



An  
Bord  
Pleanála

## Inspector's Report ABP-320719-24

<b>Development</b>	<i>Retention of a single storey pavilion structure to rear of public house</i>		
<b>Location</b>	<i>The Blacklion Public House, Orchard Lane, Clondalkin Village, Dublin 22 D22 E642</i>		
<b>Planning Authority Ref.</b>	<i>SD24B/0147W</i>		
<b>Applicant(s)</b>	<i>Greenwin Limited</i>		
<b>Type of Application</b>	<i>Permission</i>	<b>PA Decision</b>	<i>Refuse Retention</i>
<b>Type of Appeal</b>	<i>First</i>	<b>Appellant</b>	<i>Greenwin Limited</i>
<b>Observer(s)</b>	<i>Michael Devan</i>		
<b>Date of Site Inspection</b>	<i>01/11/2024</i>	<b>Inspector</b>	<i>Andrew Hersey</i>

### Context

**1. Site Location/ and Description.** The site is located in the rear car park associated with the Blacklion Public House on Orchard Lane, Clondalkin Village Centre.

The Blacklion Public House is designated as a Protected Structure in the South Dublin County Development Plan 2022-2028. The site is also located within an Architectural Conservation Area.

The said structure for which retention permission is sought is a grey powder coated steel framed structure which is detached from the public house and is located within the private car park associated with the public house.

The said structure is not visible from Orchard Lane.

There are residential houses located to the north of the site which front onto Orchard Lane. There is a school to the west (St Johns National School) and a Church and lands to the north west. There is another car park located to the south which is separated from the same by a block wall.

**2. Description of development.** *The proposed development comprises of Retention Permission for:*

- *a single story pavilion structure (floor area 203 sq.m)*
- *consisting of two proposed acoustic lobbies (floor area 11.6 sq.m) at the rear of the existing premises.*
- *The use of the pavilion structure is ancillary to the existing bar and restaurant use on the site.*
- *Permanent permission is being sought for the pavilion structure.*

**3. Planning History.**

- Planning Reg. Ref. SD12A/0220 – Permission granted for 2 no. timber shelters to existing first floor terrace and an external glazed screen to the existing ground floor terrace both to the rear of the premises (A Protected Structure).

**4. National/Regional/Local Planning Policy**

- South Dublin County Development Plan 2022-2028 is the statutory development plan in the area where the proposed development site is located.
- Within the plan the site is subject to zoning objective VC: To protect, improve and provide for the future development of Village Centres'

- 'The Black Lion' Public House is a Protected Structure in the Council's Record of Protected Structures Schedule (Appendix 3A South Dublin County Development Plan 2022-2028 under Map Ref. No.146).
- The site is located within an Architectural Conservation Area
- Policy NCBH20 Architectural Conservation Areas seeks to *'Preserve and enhance the historic character and visual setting of Architectural Conservation Areas and carefully consider any proposals for development that would affect the special value of such areas'*
- Policy NCBH20 Objective 8 *To ensure that all planning applications for new developments within or immediately contiguous to an ACA include an Architectural Impact Assessment and Design Rationale addressing design considerations such as urban structure and grain, density and mix, scale, height, materials, landscape, views and landmarks and historic development.*
- Policy IE8 Objective 5: To ensure that future developments are designed and constructed to minimise noise disturbance and take into account the multi-functional uses of streets including movement and recreation as detailed in the Urban Design Manual (2009) and the Design Manual for Urban Roads and Streets (2013, updated 2019).

## 5. Natural Heritage Designations

The nearest designated site is

- The Glenasmole Valley Special Area of Conservation (SAC) (Site Code: 00120) c. 8.5km to the south of the site.

## Development, Decision and Grounds of Appeal

**6. PA Decision.** Permission was refused permission on the 6<sup>th</sup> August 2024 for the following reason:

- Having regard to the location of the subject site, the proposal has failed to comply with the specified criteria for development within the curtilage of a Protected Structure (Blacklion Public House) or within an Architectural Conservation Area as outlined within Section 12.3.8 and NCBH20 Objective 8

of the 2022-2028 CDP. Subsequently, the proposal would thus contravene policy and objectives of the South Dublin 2022-2028 CDP including Policy NCBH20 which seeks to preserve and enhance the historic character and visual setting of Architectural Conservation Areas and carefully consider any proposals for development that would affect the special value of such areas as well as Policy NCBH23. The proposal, if permitted, would set an undesirable precedent for other similar developments, which would in themselves and cumulatively, be harmful to the special character of the protected structure or the special character of the ACA and amenities of the surrounding area and would be contrary to the proper planning and sustainable development of the area.

## **7. Submissions**

There are seven valid submissions on file from surrounding residential properties which raise the following issues:

- Significant noise levels/noise pollution especially at weekends
- Noise levels are extreme between midnight and 12.30am
- WHO recommends noise levels should be 40dBA at nighttime
- That in 2013 the public house got permission for an outdoor terraced area and a condition was imposed that there was to be no bar area within the same and that it had to close by 11.00pm and was not allowed to have amplified music
- There is music within the pavilion on Friday Saturday and Sunday nights (of bank holidays) as well as live music on Thursdays and Sundays.
- The structure is not designed to attenuate music
- That mitigation measures as recommended in the acoustic report are not practical
- That there is a room upstairs in the public house that could be used for the purposes of a music venue. This was previously used as a night club.
- Proximity to existing residential properties.
- Intensification to the existing use.

- Concerns are raised regarding the acoustic report submitted with the application, and in particular the times in which the monitoring was undertaken

## **8. Internal Reports**

- Environmental Health Department (17<sup>th</sup> July 2024) recommends that the proposed development is refused for the following grounds: *Having regard to the location of the proposed development in close proximity to existing residential properties, it is considered that it has not been adequately demonstrated that the proposed pavilion structure could operate in a manner that would not negatively impact on the residential amenity of residential dwellings in the vicinity.*
- The report also states that *they have received numerous noise complaints from local residents since the structure was constructed all relating to late night music coming from the venue which is affecting residence sleep and enjoyment of their properties. The noise control objective should be that the noise is at such a level that it is acceptable to a resident of a nearby noise sensitive property. This will often mean that the noise from the venue should be inaudible inside the dwelling, even with the windows slightly open. Environmental Health do not accept that the noise impact assessment report submitted as part of the planning application have adequately proved this to be the case. The proposed development could therefore result in the creation of a noise nuisance to residents in the vicinity and would therefore be prejudicial to the health of the public.*
- Roads (6<sup>th</sup> August 2024) have no objection to the proposal subject to conditions
- Architectural Conservation Office (2<sup>nd</sup> August 2024) – further information is required in the form of an Architectural Impact Assessment Report

## **9. First Party Appeal.**

A first party appeal was lodged by Kieran Horgan (Director) of Greenwin Ltd. on the 2<sup>nd</sup> September 2024. The appeal is supported by a Noise Impact Assessment Report and an Architectural Heritage Impact Assessment. The appellant raises the following issues:

- That the appellant would be happy accepting a condition limiting its use to uses ancillary to the existing long term established bar and restaurant on site.
- An Architectural Heritage Impact Assessment has been submitted with the appeal and prepared by specialist conservation architects. In summary the report states that: *‘the materiality and detailing of the Pavillion structure is appropriate within the ACA’* and that the *‘the Pavillion structure is designed and sited appropriately and is generally subservient to the main Public House structure as well as those structures immediately adjacent to it and is not visually obtrusive nor does it detract from the character of the public house structure or its setting within the ACA’*
- The conclusion of the Noise Impact Assessment submitted with the appeal states that: Based on the assessment and recommendations outlined in the report it is predicted that noise levels from the existing beer garden and bar at the Black Lion is unlikely to provide an adverse noise impact

### **11. Planning Authorities Response**

A response from the Planning Authority was received on the 17<sup>th</sup> September 2024. The response in summary states that the Planning Authority refers to the planners report on file.

### **12. Observations**

An observation has been received on the 25<sup>th</sup> August 2024 from ‘The residents of homes near the pavilion structure’ each of whom are listed at the bottom of the observation. The observation in summary states:

- That the appeal states that the use of the structure comes into play every Saturday night from 8am- 12.30pm when there is a DJ and one Friday a month when there is live music. The observers state that this is inaccurate and that there is amplified music every Friday and Saturday night and every bank holiday Sunday – screenshots from social media posts showing the same have been included in the observation.
- That there was no nightclub at this location pre-Covid
- The structure is clearly not designed to attenuate amplified noise.

- That the mitigation measures in the Noise Impact Report will not in any way the noise levels.
- That the noise assessment continues to state that the noise levels would be similar to background noise in the village is not accurate.
- That asking residents to close their windows is inappropriate and unenforceable.

## **Environmental Screening**

### **13. EIA Screening**

Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Planning & Development Regulations 2001(as amended), I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. See Form 1 and Form 2 attached to this report.

### **13. AA Screening**

I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located 8.5km from Glenasmole Valley SAC (Site Code 001209)

The proposed development comprises of the retention of a pavilion structure for uses ancillary to an existing public house in an urban area. No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The nature of the works proposed
- The distances to the nearest Natura 2000 site and the absence of any hydrological connect from the site to the same and

•Having regard to the screening report/determination carried out by the Planning Authority

I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

## **2.0 Assessment**

### **2.1. Introduction**

2.1.1. I have examined the application details and all other documentation on file and I have inspected the site and have had regard to relevant local development plan policies and guidance.

2.1.2. I am satisfied the substantive issues arising from the grounds of this third party Appeal relate to the following matters-

- Principle of Development
- Visual Amenities
- Residential Amenities
- Financial Contributions

### **2.2. Principle of Development**

2.2.1. The proposed development site is located within an area designated with zoning objective VC, in the South Dublin County Development Plan 2022-2028 the objective of which is 'To protect, improve and provide for the future development of Village Centres'

2.2.2. The proposed development comprises of the retention of a detached powder coated steel structure which is located to the rear and adjacent to the Black Lion Public House in Clondalkin Village. While the use of the structure is not specifically stated, submissions on file and the floorplan of the structure would suggest that its use is that



of a venue for music and or events. The floorplan shows a bar counter, seating around an open area (dance floor) and a stage. There are also segregated toilets within the structure. The structure is not physically connected to the public house and is very much separate to the same. The use therefore can be described as a night club/music venue.

- 2.2.3. A night club is a use which is considered to be 'Open to Consideration' in the land use zoning matrix as set out in the South Dublin County Development Plan 2022-2028.
- 2.2.4. Having regard to the location of the said structure adjacent to an existing public house, I would consider that the principle of a night club/music venue at this location is an acceptable form of development within this zoning designation on a permanent basis as applied for subject to issues regarding residential and visual amenity issues being resolved.

### **2.3. Visual Amenities**

- 2.3.1. The Blacklion Public House (including its curtilage) is listed as a Protect Structure in the South Dublin County Development Plan 2022-2028.
- 2.3.2. The site is also located within an Architectural Conservation Area
- 2.3.3. I note the Conservation Officers report on the file whom recommended that the proposed development required the benefit of a Visual Impact Assessment and recommended therein that additional information be sought with respect to the same.
- 2.3.4. The case planner had regard to the same but a recommendation was made to refuse the proposed development on the basis that the applicant had not submitted a Visual Impact Assessment and therefore failed to comply with policy with respect to developments within ACA's which under Policy NCBH20 Objective 8 seeks *To ensure that all planning applications for new developments within or immediately contiguous to an ACA include an Architectural Impact Assessment and Design Rationale*
- 2.3.5. The proposed development was therefore refused on the basis of non-compliance with the above policy.
- 2.3.6. The appeal submitted includes for a detailed Architectural Heritage Impact Assessment prepared by conservation specialists.

2.3.7. The Planning Authority in their response to the appeal appear not to have examined the same

2.3.8. In summary, the Architectural Heritage Impact Assessment states that;

- *'the materiality and detailing of the Pavillion structure is appropriate within the ACA'* and that the
- *'Pavillion structure is designed and sited appropriately and is generally subservient to the main Public House structure as well as those structures immediately adjacent to it and is not visually obtrusive nor does it detract from the character of the public house structure or its setting within the ACA'*

2.3.9. Regard must also be had to the location of the proposed development to the rear of the existing public house. The structure subject of this appeal is not visible from the adjacent street i.e. Orchard Lane. I consider that the most import aspect of the Blacklion Public House, in terms of its conservation is the front elevation facing onto Orchard Lane. The proposed pavilion structure for which retention is sought is not visible from the street and therefore does not impact upon the front elevation of the public house.

2.3.10. In this respect, I consider that the proposed development is acceptable in terms of visual amenities, will not detract from the protected structure and will not have any discernible impact on the ACA.

## **2.4. Residential Amenities**

2.4.1. This is the fundamental concern raised by the local residents whom have lodged submissions to the file and who have made an observation on the appeal

2.4.2. The only issue in consideration here is noise and in particular noise that results as a consequence of music within the proposed structure subject of this retention.

2.4.3. It would appear from submissions on the file that local residents are experiencing night time noise especially at the weekends up to 12.30pm.

2.4.4. The report from the Environmental Health Officer on file (dated 17<sup>th</sup> July 2024) reinforces this assertion stating that they have had numerous complaints from local residents and therefore recommend that permission is refused for the said proposal

- 2.4.5. A Noise Impact Assessment (hereunder referred to as the NIS) has been submitted with the application and with the appeal.
- 2.4.6. I note that the nearest residential house is located less than 50 metres to the north of the proposed development i.e. those houses facing onto Orchard Lane. I note that the NIS predicts that noise levels at this house which is referred to as NSL 1 in the report will be 39dBA which is within EPA parameters for noise levels at night time i.e. after 2300hrs.
- 2.4.7. The objectors refute this information and state that this is wholly inaccurate.
- 2.4.8. Mitigation measures have been proposed which include for closing the retractable roof, installing a music noise limiter and further reducing music noise in the beer garden after 11pm.
- 2.4.9. While the same is noted, regard must be had to the residential amenities of nearby residents. The report from the Environmental Health Officer states that ‘  
*‘The noise control objective should be that the noise is at such a level that it is acceptable to a resident of a nearby noise sensitive property. This will often mean that the noise from the venue should be inaudible inside the dwelling, even with the windows slightly open. Environmental Health do not accept that the noise impact assessment report submitted as part of the planning application have adequately proved this to be the case’*
- 2.4.10. The same is noted and I would consider that the structure which is a lightweight glass building with steel frame is not designed to contain noise associated with a music venue. This structure was built during covid to comply with social distancing requirements.
- 2.4.11. I would consider therefore that the only issue here is the use of the structure for the purposes of a music venue/night club. The use as an beer garden can be accepted subject to noise levels been ameliorated by way of condition. I also consider that the operating hours be restricted to an 11pm close time as was previously imposed under Planning Reg. Ref. SD12A/0220.

## **2.5. Financial Contributions**

- 2.5.1. S47 Contributions are required at a commercial rate as per the council's development contribution scheme.

### 3.0 Recommendation

3.1. I recommend that permission for the development be granted permission.

### 4.0 Reasons & Considerations

4.1. Having regard to the information submitted with the application and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would comply with the zoning objective for the site as set out in the South Dublin County Development Plan 2022 – 2028, would not be injurious to the visual or residential amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

### 5.0 Conditions

1.	<p>The development shall be retained and carried out 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. 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><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The use of the pavilion shall be restricted to that of a beer garden only ancillary to the use of the public house/restaurant. The pavilion shall not be used for the purposes of a music club/night club or live music venue.</p> <p><b>Reason:</b> To protect the residential amenities of property in the vicinity of the site</p>

3.	<p>During the operational phase of the proposed development the noise level shall not exceed (a) 55 dB(A) rated sound level between the hours of 0700 to 2300, and (b) 45 dB(A) 15min and 60 dB LAfmax, 15min at all other times , (corrected for a tonal or impulsive component) as measured at the nearest dwelling or at any point along the boundary of the site. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> To protect the residential amenities of property in the vicinity of the site</p>
4.	<p>The pavilion structure shall close at 11pm each night</p> <p><b>Reason:</b> In the interest of residential amenity</p>
5.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health</p>
6	<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 Contribution 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><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with</p>

	the Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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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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Andrew Hersey

Planning Inspector

30<sup>th</sup> December 2024