



An  
Bord  
Pleanála

## Inspector's Report 29A.LC2067.

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<b>Development</b>	Street Furniture Licence at Merry Cobbler.
<b>Location</b>	78-82 Irishtown Road, Dublin 4.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	SF552.
<b>Applicant(s)</b>	Jimmy Stafford.
<b>Type of Application</b>	Section 254 Licence.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Jimmy Stafford.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	19 <sup>th</sup> of October 2017.
<b>Inspector</b>	Karen Hamilton.

## 1.0 Site Location and Description

1.1. The site is a public house, The Merry Cobbler, located in Irishtown at the junction of Irishtown Road and Barrack Lane, Dublin 4. The building is a protected structure. The surrounding area is suburban with a mix of commercial and residential. There are two dwellings located to the south of the site, with the building lines set behind the public house and large front gardens along the public footpath, directly adjacent to the entrance of the public house. There is a large area to the front and side entrances of the public house beside the public footpath with tall barrels for informal gathering.

## 2.0 Proposed Development

2.1. The proposed development is for a street furniture licence (Section 254) as detailed below:

- Outside seating area and screening between the public house and public footpath,
- 3 tables and 12 chairs to the left of the entrance (2.4m wide by 5.1m long),
- 2 tables and 8 chairs to the right of the entrance (1.8m wide by 3.3m long,
- Screening along the front of both seating areas, (c 5.1m along the front of the left and c. 1.8m to the right), with 1.4m high screens of 0.7m high timber plant boxes and 0.7m high laminated glass.

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to refuse permission for reasons of impact on the adjoining residential amenity in terms of noise and disturbance.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse permission and also notes the sufficient amount of spaces to the front of the premises to accommodate external seating.

### 3.2.2. Other Technical Reports

Roads and Traffic Section- No objection to proposal.

### 3.3. Prescribed Bodies

Dublin Fire Brigade- No objection to proposal.

### 3.4. Third Party Observations

The report of the area planner refers to an observation received from the residents of No 84 and 86 in relation to the proposed street furniture and the possible increase in levels of noise and disturbance from external seating and the impact of their residential amenity.

## 4.0 Planning History

### **29S.246669 (Reg. Ref. No 2485/16)**

Spilt decision to amend condition no 3 relating to opening hours and permission for in house events, where the Board allowed an increase in opening hours by 30 minutes (restricted under Reg. Ref. No 2379/98) and refused to remove the restrictions in condition no 4 of Reg. Ref. No 2379/98, relating to in house events as they would seriously injure the residential amenities of property in the vicinity.

### **2379/98**

Permission granted to serve food in the new bar and condition no 3 restricted the use of premises to 00.30 and condition no 4 restricted the use of nightclubs or large organised functions.

### **0498/98**

Permission granted for alterations to residents bar and lounge and condition no 2 restricted any nightclub use on the premises.

## 5.0 Policy Context

The public house is a protected structure and therefore the following policy and guidance are relevant.

5.1. Architectural Heritage Guidelines for Planning Authorities, 2004. Development guidelines for Protected Structures and Areas of Architectural Conservation

### 5.2. Dublin City Development Plan 2016-2022

The site is zoned in Z2 "*To protect and/or improve the amenities of residential conservation areas*".

#### Noise

Objective S1O26: To protect residents of mixed-use development from noise emanating from other uses such as shops, office, nightclubs, late night busking, public houses and other night time uses through the planning system.

**Section 9.5.8** Noise Pollution: Minimise the impact of noise pollution by controlling developments which are noise sensitive away from more sensitive areas such as residential areas. If it is likely to create disturbance due to noise, a condition can be imposed limiting the hours of operation and level of noise generation.

The site is located within a **Conservation Area**, therefore the following policies apply:

**CHC4:** To protect the special interest and character of all Dublin's Conservation Areas. Development will contribute positively the character and distinctiveness of the appearance and setting.

### 5.3. Natural Heritage Designations

South Dublin Bay and River Tolka SPA (code 004024) c.750m to southeast and South Dublin Bay SAC (code 000210) c. 700m to southeast.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal are submitted from an agent on behalf of the public house operator and the issues raised may be summarised as follows:

- The additional tables and chairs are linked to the gastro-pub use,
- The seating is confined to dining activity and it is not a beer garden,
- There will be CCTV on at all times,
- There will be no loud aggressive music,
- There is a requirement for a renewal application annually so it is in the interest of the operators to ensure good neighbour relations,
- There is an all-night Garda Station directly opposite the road,
- Tables and chairs will be locked during non-business hours to prevent misuse,
- The only two dwellings affected, no 84 and 86, are set behind the premises and will be well screened,
- Due to the climate the seating area will only be used in warm periods.

### 6.2. Applicant Response

The applicant is the same as the appellant.

### 6.3. Planning Authority Response

None received.

### 6.4. Observations

None received.

## 7.0 Assessment

- 7.1. The appeal is made under the provisions of Section 254 of the Planning and Development Act, 2000, which relates to licensing of appliances and cables etc., on public roads. Subsection 5 states that in consideration of an application for licence under 254 a planning authority, or Board on appeal, shall have regard to the following:
- a) The proper planning and sustainable development of the area,
  - b) Any relevant provisions of the development plan, or local area plan,
  - c) The number and location of existing appliances, apparatuses or structures, on under, over or along the public road, and
  - d) The convenience and safety of road uses including pedestrians.
- 7.2. Having regard to the above, the main issues of the appeal can be dealt under the following headings:
- Access and Pedestrian Movement.
  - Residential Amenity
  - Built Heritage
  - Appropriate Assessment

### **Access and Pedestrian Movement**

- 7.3. The public house is located on the corner of Irishtown Road and Barrack Lane and the front of the site is set back from the edge of the Irishtown road by c. 6.3m at the entrance. The proposed seating area is for 3 tables and 12 chairs to the left of the main entrance and 2 tables and 8 chairs to the right, both with associated screening. The seating area to the left of the entrance door protrudes forward of the building line by c 2.4m and the seating area to the right of the entrance door protrudes c 3.2m.
- 7.4. The report of the Roads Department states that regard was given to the surrounding environment and the location of the clear pedestrian footpath (c. 6.3m) between the proposed screened area and the road and there was no objection to the proposed development.

- 7.5. The area immediately surrounding the site is residential in character and I did not note any other outside seating areas, sandwich boards or appliances on the public footpath in the vicinity.
- 7.6. Therefore, having regard to the existing environment, the amount of public footpath remaining, the report of the Roads Department and the criteria in Section 254 (5) (c) and (d) relating to the location of other appliances, I consider the location of the outside seating area is acceptable and would not cause any inconvenience or negative impact on the safety of roads users including pedestrians.

### **Residential Amenity**

- 7.7. The existing public bar is located beside two residential properties which have large front gardens adjacent to the proposed seating area. Observations noted in the planning officers report from surrounding residents related to the impact of the proposal on their residential amenity, in particular the noise and disturbance emanating from the outdoor seating. The reason for refusal for the licence refers to the intensification of and prolonged use of the external seating and the negative impact on the existing residential amenity. The grounds of appeal state that the seating is limited to the restaurant use on the site, does not have loud music, is well screened from adjoining neighbours and can only be used during warm periods. I will assess the impact of the proposed development on the residential amenity below, whilst having regard to the provisions of the development plan and the proper planning and sustainable development of the area.
- 7.8. Land use: The subject site is located on lands zoned as Z2 of the development plan where it is an objective "*To protect and/or improve the amenities of residential conservation areas*". The proposed seating area is located c. 2m from the front garden of No 84, an adjoining residential property. Section 14.6 of the development plan requires all non-conforming developments to be considered on their merits and permission may be granted where the proposed development does not adversely affect the amenities of the premises in the vicinity. Based on the location of the site within the Z2 zoning I have no objection to the principle of the use site of the seating area, subject to complying with other planning requirements as addressed below.
- 7.9. Planning History: Condition No 3 of PL29S.246669 (Reg. Ref. 2485/16) permitted an increase in the opening hours of the public house by 30mins to 0030 during the week

and 0100 at the weekend although the use of the public house as a nightclub or large public function was not permitted as it would be contrary to the Z2 residential zoning objective and would seriously injure the residential amenities of the property in the vicinity. The proposed development is for the use of the seating area between the hours of 10.30 and 21.00. Although the proposed hours of operation are less than the those permitted by the previous grant of permission, it is of note that the intensification of the site for large public occasions and a nightclub was refused for reasons of negative impact on the adjoining residential amenity. I consider the inclusion of seating for 20 people outside the public house for restaurant use is intensification, therefore I consider the Boards previous decision, in particular the limitations of use, are relevant to the assessment of this Section 254 licence.

7.10. **Noise:** Section 9.5.8 of the development plan includes guidance to assess the impacts of noise pollution where the impact should be minimised by controlling developments, which are noise sensitive, away from more sensitive areas such as residential areas. I consider the primary use and land use zoning on the site and in the vicinity takes precedent over other non-conforming uses and I consider it important to protect the residential amenities. I consider the placing of an additional 20 seats outside for use by the restaurant, intensification, and I consider it would generate additional noise. Having regard to the location of the seating c. 2m from an adjoining property and the hours of operation until 21.00 I consider the proposed development would have a negative impact on the residential amenity by reason of noise and disturbance.

7.11. Therefore, based on the land use zoning, the guidance in the development plan relating to the location of noise sensitive developments and the amount of outside seating and distance from the adjoining dwelling, I consider the proposed development would have a negative impact on the amenities of the residential development in the vicinity and the Section 254 licence should be refused.

### **Built Heritage**

7.12. The existing building is a protected structure and is located within a conservation area. The proposed seating (c.18 m<sup>2</sup>) and associated screening (1.4 high timber and glass planters) are located along the front of the building. Policy CHC4 of the development requires that all development contributes to the character and



protection of the special interest of all Dublin's Conservation Areas. I note the quality of the materials used for the screening area and considering the temporary nature, limited scale and location of the seating of the seating, I do not consider the proposed development would have a negative impact on the overall character or setting of the protected structure or the conservation area. Therefore, I consider the proposal would comply with the policies of the development plan in relation to the protection of the built heritage.

### **Appropriate Assessment**

- 7.13. Having regard to the nature and scale of the proposed development within a serviced area and 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 the conservation objectives of any European site.

## **8.0 Recommendation**

- 8.1. It is recommended that the proposed development is refused for the reasons and considerations as set out below.

## **9.0 Reasons and Considerations**

Having regard to the location of the gastro pub directly adjacent to residential properties, the Z2 zoning *"To protect and/or improve the amenities of residential conservation areas"*, the planning history (29S.246669) and the guidance in Section 9.5.8 of the development plan for the appropriate location of development in noise sensitive locations, it is considered that the proposed development, consisting of an outdoor seating area for 20 people, would seriously injure the residential amenities of the adjoining properties and would be contrary to the proper planning and sustainable development of the area.

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Karen Hamilton  
Planning Inspector

23<sup>rd</sup> of November 2017