



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315391-22

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<b>Development</b>	Retention of covered outdoor seating area, a separate steel container incorporating a bar and all associated ancillary site works.
<b>Location</b>	The Willows, 74 Willow Park Crescent, Finglas East, Dublin 11, D11 TP64.
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	4940/22
<b>Applicant(s)</b>	Albert Martin.
<b>Type of Application</b>	Retention.
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	1. Gerard Corcoran
<b>Observer(s)</b>	1. Ray Kelly and Audrey Burgess. 2. Gerard Walsh & Audrey Walsh 3. Robbie Devine 4. Ian Finlay & Louise May 5. Gerry & Mary Donohoe

**Date of Site Inspection**

25.06.2023

**Inspector**

Fiona Fair

## 1.0 Site Location and Description

- 1.1. The site is located on Willow Park Crescent, Finglas East, Dublin 11. The subject site and associated public house premises comprises part of a parade of shops and commercial uses – including a beauticians, retail shop, and takeaways – with some residential above, all within an established neighbourhood centre.
- 1.2. The subject site is occupied by The Willows Pub, a two-storey building with a side laneway access to a car parking area to the rear which extends back into the site. To the side, gates have been erected within the laneway, to control access to the rear car parking area. An outdoor seating area is present to the rear of the public house in the car parking area (private and within the ownership of the applicant) and has been extended to include a covered seating area, and tables with umbrellas. An outdoor bar, within a container has been erected along the eastern boundary of the site, within the rear car parking area, adjacent to the new covered seating area.
- 1.3. The site is bounded by residential dwellings, with properties on Oakwood Avenue located to the northwest, Cedarwood Avenue to the north, and Cedarwood Road to the east - all Z1 residential zoning. Nos. 124 – 130 Sycamore Road (even only) to the west. There is also a two-storey terrace of commercial properties while Nos. 62B – 72 Willow Park Crescent (even only) are also 2-storey premises in commercial use at ground floor level aside from residential in the latter units. The first floor or some of these commercially-zoned units may be in residential use at first floor level.

## 2.0 Proposed Development

- 2.1. RETENTION: The development consists of retention of
  - (i) covered outdoor seating area located in the car park to the rear
  - (ii) a separate steel container incorporating a bar; and
  - (iii) all associated ancillary site work

## **3.0 Planning Authority Decision**

### **3.1. Decision**

1. The covered outdoor seating area and outdoor bar proposed to be retained, located in a backland and constrained car park area to the rear of the existing public house, are in unacceptably close proximity to established residential suburban development, and as a result would have an unacceptable negative impact on the residential amenities of those dwellings through nuisance noise and general disturbance. The proposed retention of this development would, therefore, cause serious injury to the residential amenities of properties in the vicinity, would set an undesirable precedent for similar such development and would be contrary Section 14.7 Transitional Zone Areas and to Section 9.5.8 Noise Pollution of the City Development Plan 2016 - 2022 and to the proper planning and sustainable development of the area.

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

#### **3.2.1. Planning Reports**

- The PA report concludes that: There are significant concerns with regard to the covered seating area and outdoor bar for retention, both of which are not considered consistent with the Dublin City Development Plan 2016-2022 and with the proper planning and sustainable development of the area.

#### **3.2.2. Other Technical Reports**

Drainage Division: report received – no objection subject to conditions.

Environmental Health Office (EHO) – report received recommends refusal.

### **3.3. Prescribed Bodies**

None Received

### 3.4. Third Party Observations

A number of submissions were received including submissions from elected representatives, which raise a number of issues. Two letters were in support and eight were in objection. These are summarised as follows in the PA's report;

In objection:

- Excessive noise & music
- Noise can be heard on Oakwood Avenue
- Size of seating area is increased with indoor furniture brought outside.
- Noise & disturbance – complaints have been made
- Anti-social behaviour heard in rear gardens of residential properties.
- Late night music
- Amplified music
- Identical request to that previously refused.
- Ample space inside the property
- 80 -100 people within this space
- Rubbish being thrown over wall into private garden areas
- Value of property would be reduced.
- Extended opening times – issues exacerbated.
- Section 9.5.8 of the City Development Plan & Objective SIO26 – seek to protect residents from noise emanating from other uses
- Section 16.30 Street Furniture- impact of outdoor street furniture on adjoining premises
- Residential properties bound the site on 3 sides.
- Contrary to Section 14.7 transitional zone areas of the Dublin city development plan
- Noise and disturbance from this area – can't open windows or use garden area

**In support:**

- Seating area is modest.
- Will have no negative effects on the amenity of neighbouring property.

## 4.0 Planning History

**WEB1454/22** – A split decision was issued for the retention of development which granted retention for the vehicular entrance gate to the rear car park, and refused retention permission for an outdoor seating area with panelling and roof over, and a separate steel container incorporating a bar.

The refusal reason was as follows;

The covered outdoor seating area and outdoor bar proposed to be retained, located in a backland and constrained car park area to the rear of the existing public house, are in unacceptably close proximity to established residential suburban development, and as a result would have an unacceptable impact on the residential amenities of those dwellings through noise and general disturbance. The proposed retention of this development would, therefore, cause serious injury to the residential amenities of properties in the vicinity, would set an undesirable precedent for similar such development and would be contrary Section 14.7 Transitional Zone Areas of the Dublin City Development Plan, in particular and the proper planning and sustainable development of the area.

**3802/08** – Planning permission was refused for alterations to existing public house and construction of part 2 storey part 3 storey extension to same encompassing part of the car park to the rear, to include:

- (1) Existing public bar (The Willows) reduced in size from 370 square metres to 222 square metres and the provision of a wine shop (29sq.m) and a coffee shop (102sq.m) all exiting to existing street entrance and within the same footprint.
- (2) Conversion of existing storage area to rear to new kitchen area, toilets to public house, staff and storage area.

(3) Widening of existing vehicle entrance locally to front to provide 5.5 metre access to and from the site.

(4) Pedestrian access from Oakwood Avenue serving the proposed apartments in car park area only.

(5) Construction of 20 No. apartments total to include, 12 No. 2 bed apartments 85 to 95 sq.m, 4 No. 3 beds from 100 to 105 sq.m and 4 No. 1 beds from 65 to 75 sq.m. 2x2 bed and 2x1 bed over existing car park area with 32 surface car parking spaces under and pedestrian access to Oakwood Avenue. 16 of the apartments over existing part single part two storey public house area over 2 floors. Provision of 200sq.m of private open space with a further 107sq.m public space. All apartments have internal balconies varying in size from 8 sq.m to 10.6 sq.m

(6) Removal of existing pitched roof to front of public house and provision of flat roof finish incorporating upper floor

(7) Alterations to existing facade to allow for more glazing area finishing flush with building line.

(8) Overall height of proposal 10.3 metres with flat roof finish throughout with 14 sq.metres of solar panels on the flat roof over the southern elevation entrance area (not visible from roadway).

The refusal reasons were;

1) The proposed development by reason of its bulk, height, scale, density and proximity to adjoining residential property would represent an overdevelopment of a very constrained site and would seriously injure the amenities of adjacent residential property and would therefore be contrary to the proper planning and sustainable development of the area.

2) The proposed development, due to its height, bulk, design and proximity to adjoining property and balcony and window arrangements, would generally be out of character with the pattern of development of the adjoining residential area and result in serious injury to the amenities of adjoining residential property through overlooking, overshadowing and visual intrusion.

3) The proposed apartments with windows and balcony above the proposed wine shop and coffee shop at the south western corner of the subject site up against

commercial building at 130A Willow Park Road, and the upper level apartments proposed at the south western corner against the boundary of a commercial building at 72 Willow Park Crescent, would have a very poor outlook, minimal light penetration and an inadequate general environment for potential occupiers due to their proximity to these adjacent established commercial buildings. Furthermore these proposed apartments might also have an adverse impact on/ restrict the development potential of these adjacent commercial sites. The development would thus be contrary to the proper planning and sustainable development of the area.

4) The internal layout of the car park, which must allow for pedestrians, residents, customers and servicing, is completely unsatisfactory. Columns are located in vehicular paths and no clear circulation pattern, servicing area or pedestrian ways are provided. The interface with the public road is unclear and the introduction of additional turning movements at this substandard location combined with the dangerous layout would endanger public safety by reason of traffic hazard, obstruction to road users or otherwise.

#### **Enforcement (as per PA Planners Report)**

E0463/20 - Gate erected to lane way and the use of car park as beer garden – case closed.

E0850/21- Large structure erected in car park – current live enforcement case.

## **5.0 Policy Context**

### **5.1. Development Plan**

The planning application was considered by the PA under the Dublin City Development Plan 2016 – 2022. However, a new plan has since been adopted on the 14<sup>th</sup> December 2022 and therefore the current statutory City Development Plan is the Dublin City Development Plan 2022-2028.

The site is zoned Objective Z3 (Neighbourhood Centre) – ‘to provide for and improve neighbourhood facilities’ Public House is Open for Consideration in this zone.

The lands adjoining to the north, south and east are Zoned Z1: To protect, provide and improve residential amenities.



The subject site is partially located within the outer noise zone for Dublin Airport

#### Section 9.5.8 Noise Pollution

The Council, through the planning system, can minimise the adverse impacts of noise pollution by controlling developments which are noise intensive and keeping them away from more sensitive residential areas. Furthermore, where it is considered that a proposed development is likely to create disturbance due to noise, the planning authority can impose a planning condition limiting the hours of operation and level of noise generation (for further guidance, see Section 15.18.9).

#### Section 14.6 Transitional Zone areas

The land-use zoning objectives and control standards show the boundaries between zones. While zoning objectives and development management standards indicate the different uses permitted in each zone, it is important to avoid abrupt transitions in scale and land-use between zones. In dealing with development proposals in these contiguous transitional zone areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones. For instance, in zones abutting residential areas or abutting residential development within predominately mixed-use zones, particular attention must be paid to the use, scale, density and design of development proposals, and to landscaping and screening proposals, in order to protect the amenities of residential properties (see also Appendix 3: Achieving Sustainable Compact Growth Policy for Density and Building Height in the City, Chapter 4: Shape and Structure of the City, and Chapter 15: Development Standards for guiding principles regarding criteria such as height, density, urban design).

#### Section 15.14.12 Licence Premises

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

#### Section 5.2.5 Restaurants

##### Cafes / Restaurants

CCUV30 To promote and facilitate the provision of cafés / restaurants in the city and support their role in making the city more attractive for residents, workers, and visitors and in creating employment.

##### Outdoor Dining

CCUV32 Proposals for outdoor dining / trading from premises extending into the street will be supported where they would not harm local amenity or compromise pedestrian movement, accessibility needs or traffic conditions.

##### Night Time Economy

##### CCUV35

To support and facilitate evening / night time economy uses that contribute to the vitality of the city centre and that support the creation of a safe, balanced and socially inclusive evening / night time economy.

## 5.2. **Natural Heritage Designations**

The site is not located within or adjacent to a Natura 2000 site.

### 5.3. EIA Screening

The proposed development is not of a type that constitutes an EIA project and environmental impact assessment is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Third Party appeal received from Ger Corcoran the owner and occupier of 72A Willow Park Crescent, Dublin 11. It is summarised as follows:

- Lives next to the Willows Pub and it causes him no nuisance or any injury to amenity.
- Do not agree with DCC decision to refuse permission.
- Believe that retention of the development is in line with Z3 Zoning.
- The outdoor seating area is modest.

### 6.2. Applicant Response

A First Party Response has been submitted by Hughes Planning on behalf of Albert Martin. It is summarised as follows:

- The scale of the outdoor seating area is small in nature and does not constitute and would not have an impact upon surrounding dwellings amenity.
- The additional area is not a significant increase.
- The applicant is open to receiving a condition attached to a grant of permission which would omit the container / bar located to the south east of the subject site.
- It is submitted that omission of the container / bar would reduce the number of people using the outdoor area and as a result would reduce the noise.
- Should this be acceptable, request that a condition be attached, which allows the Willows to use the container for general storage associated with the Willows.

- The visual amenity of the area is not impacted.
- The proposed development will improve the local public realm by allowing for the creation of an attractive, high-quality service / amenity space built in the underutilised car park.
- Sets out relevant development plan policy in relation to the new City Development Plan 2022 – 2028.
- Sets out precedent for outdoor seating areas in the city suburbs, attached to licenced premises.
- The proposed outdoor seating area has been designed to the highest standard and has considered the residential amenity of adjoining properties.
- The proposal presents a high quality and modest addition to the immediate area.

### 6.3. Planning Authority Response

- Response received, requests that the Board uphold the PA's decision. But in the event of a grant of permission that Section 48 development contribution be attached.

### 6.4. Observations

Five number observations received, from Ray Kelly and Audrey Burgess. Gerard Walsh & Audrey Walsh, Robbie Devine, Ian Finlay & Louise May and Gerry & Mary Donohoe. They are summarised as follows:

- The proprietor has scant regard for the planning process, having already constructed the outdoor bar and entertainment service.
- Noise disturbance to gardens and private amenity space, continues late into the night.
- Amplified music and entertainment is often provided. (Evidence on Instagram)
- On occasions the outdoor seating area is extended right across the car park.
- The Willows already has two large bar / lounge areas.

- The outdoor seating and drinking area is an infringement on residents living on Cedarwood Road.
- Devaluation of property. Huge disruption to people's lives. Sleepless nights.
- A YouTube channel has been created here – video evidence of noise neighbours have to endure.
- With recent legislation allowing later closing hours for pubs and nightclubs concern that the matter will worsen.
- Antisocial behaviour and littering.

## 6.5. Further Responses

None Received

## 7.0 Assessment

7.1. I consider the key issues in determining this appeal are as follows:

- **Principle of the Proposed Development & Impact Upon Residential Amenity of Adjoining Property**
- **Appropriate Assessment (AA)**
- **Principle of the Proposed Development & Impact Upon Residential Amenity of Adjoining Property**

7.1.1. In the Dublin City Development Plan 2022 – 2028 the site is governed by the landuse zoning, “Neighbourhood Centres” – “Zone Z3” with the objective, ‘To provide for and improve neighbourhood facilities’.

7.1.2. An extension to the useable area of the public house currently on site, in the form of a covered outdoor seating area for customers of the public house is ‘open for consideration’ under the Z3 zoning objective. As such, development may be permitted where the development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects, and would otherwise be consistent with the proper planning and sustainable development of the area.

- 7.1.3. The covered outdoor seating area (which is subject of this retention application) is currently used as part of the public house, is located within the car parking area to the rear, and is shown to have an area of c.37.6sqm. An existing outdoor seating area is present adjacent to this newer covered seating area, and is identified on the plans submitted, and runs along the rear of the commercial properties in the neighbourhood centre parade.
- 7.1.4. The existing steel container which is a bar (and is also subject of this retention application) is shown to be c.16.2sqm and is sited along the site boundary to the east.
- 7.1.5. It is noted by the PA and as set out under planning history section of this report above, this outdoor seating area and steel container bar were the subject of a previously refused planning application for retention (Reg. Ref. WEB1454/22 - split decision; granted retention of gate and refused outdoor seating area and bar in steel container). The refusal reason related to the proximity of the outdoor seating area and bar to the existing residential properties and the undue negative impacts on the residential amenities of those dwellings from noise and general disturbance. The development for retention was considered to be contrary Section 14.7 Transitional Zone Areas of the Dublin City Development Plan 2016 -2022. The current application for retention is for the same outdoor seating area and steel container bar, no changes have been made. It is therefore considered that the applicant has not overcome the previous reason for refusal. I note the relevant Transitional Zone Areas policy is now set out under Section 14.6 of the new City Development Plan 2022 -2028. The lands adjoining to the north, south and east are Zoned Z1: To protect, provide and improve residential amenities.
- 7.1.6. Section 14.6 Transitional Zone areas of the new CDP 2022 – 2028 states:
- “... it is important to avoid abrupt transitions in scale and land-use between zones. In dealing with development proposals in these contiguous transitional zone areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones. For instance, in zones abutting residential areas or abutting residential development within predominately mixed-use zones, particular attention must be paid to the use, scale, density and design of

development proposals, and to landscaping and screening proposals, in order to protect the amenities of residential properties”.

7.1.7. Section 15.14.12 Licence Premises (of the CDP 2022 -2028) states:

“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

7.1.8. With respect to ‘Outdoor Dining’ Policy CCUV32 of the CDP 2022 – 2028 states:

“Proposals for outdoor dining / trading from premises extending into the street will be supported where they would not harm local amenity or compromise pedestrian movement, accessibility needs or traffic conditions”.

7.1.9. Due cognisance being had to the first party’s submission with respect to the covid pandemic in recent years and to precedent set on other licenced premises in the city suburbs for outdoor seating and dining. However, each case must be decided on a case by case basis and on balance while some covered outdoor seating can be accommodated on the sites of public houses, in this instance having regard to the very close proximity of the outdoor bar and the seating areas to the rear of residential dwellings, and the noise and disturbance emanating from the operation of the extended public house operation, it is considered that permission should be refused.

7.1.10. Due cognisance is had to the report on file from EHO which notes that they have received recent complaints in relation to noise and disturbance from this outdoor area which is the subject of this retention permission application. The EHO have stated that the ‘likelihood of noise breakout (including patron noise) from the proposed outdoor amenity area and its effects on local residents would have a profound effect on local residents who live adjacent the proposed outdoor seating

area and would set an undesirable precedence for proper planning and diminish the quality of life for those living locally and fail to adequately protect local residents from nuisance noise’.

- 7.1.11. Serious concern, in terms of noise and disturbance, has been raised by third parties who reside in close proximity of the outdoor seating area and bar. The retention of this outdoor seating area and bar is considered contrary to Section 9.5.8 Noise Pollution of the City Development Plan 2022 - 2028.
- 7.1.12. The first party have requested that consideration be given to placing a condition on a grant of permission which would not allow the use of the container located to the south east of the subject site, to continue being used as a bar, but that the outdoor seating area be permitted. It is submitted that the omission of the bar container would reduce the number of people using the outdoor area and as a result would reduce the noise. Should this be acceptable, it is requested that a condition be attached, which allows the Willows to use the container for general storage associated with the Willows.
- 7.1.13. It is my opinion that the retention of the outdoor seating area and outdoor bar are unacceptable. The applicant has not overcome the refusal reason of the previous application Reg. Ref. WEB1454/22. There are significant concerns with regard to undue negative impacts on the residential amenities of the surrounding properties from the use of the covered seating area and outdoor bar for retention, both of which are not considered consistent with the Dublin City Development Plan 2022 - 2028 and with the proper planning and sustainable development of the area.
- 7.1.14. All of the structures subject to enforcement proceedings and the outdoor bar should be removed. Cognisance is had that enforcement is within the remit of the Planning Authority and not An Bord Pleanala.

## **7.2. Appropriate Assessment**

- 7.2.1. The appeal site is not within or adjoining any Natura 2000 site. Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and 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

I recommend that the decision of the planning authority be upheld and that retention be Refused, for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

1. The covered outdoor seating area and outdoor bar proposed to be retained, located in a 'transitional zone', backland and constrained car park area to the rear of the existing public house are in unacceptably close proximity to the rear gardens of established residential suburban development, and as a result would have an unacceptable negative impact on the residential amenities of those dwellings through nuisance, noise and general disturbance. The proposed retention of this development would therefore cause serious injury to the residential amenities of properties in the vicinity, would set an undesirable precedent for similar such development and would be contrary Section 14.6 Transitional Zone Areas and to Section 9.5.8 Noise Pollution of the City Development Plan 2022 - 2028 and 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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Fiona Fair  
Planning Inspector

25/06/2023