



An
Bord
Pleanála

Inspector's Report ABP-315986-23

Development	Extension of public house by enclosure of existing smoking area/yard
Location	Kennedy's Public House, 132-134 Lower Drumcondra Road, Dublin 9
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	5371/22
Applicants	Martin Tynan.
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellants	Martin Tynan.
Observers	None
Date of Site Inspection	3 rd June 2023
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

1.1. The site is in an inner suburban area c. 2.5km north of Dublin's city centre along the major thoroughfare of Drumcondra Road. It has a stated area of 656m². It is occupied by two-storey terraced building operating as a public house within a local services centre. The adjoining buildings on either side are banks. The back of the property has access along Victoria Lane which has been taken in charge by the council. At the time of inspection there were some cars parked and beer kegs stored in the lane at the back of the site, but there was no access for customers from the public house to this area. The lane also provides access to the side and rear of the houses along Hollybank Road.

2.0 Proposed Development

2.1. It is proposed to extend the building on the site to enclose the yard on its southern boundary with a partially pitched roof installed over it. The extended area would be used as a seating area for the public house. Its area is stated to be 32m².

3.0 Planning Authority Decision

3.1. Decision

The planning authority refused permission for one reason which stated that the proposed development would constitute overdevelopment of the site leaving it with no smoking area on its curtilage which may exacerbate enforcement issues on Victoria Lane. The proposed development would therefore seriously injure the amenities of property on Hollybank Road

3.2. Planning Authority Reports

3.3. Planning Reports

No proposals have been submitted for an alternative smoking area for patrons. There are live enforcement cases for erecting furniture on the public road to the front and rear of the pub and a bar serving to the rear. While the bar has been removed the street still seems to be in use by patrons. The enclosure of the existing smoking

area may leave the public without a smoking area and lead to a de facto smoking area at Victoria Lane to the detriment of neighbouring residential amenity. In transitional zone area it is necessary to avoid developments that would be detrimental to the more sensitive zone. No consideration of the more sensitive residential zone has been submitted contrary to section 15.14.12 of the development plan. It was recommended that permission be refused.

3.3.1. Other Technical Reports

The Environmental Health Officer insists that the noise conditions of the previous permission apply in this case to protect the amenities of the residential property in the vicinity.

4.0 Planning History

Reg. Ref. 5020/22 – A request by the council for further information is outstanding on an application for permission to retain a fire escape door and two roller shutter doors at the rear of the site on Victoria Lane.

Reg. Ref. 4321/22 – In August 2022 the council refused permission to retain a fire escape door and a roller shutter door at the rear of the site on Victoria Lane because it facilitated the installation of an unauthorised bar counter serving at the rear of the site which gave rise to disturbance that seriously injured the amenities on residential properties in the vicinity.

ABP-310877-21, Reg. Ref. 3142/20 – In November 2021 the board granted permission to retain a bar area at the rear of the site and erect a timber screen on the walls to the south and west of the smoking yard. The council had decided to refuse permission. the planning authority granted permission for a house on the site facing Lorcan Crescent.

5.0 Development Plan

- 5.1. **Dublin City Development Plan 2022-2028** –The site is zoned for mixed service facilities use under objective Z4. Adjoining properties on Hollybank Road area zoned as a residential conservation area under objective Z4. Section 15.14.12 of the plan refers to licensed premises and states *inter alia* that where extensions to

existing uses are proposed the onus is on the applicant to demonstrate that it would not be detrimental to the residential quality of an area. Section 14.6 says that in contiguous transitional zone areas it is necessary to avoid developments that would be detrimental to the more environmentally sensitive zone.

5.2. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

- The proposed development would be in the long established structure of the public house. The council were wrong to regard it as being part of a transitional zone. The public house has been established for over 100 years and the proposed development would be entirely within its curtilage. This is not transitional but entirely consistent with the established planning use of the building. The development is not an extension and will not result in additional floorspace, so it cannot be regarded as over-development.
- There will be additional sound proofing and noise control measures provided under the permission ABP-310877-23, Reg. Ref. 2142/20 granted by the board which included conditions about the noise from the smoking area that is to be enclosed.
- The scale of the proposed development at 32m² should not be regarded as overdevelopment. It would not increase the overall floor area of the pub. All pubs in the area experience a surge of activity when there are events in Croke Park. The provision of a smoking area is inconsequential in the context of crowds visiting an 80,000 seater stadium. Pubs are not required to provide smoking area. Patrons of Kennedy's are not encouraged to use the laneway to smoke. Government policy is to make Ireland effectively tobacco free and the shift away from smoking has reduced the demand for smoking areas around pubs.

- Any enforcement issues regarding portable toilets and obstacles on the public footpath have been resolved. Victoria Lane has been used as a service access for as long as the pub has been in operation. This normally involves the leaving of beer kegs there for collection and occasional parking of cars. Beer barrels and hanging baskets do not constitute furniture works or a planning use. The enforcement issues referred to in the decision of the council are not materially related to the proposed development.

6.2. Planning Authority Response

The response requests that the board uphold the council's decision. If the board is granted permission a conditions requiring a contribution under section 48 should be applied.

7.0 Assessment

- 7.1. The scale of the proposed development is small relative to the size of the pub of which it is a part. It would not change the established use of any part of the site in planning terms, and that use is consistent with the Z4 zoning of the site.
- 7.2. The proposed development involves a small extension of the building housing the pub and the enclosure of an area that is not immediately adjacent to residential properties. The development in itself would not, therefore, threaten the amenities of nearby properties nor would it amount to over-development of the site or be contrary to section 15.14.12 of the development plan. I note the council's concern about the potential for an overspill of activity from the pub on to Victoria Lane to injure the amenities of the neighbouring houses there. If the end of the lane beside the site were used as an outdoor smoking area by customers of the pub, than it is likely that this would give rise noise, activity and disturbance that could be injurious to residential amenity. It is also plausible that the absence of an internal smoking area on the premises might make it more likely that an alternative outdoor area beside the pub would be used for smoking by customers. Nevertheless the potential connection between the omission of the established smoking area as proposed in this application and the use of Victoria Lane as a smoking area is remote and contingent. It would not be sufficient to justify a conclusion that the proposed development would

seriously injure the amenities of residential property in the vicinity and a refusal of permission in this case. As a general principle the power to consider applications for permission under Part III of the planning act should not be used to anticipate or replace the power to enforce against unauthorised development under Part VIII of the act. If unauthorised works or changes of use occur on Victoria Lane, than the more appropriate way to address then is under Part VIII of the act.

7.3. I would also agree with the appellant's position that, as a matter of public policy in relation to health, it should not be a presumed that pubs should provide smoking areas for their customers.

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

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the zoning of the site for mixed service facilities under objective Z4 of the Dublin City Development Plan 2022-2028, to the established use of the site as a public house, and to the scale of the proposed works and their position away from the boundaries of the site with residential properties, it is considered that the proposed development would not be over-development of the site and would not injure the amenities of property in its vicinity. It would therefore be in keeping with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions..

Reason: In the interest of clarity.

2. The proposed development shall be carried out and shall operate in accordance with the conditions of the grant of permission made by the board under Reg. Ref. 3142/20, ABP-310877-21.

Reason: To ensure orderly development and to protect the amenities of properties in the vicinity

3. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

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

Stephen J. O'Sullivan

Planning Inspector, 5th June 2023