amenities of the area etc.

5.1.6. I consider the following objectives are particularly relevant:

EEO11 Ensure that towns, villages and other locations within the Metropolitan Area pursue development policies of consolidation, and maximise their economic strengths and competitive advantages such as tourism and marine sectoral activities in Malahide and Howth etc.

- EEO33** Support and facilitate evening / night-time economy uses that contribute to the vitality of towns and villages, ensuring the creation of a safe, balanced and socially inclusive evening / night-time economy.
- EEO45** Promote and facilitate tourism as one of the key economic pillars of the County's economy and a major generator of employment and to support the provision of necessary significant increase in facilities such as hotels, aparthotels, tourist hostels, cafes and restaurants etc.
- HCAO24** Require proposals for any development, modification, alteration, extension or energy retrofitting affecting a Protected Structure and/or its setting or a building that contributes to the character of an ACA are sensitively sited and designed, are compatible with the special character, and are appropriate in terms of the proposed scale, mass, height, density, architectural treatment, layout, materials, impact on architectural or historic features.
- DMSO6** 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.
- DMSO119** Limit the number of car parking spaces at places of work and education so as to minimise carborne commuting. The number of car parking spaces at new developments shall be in accordance with the standards set out in Table 14.19 and the associated criteria for car-parking provision set out in this Plan.
- DMSO122** In towns and villages with Pay and Display parking, developers may pay a contribution in lieu of car parking at a rate of up to €20,000 (twenty thousand euro) per space.
- DMSO187** All planning applications for works in an Architectural Conservation Area shall have regard to the information outlined in Table 14.24.

5.2. National Planning Framework

- 5.2.1. Acknowledging demographic trends, Project Ireland 2040, the National Planning Framework (NPF), seeks a 50:50 distribution of growth between the Eastern and Midland region and other regions. It places an emphasis on renewing and developing existing settlements including a delivery target of at least 40% of all new housing within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites.
- 5.2.2. Section 9.4 of the NPF notes that as we seek to promote such compact and efficient forms of development within our settlements, it is important to more proactively manage noise. The NPF supports measures to avoid, mitigate, and minimise or promote the pro-active management of noise, where it is likely to have significant adverse impacts on health and quality of life, through *inter alia* suitable planning conditions and good acoustic design such as building materials, noise barriers etc. National Policy Objective (NPO) 65 seeks to promote the pro-active management of noise where it is likely to have significant adverse impacts on health and quality of life.

5.3. Regional Spatial and Economic Strategy

- 5.3.1. The Eastern and Midland Regional Spatial and Economic Strategy (RSES) 2019-2031 builds on the foundations of the NPF. Section 7.3 of the RSES notes that stress from living with noise can have chronic effects on human health including impacts on mental health and sleep disturbance. Excessive noise also has harmful effects on wildlife.

5.4. Other Guidance

In the absence of any specific local, regional or national guidance relating to entertainment noise, it is reasonable to mention some of the guidance and standards from other jurisdictions and internationally.

5.4.1. Guidelines for Community Noise

These Guidelines (WHO, 1996, updated 1999) discuss some of the health impacts of noise in dwellings. This is important in the context of NPO 65 which seeks to proactively manage noise where it is likely to have significant adverse impacts on health and quality of life. The Guidelines identify adverse noise impacts such as sleep

disturbance, annoyance and speech interference. Table 1 provides guideline values for community noise in specific environments. The following is relevant to this appeal:

Specific environment	Critical health effect(s)	L _{Aeq} [dB(A)]	Time base [hours]	L _{Amax} fast [dB]
Outdoor living area	Serious annoyance, daytime and evening	55	16	-
	Moderate annoyance, daytime and evening	50	16	-
Dwelling, indoors	Speech intelligibility & moderate annoyance, daytime & evening	35	16	
Inside bedrooms	Sleep disturbance, night-time	30	8	45
Outside bedrooms	Sleep disturbance, window open (outdoor values)	45	8	60
Ceremonies, festivals and entertainment events	Hearing impairment (patrons:<5 times/year)	100	4	110

In relation to ‘*Ceremonies, Festivals and Entertainment Events*’ the guidance highlights widespread concern about the effect of loud music and impulsive sounds. It generally focuses on people attending these occasions and employees of the venues detailing that both should not be exposed to 100 dB LAeq during a 4-hour period more than four times per year or in the case of employees established occupational standards. Noting the proximity of the appeal site to neighbouring residential properties, these recommendations are especially pertinent and the negative impacts of generally uncontrolled (save licensing laws) and unmeasured loud noise from music, amplified sound, patron sound etc. are significant considerations.

5.4.3. **Good Practice Guide on the Control of Noise from Pubs and Clubs**

This practice guide (Institute of Acoustics, 2003) does not provide objective noise criteria for the purpose of assessing and controlling noise from all the main sources of noise that can be present at such properties. It does however identify sources of noise disturbance originating from outside such buildings including music, singing and

speech, both amplified and non-amplified and rowdy behaviour all of which could reasonably be considered to occur at sites such as the appeal site.

Section 7.1 states that *'where noise could affect the occupants of neighbouring properties, consideration should be given to noise control issues prior to applying for planning consent, or a licence that permits entertainment, or before introducing any material changes to buildings or operations. Such consideration is financially prudent, as it could reduce the likelihood of failed planning or licence applications and/or costly remedial measures, in the event of justified complaints from local residents.'*

Section 7.2 states that *'in order to minimise the risk of noise problems arising, extreme caution should be exercised in permitting developments that result in pubs, clubs and other similar premises being structurally attached to noise-sensitive properties. Such development should not be permitted without it being clearly demonstrated that acceptable noise levels can be achieved and maintained at, and in, the noise-sensitive properties. When demonstrating acceptability, a conservative approach should be adopted in the calculations, which, must be based on realistic source noise levels.'*

5.4.4. Noise From Pubs and Clubs (Phase II)

This UK report (Department for Environment, Food and Rural Affairs, 2006) attempts to find the most appropriate methodology and criteria for assessment of entertainment noise from pubs and clubs. It identified three noise metrics for measuring noise and highlighted significant weaknesses within each. The following were suggested:

- Absolute LAeq 5min,
- LA90 – LA90 (no music) or LAeq – LA99.95, or
- existing UK Noise Act methodology (LAeq – LA99.8).

Whilst I accept the limitations of each of these metrics as detailed in the report, I note that the control and assessment of music and other sound sources at the appeal site would be within the remit of the applicant through a detailed Noise Impact Assessment.

5.4.5. Methods for Rating and Assessing Industrial and Commercial Sound

This British Standard publication (BS 4142:2014 +A1:2019) came into effect on 31st October 2014. Clause 1.1 clearly details its use as an appropriate methodology for considering *'sound from fixed installations which comprise mechanical and electrical*

plant and equipment' such as the extraction system and other plant located on the appeal site. Clause 1.2 details its appropriateness for complaints and impact from premises used for residential purposes. The standard notes that a difference between specific and background levels of 10dB or more is indicative of a significant adverse impact. A difference of 5dB is indicative of an adverse impact, with lower differences suggesting reduced impacts. The standard states that impact will be increased or reduced depending on local context which is pertinent to the proposed development.

5.4.6. Guidance on Sound Insulation and Noise Reduction for Buildings

This British Standard publication (BS 8223:2014) came into effect on 28th February 2014. Table 4 provides recommendations for internal ambient noise levels for houses:

Activity	Location	07:00 to 23:00	23:00 to 07:00
Resting	Living Room	35 dB LAeq,16hour	-
Dining	Dining Room/area	40 LAeq,16hour	-
Sleeping (daytime resting)	Bedroom	35 dB LAeq, 16hour	30 dB LAeq, 8hour

It should be noted this standard is not directly applicable to the assessment of impacts from external sources such as the appeal site on neighbouring properties.

5.4.7. Acoustics - Description, Measurement and Assessment of Environmental Noise

Consisting of Parts 1 and 2, these International Standard publications (ISO 1996-1 and ISO 1996-2) detail a methodology for measuring noise in the community. Considering the difficulties in terms of adequately measuring noise from music, low frequencies etc. as discussed elsewhere in this section, I am not convinced it is the most appropriate methodology for managing the proposed development.

5.4.8. Guidance Note for Noise: Licence Applications, Surveys and Assessments in Relation to Scheduled Activities (NG4)

Whilst these guidelines (EPA, 2016) don't relate to the subject appeal it is noted that typical limit values at noise sensitive locations (including dwellings) are detailed as:

- Daytime (07:00 to 19:00hrs) – 55dB LAr,T;
- Evening (19:00 to 23:00hrs) – 50dB LAr,T;
- Night-time (23:00 to 07:00hrs) – 45dB LAeq,T.

5.4.9. **Environmental Noise Guidance for Local Authorities**

Section 20 of this guidance (Association of Acoustic Consultants of Ireland, 2021) focuses on *Pubs & Clubs* and highlights breakout music noise as the source that gives rise to the majority of complaints. Significantly, it confirms that there is no standardised or universally applied method for assessing music noise from pubs and clubs. Typical issues are highlighted including the inadequate use of *LAeq T* for assessing music noise due to bass elements such as low frequency sound. It recommends carrying out low frequency assessments with exceedances of 5dB at a dwelling's façade may indicate it is audible inside and may therefore be unacceptable to the resident.

5.5. **Natural Heritage Designations**

Malahide Estuary SAC (000205) 0.20km

Malahide Estuary SPA (004025) 0.20km

5.6. **EIA Screening**

5.6.1. The proposed development is not a class of development set out in Schedule 5, Part 1 or Part 2 of the Planning and Development Regulation 2001 (as amended) and therefore no preliminary examination is required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. A 3rd Party appeal has been lodged by Mary Lynch of an adjacent house to the west (2a Old Street, Malahide). The grounds of appeal generally reflect the observations made to the Planning Authority and can be summarised as follows:

- It is submitted that the proposal seeks to extend and intensify outdoor usage that lacks planning permission i.e. the beer garden. It is noted that Table 2 of the acoustic report details how this unauthorised area contributes to existing evening LAeq (44 at 22:41, with a max of 61) and higher night LAeq (45 at 00:05, with a max of 59) levels i.e. the additional noise takes account of the unauthorised use.

Referring to the Guidance Note for Noise Action Planning (EPA, July 2009), they state that these are at the limit of reasonably acceptable noise levels.

- Referring to the acoustic report, it is stated that the proposal is incapable of complying with relevant criteria for the prevention of noise nuisance at adjoining residences i.e. predicted noise levels will require operational controls.
- Referring to the acoustic report, it is suggested that the noise conditions attached by the Planning Authority are incapable of being adhered to as suggested by the lack of enforcement of similar conditions at adjacent premises.
- It is submitted that the noise conditions attached by the Planning Authority are based on an inaccurate assessment of the acoustic report which states that the *'Predicted noise levels in the rear garden of no 2 Old Street are above 45dBA'*. It is also suggested that the report erroneously states that the existing operations at the premises have not been subject to prior complaint.
- It is stated that the existing and proposed seating constitutes a significant expansion and intensification of the operational capacity of the premises requiring 1 additional car parking space per 15sq.m floor space.
- The Board is requested to overturn the Planning Authority decision on this basis. It is also stated that the original observations to the Planning Authority still apply.

6.2. Applicant Response

6.2.1. David Mulcahy Planning Consultants Ltd. and Amplitude Acoustics responded on behalf of the applicant, DCD Pubs Ltd. They can be summarised as follows:

- Referring to a location map and photograph purporting to illustrate the appellants property, it is stated that there is no garden/private amenity space to the rear of 2a Old Street. It is also suggested that there is a service area for 4 no. businesses between the appellants property and the appeal site which generates noise and disturbance. The location of a gym at 3a Old Street is also highlighted.
- It is submitted that the appeal is vexatious and that the appellant is one of a group of people who serially object to business development in this town centre location.

- Noting the appellant's reference to her original observations to the Planning Authority, it is submitted that any issues should be raised in the grounds of appeal and simply referring back to a previous observation is not sufficient.
- Regarding the alleged unauthorised development, it is submitted that the beer garden/smoking area has the benefit of planning permission under PA ref. F10A/0426. It is also noted that Table 2 of the acoustic report presents the ambient noise levels at survey location 2 i.e. the cumulative noise level due to all contributing noise in the area such as ambient noise dominated by urban hum and plant noise, local road traffic and train noise from the nearby rail line. It explicitly states that '*noise emissions from the Fowlers smoking area were minimal and did not significantly contribute to the ambient LAeq or background LA90*'.
- Regarding the suggestion that the proposal is incapable of complying with the relevant criteria for the prevention of noise nuisance, the applicant suggests that this is an incorrect interpretation of the acoustic report. It is noted that the report concludes that the predicted noise levels from the proposal in isolation are below the ambient LAeq measured on a quiet Sunday evening/night. Whilst it is accepted that the acoustic report highlights a potential for a modest increase in cumulative noise impacts, mainly arising from the existing smoking area, it notes that a range of mitigation measures have been proposed including operational controls.
- Regarding the claim that the planning conditions are incapable of being adhered to, the applicant highlights that all planning conditions have been adhered to, to date, and submits that any perceived lack of enforcement of similar conditions at adjacent premises is an issue for the appellant to raise with the Planning Authority.
- Regarding the appellant's contention that the noise conditions are based on an inaccurate assessment of the acoustic report and their suggestion that the existing operations at the premises have not been subject to prior complaint, the author of the report (Amplitude Acoustics) claim they were unaware of a prior noise complaint at the time of assessment and note the recommendations of the report include a noise management plan for operational controls and community relations.
- Furthermore, Amplitude Acoustics state that the predictive cumulative levels indicate a modest exceedance of ambient noise levels, in the reasonable worst-case scenario i.e. smoking area with roof open and full occupancy of both outdoor

spaces. They note mitigation measures are provided for this scenario and also suggest that the main contributor to cumulative noise levels was the existing smoking area and predicted noise levels from the proposal in isolation are below the ambient LAeq measured on a quiet Sunday evening/night.

- Regarding the appellant's suggestion that the proposal generates additional car parking requirements, and referring to Objective DM113 and amplification text from the Fingal Development Plan 2017-2023, the applicant highlights the appeal site's town centre location and proximity to public transport. They also suggest that parking demand is normally limited to staff as opposed to patrons.

6.3. Planning Authority Response

6.3.1. The Planning Authority's response can be summarised as follows:

- The proposal was assessed having regard to the development plan zoning objective as well as the impact on adjoining neighbours and the character of the area. Concerns set out in 3rd party objections were acknowledged and considered.
- The proposed development was considered to be consistent with the proper planning and sustainable development of the area.
- It requests that the decision of the Planning Authority be upheld, and that Condition 11 (s. 48 contribution) is included in such circumstances.

7.0 Assessment

7.1. Preliminary Points

7.1.1. I note that the applicant's appeal submission inaccurately identifies the appellant's property to the south of Nos. 1 and 2 Old Street. The appellant's initial submission to the Planning Authority indicates that their property lies to the north of these properties, adjacent, and south of the rear access road, and within 30m of the appeal site. That submission suggests that there is no private amenity space attached to the appellant's property which is consistent with my observations. I also note that the gable end of their property addresses the appeal site and is blank at upper floor level. I was unable to ascertain if there was ground floor window or door openings in the gable end as the

adjoining rear access gate to Duffy's pub (Main Street) was closed at the time of inspection. I did, however, observe a high block wall flanking this access, between the appeal site and the appellant's property, which provides a degree of screening. I am satisfied that I have correctly identified the appellant's property in this instance.

7.1.2. Having examined the application details and all other documentation on the appeal file, including the appeal submissions, and inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal. The issues can be addressed under the following headings:

- Unauthorised Development
- Residential Amenity
- Traffic and Transport
- Appropriate Assessment

7.2. **Unauthorised Development**

7.2.1. The appellant alleges that the existing beer garden/smoking area to the rear of the premises is unauthorised and suggests that this will cumulatively impact on residential amenity in terms of noise emissions. Whilst I propose to address the impacts arising from noise separately, it is important to consider the lawful planning status of this area, particularly if noise mitigation measures are reliant on unauthorised development. This area is illustrated on the existing ground floor plan and is divided into three sections through minor changes in ground level i.e. +0.00 (as per the front lobby), +0.54 and +0.90. The premises was closed at the time of my visit, and therefore the beer garden was not inspected, but it is clearly depicted in the appellants appeal submission with some tables and chairs evident. I did, however, observe a retractable roof system above this area, and this is shown on the existing rear elevation drawing.

7.2.2. The applicant submits that this area has the benefit of planning permission under PA ref. F10A/0426. I have reviewed this permission and I accept that the beer garden/smoking area in its existing configuration was illustrated on the proposed ground floor plan (Dwg No. 1583-PP-07) and subsequent drainage plan (Dwg No. 11/1372/02), as submitted under further information. This area would appear to be authorised by virtue of the Condition 1 (plans and particulars) and notwithstanding

Condition 2, which restricted the permission to that detailed in the statutory notices. In this regard, I note the commentary in the planning officer's report under PA ref. F10A/0426 which considered the internal reconfiguration of the ground floor in the context of amenity impacts but did not at any point suggest the smoking area to be unacceptable. There are elements of this area that were not illustrated on the proposed drawings under PA ref. F10A/0426 however, including part of the rear wall and the retractable roof system, and their planning status is therefore questionable.

7.2.3. I also note that Condition 2 of the permission subject of this appeal is couched in similar, but not identical, terms to Condition 2 of PA ref. F10A/0426. It is evident from the planning officer's report in this instance that the area of concern related to the awning located above the proposed doors in the front elevation. Their consideration of the further information response relating to same highlights that '*a canopy should be designed to meet the requirements of Table 12.2 – Guidance for Signage on Protected Structure's or within ACA's*' and recommended it be omitted by condition.

7.2.4. It would therefore appear to me that a section of the rear wall and the retractable roof system does not have the benefit of planning permission, whilst the actual beer garden/smoking area clearly does. Additionally, I note the rear extensions have illustrated ridge levels of +8.730m and this is significantly higher than the permitted heights (+7.330m) under PA ref. F10A/0426. Whilst I accept that the enforcement of planning control is primarily a matter for the Planning Authority, it does require further discussion in this instance and particularly in the context of noise emission mitigation.

7.3. Residential Amenity

7.3.1. The crux of the appeal centres on the potential for adverse impacts on residential amenity arising from increased noise emissions. As noted, the proposal seeks to *inter alia* change the use of an existing flat roof area to an outdoor lounge. The Planning Authority raised similar concerns which resulted in the submission of a Noise Impact Assessment (NIA), or acoustic report heretofore, under further information. The report makes a number of preliminary comments which are relevant to the appeal. It states that the outdoor lounge area measures 99sq.m, with seating for up to 48 patrons. I also note that any amplified music in the first-floor bar or outdoor lounge is intended to be low-level background only and there is no intention to have outdoor screens, loud music events, DJ's or live music in this area. The proposed opening hours are:

- *Monday – Thursday 10:30am – 11:30pm*
- *Friday – Saturday 10:30am – 12:30am*
- *Sunday 12:30pm – 11:00pm*

Summary of NIA

- 7.3.2. The NIA includes an attended baseline noise survey conducted between 2200 on Sunday 20th and 0015 on Monday 21st March 2022. Survey locations were to the eastern side of New Street, opposite the appeal site (location 1) and north of the rear access road, off Old Street (location 2). Table 2 of the NIA details the ambient noise measurements at survey location 2 only. It is stated that measurements of ambient and background noise at location 1 proved impractical due to entertainment noise from Gibney's. The NIA states that survey location 2 measurements were dominated by plant noise from adjacent premises, local road traffic and train noise from the rail line.
- 7.3.3. Having regard to recent noise limits applied in this part of Malahide by the Board, as referred to in section 3.1 of the NIA, and couched in similar terms to Condition 4 of ABP-309228-21 (Gibney's), the report details the following design target noise limits:
- *0800 – 2230 hours: overall noise limit 42dB LAeq, 5min at nearest NSL*
 - *60dB and 53dB Leq noise limit in 63Hz and 125Hz octave bands*
 - *All other times: overall noise limit 39dB LAeq, 5min at nearest NSL*
 - *58dB and 51dB Leq noise limit in 63Hz and 125Hz octave bands*
- 7.3.4. Section 5 of the NIA details the main assessment. It's based on a number of assumptions pertaining to acoustic modelling and noise mitigation which are pertinent. I note that the acoustic modelling assumes that the proposed outdoor lounge is occupied by 48 seated patrons, with 1 in 3 persons speaking in a raised voice and patron discussions being the dominant source of noise, with amplified music being limited to low-level background music. In terms of noise mitigation, the report assumes that the proposed 2.8m high wood panelling along the site boundaries and adjacent to the smoking area will be acoustically rated and therefore function as a noise barrier.
- 7.3.5. The predicted noise levels are detailed in section 5.3 of the NIA and are based upon the aforementioned assumptions with three scenarios considered:

1. *The proposed outdoor lounge only with planned occupancy and patrons conversing with raised voice.*
2. *The existing outdoor smoking area only with roof open, full occupancy and patrons conversing with raised voice.*
3. *Cumulative noise of scenarios 1 and 2.*

7.3.6. Under Scenario 1, the modelling suggests that the predicted noise levels to the rear of Nos. 1 and 2 Old Street, c. 35-40m west of the centre of the proposed outdoor lounge, are above 40dBA LAeq but below the design target of 42dBA. Under Scenario 2, the predicted noise levels to the rear of Nos. 1 and 2 Old Street are above 45dBA LAeq. Under Scenario 3, the reasonable worst-case scenario, the predicted noise levels to the rear of Nos. 1 and 2 Old Street are also above 45dBA LAeq. The report suggests that this can mainly be attributed to the existing smoking area and in summary suggests that entertainment noise from the proposal can be adequately controlled through a combination of good acoustic design and operational controls.

7.3.7. Section 6 of the NIA details the proposed mitigation measures including the acoustic design and operational controls. Table 5 outlines the height and location of the proposed noise barrier which is generally consistent with the submitted drawings. Table 6 details examples of suitable noise barrier materials including acoustically rated wooden panels etc. Table 7 describes the recommended acoustic absorption for the proposal including a minimum of 12sq.m in the outdoor lounge area and 20sq.m in the new first floor bar. The proposal also involves limiting the sound system for the new bar and outdoor lounge area with the limiter set to comply with the stated design target.

7.3.8. The NIA accepts that physical measures alone may be inadequate to control entertainment noise from the development and recommends the implementation of a noise management plan which should include *inter alia* a community liaison position. Section 7 of the NIA concludes that noise emissions from the outdoor lounge area can be adequately controlled subject to the mitigation measures being fully implemented.

Assessment of Grounds

7.3.9. Whilst there may be some merit in the appellants allegations regarding the lawful planning status of the beer garden/smoking area, I have established that this appears to be limited to part of the rear wall and retractable roof system. Therefore, their

contention that the surveyed ambient noise levels includes additional emissions from an unauthorised use, is unfounded. It's unclear, however, whether the retractable roof was closed during the survey, and this could have resulted in lower ambient noise levels, as a result of unauthorised noise mitigation. Having regard to Scenario 2, it is reasonable to assume that the roof was open, and I accept that noise emissions from the smoking area do not significantly contribute to the ambient LAeq or LA90.

- 7.3.10. The appellant also suggests the applicant will be unable to comply with predicted noise levels and operational controls. Whilst I have established that there is no ideal method for considering the impact of noise such as that emanating from the appeal site, it would appear to me that the standards suggested by the WHO and EPA are too restrictive for the premises to operate as required. However, they are a reasonable baseline to manage residential amenity. In this regard, the applicant accepts that there is potential for a modest increase in cumulative noise impacts, mainly arising from the existing smoking area, and therefore mitigation and operational controls are required to keep the proposal within the design limits and in accordance with analogous and recent appeal decisions in the area. These controls are acceptable and achievable.
- 7.3.11. The appellant also cites a lack of planning enforcement at adjacent premises as an undesirable precedent in the area. As previously noted, enforcement is a matter for the Planning Authority. Similarly, noise nuisance complaints, including noise from pubs and clubs etc. is a matter for the local authority¹. This is in addition to the licensing laws but does not negate the need for a robust assessment of the likely impacts on residential amenity that may arise. Indeed, proposed changes to the licensing laws, including extended opening hours, make this all the more important.
- 7.3.12. Finally, the appellant suggests that the noise conditions attached by the Planning Authority are based on an inaccurate assessment of the acoustic report. This is disputed by the applicant, and I, for the most part, agree. I consider that the NIA represents a reasonable account of ambient noise in the vicinity of the appeal site, although a survey over longer period, such as a weekend, would have been preferable. I also agree that Scenario 3 is reasonably likely to occur and therefore the mitigation measures and operational controls, including noise management plan, are

¹ Section 107 of the Environmental Protection Agency Act 1992 (as amended) gives powers to local authorities and the EPA to serve notice to take steps to control noise from any premises, process or work.

a critical aspect of the proposal. I do have lingering concerns regarding the modelling however, including the stated capacity of the outdoor lounge. Whilst I accept that proposed floor space measures c. 99sq.m, I note that the floor plans indicate a capacity for c. 62 seated patrons on the conservative assumption that the banquette seating provides for one space per directly opposing seat. The acoustic modelling is therefore based on a flawed assumption of a maximum occupancy of 48 patrons, and I'm not entirely convinced that an indicative seated only capacity is credible. I also note the applicant has not presented any rationale or justification for the other assumptions.

Conclusion

- 7.3.13. The Board may wish to seek further information on the issues raised above, and in particular the capacity of the outdoor lounge area for the purposes of the acoustic modelling. I am satisfied however that there is sufficient information to make a recommendation in respect of the issues raised in the appellants grounds of appeal.
- 7.3.14. Having regard to the ambient noise levels in the vicinity of the site and the modelling presented for the reasonable worst-case scenario, notwithstanding the stated flaw, I am satisfied that the proposal will not adversely impact on the residential amenity of the appellant or indeed the occupants of adjacent properties by reason of noise, subject to noise controls. Such controls are set out in analogous appeal decisions and in line with the general spirit of the guidance outlined in section 5.4 above i.e. Condition 4 of ABP-309228-21. A noise monitoring programme should also be conditioned in the event of a grant of permission, in addition to reduced opening hours from those sought and a complete restriction on sound amplification, projected or otherwise etc. The latter restriction will allow for normal conversation levels in the outdoor area as opposed to the modelled assumption of 1 in 3 patrons speaking with a raised voice.
- 7.3.15. Having regard to the location of the appeal site, the town centre zoning, which accepts the principle of the use, and the established use of the licensed premises, on balance, I conclude that a level of impact on residential amenity in such locations should be expected and tolerated subject to the mitigations and restrictions outlined above.

7.4. Traffic and Transport

- 7.4.1. The appeal site is located c. 170m east of Malahide Rail Station and therefore within Zone 1 for the purposes of Table 14.19 (Car Parking Standards) of the Development Plan. Pubs, restaurants, hotels etc. are noted immediately after the 'Leisure' land use

category in Table 14.19 but oddly pub, bar or lounge is not listed under this category heading. The appellant suggests that the proposal generates the requirement for 1 space per 15sq.m floor space. I note that this is the requirement for a 'function room' in Zone 2. I also note that 'function room' included 'bar' and 'lounge' in the previous Plan 2017-2023. It is reasonable therefore to consider that the appropriate standard for the proposed development is 1 space per 30sq.m i.e. 'function room' in Zone 1.

7.4.2. As previously noted, the application form indicates that the total floor space of proposed works is 232.90sq.m. This is possibly an over-estimation of the area subject to the change of use, given the outdoor lounge area measures roughly 99sq.m, but it is the basis on which the local authority Roads Section considered that 7 car parking spaces would be required for the proposal i.e. 1 space per 30sq.m, rounded down.

7.4.3. Referring to Objective DM113 and amplification text from the Fingal Development Plan 2017-2023, the applicant highlights the appeal site's town centre location and proximity to public transport as a rationale for not providing any additional parking spaces. This is reflected in Objective DMSO119 of the current Plan, as cited earlier.

7.4.4. I largely agree with the comments of the planning officer in terms of the type and timing of travel movements that the proposal would generate i.e. by public transport or taxi and outside of peak retail hours. Accordingly, given its town centre location and proximity to pay and display on-street parking, it is entirely reasonable to set aside any car parking requirement for the proposed development. I also note that the Planning Authority have not sought any additional contributions in lieu of the 7-space shortfall.

7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the proposed development, which is for the alteration and extension of an existing licensed premises including a new bar and seating area and a new outdoor lounge seating area etc. at first floor level, in an established and serviced urban area, the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, it is not considered that the proposed development would 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 that permission be **granted** for the reasons and considerations below.

9.0 Reasons and Considerations

9.1. Having regard to the provisions of Fingal Development Plan 2023-2029, the location of the proposed development within the settlement boundary of Malahide on zoned Town Centre lands, the small scale nature of the proposal in the context of the overall appeal site and the prevailing pattern and character of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area by reason of noise emissions or otherwise. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 11th day of August, 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interests of clarity.</p>
2.	<p>No public address system, or other amplified sound or live music shall be permitted within the outdoor lounge area. No sound amplification shall be installed in the outdoor lounge area or projected into this area from other areas of the licensed premises, nor shall any television screen, or similar, be installed therein.</p> <p>Reason: To protect the amenities of adjoining properties.</p>

3.	<p>The outdoor lounge area shall not be occupied by the public outside of 1100 to 2230 hours seven days per week. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In the interest of protecting the amenity of the nearby residential properties.</p>
4.	<p>(a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 0800 to 2230 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 LAeqT.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(e) Any measuring instrument shall be precision grade.</p> <p>Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with the planning authority, prior to the commencement of development. An acoustical analysis shall be included with this submission to the planning authority.</p>

	<p>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.</p>
5.	<p>A noise monitoring programme shall be submitted to and agreed in writing with the planning authority, to include an annual review undertaken by a qualified acoustic engineer at the nearest noise sensitive location demonstrating compliance with the limits detailed in Condition 4.</p> <p>Reason: In the interest of protecting the amenity of the nearby residential properties.</p>
6.	<p>(a) The developer shall comply with all future outdoor lighting requirements of the planning authority in relation to adjusting the lights by re-aiming, the addition of louvres and shields and / or dimming, to deal with any glare issues that may arise for road users, residents and adjacent lands / properties which may only become apparent when the installation has been commissioned.</p> <p>(b) The operational hours of the outdoor lighting shall not extend beyond 2230 hours with automatic cut-off at that time.</p> <p>Reason: In the interest of protecting the amenity of the nearby residential properties.</p>
7.	<p>Notwithstanding the provisions of the Planning and Development Regulations 2001, as amended, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the visual amenities of the area.</p>
8.	<p>The proposed hardwood fire escape doors shall be finished in a muted colour and accord with the 'Malahide Colour Scheme' in the <i>Malahide Public Realm Strategy – Design Guide for Shopfronts</i>.</p> <p>Reason: To protect the visual amenities of the area.</p>

9.	<p>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.</p> <p>Reason: In the interest of public health</p>
10.	<p>Site development and building works shall be carried out between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
11.	<p>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 Contributions 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.</p> <p>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.</p>

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.

Philip Maguire

Planning Inspector

22nd September 2023