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The Secretary
An Bord Pleanála
64 Marlborough St
Dublin 1

2nd July 2018

Your Ref ABP – 301491 /18

**Re use of a premises (in whole or in part) with a “publican’s 7 day license” at
The Button Factory, Temple Bar, Dublin 2.**

Dear Secretary

I refer to your letter dated 11th June 2018 enclosing a submission to the Board received from the Temple Bar Cultural Trust (TBCT). The relevant parts of the submission relate to a submission prepared by Doyle Kent Planning Partnership dated 28th May 2018, a legal submission prepared by Garrett Simons, SC, and other enclosures.

I have been requested by NOTTUB Ltd to respond to the submissions made by and on behalf of the TBCT.



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Background

It is noted that TBCT is winding down so that DCC can take over its responsibilities, functions and assets and that the body is gradually divesting itself of its property portfolio. As part of that, this property by way of a leasehold of 500 years has been sold by TBCT to NOTTUB Ltd in September 2017 with a clause requiring the continued uses of a music centre including a live music venue, comedy, theatre, museum, gallery, multi-media complex, tourism related activities visitor attraction, and bar with a theatre licence, café, restaurant, recording studios and educational uses relating to music and to include general use for cultural activities and the option to purchase the freehold in 10 years.

It is possible that only Guinness's at St James Gate are in possession of a longer leasehold in Dublin, theirs being 999 years. While TBCT, for as long as it remains in existence, retains the ownership of the head lease and the right to consent (or not) to any new license for the sale of alcohol, it is unfortunate that that body has resorted to the subject use of the planning system to carry out its functions in relation to the leasehold. The matters described in relation to the events since 2017, as described in the Doyle Kent submission on Page 2 are more appropriately dealt with at a corporate level. Please refer to Appendix 1.

We have concerns relating to the briefing given by TBCT to both Doyle Kent Planning Consultants and to Garrett Simons, Senior Counsel. Therefore, it is necessary to provide some historic background to set the context for the response to the issues raised on behalf of TBCT.

The principal involved in the Button Factory and Irish Rock n' Roll museum experience, Paddy Dunning, occupied the subject lands in conjunction with his operation of rehearsal rooms and recording studios in the 'old' Temple Bar (TB) before the advent of TBCT and the regeneration of TB as a 'cultural quarter.' The Temple Lane Studios had 22 rehearsal rooms and recording studios in operation since 1984, operated by Paddy Dunning, who is a Director of the Button Factory continuously to this day.

As part of the regeneration of Temple Bar and to draw down ERDF funding, Mr. Dunning made his properties available to TBCT to develop the Temple Bar Music Centre in a new

purpose-built 4 storey over basement centre. The centre was built with rehearsal rooms and recording studios at basement level. The street level opens onto two streets with direct access to The Crowbar for meeting and assembly from Temple Lane and access to the foyer/ticketing reception from the Curved Street.

The Temple Bar Music Centre was purpose built in 1995 to encompass a variety of music related & multi-media related uses. It is laid out as follows: -

- The basement is separated into 7 rehearsal rooms for performers, which have large concrete walls to ensure that all rooms are sound proofed for acoustics. They are used by a wide variety of artists, musicians and dancers.
- The ground floor includes a large performance space for all kinds of performances and a small auditorium bar with a stage, The Crowbar, which is open 7 days and nights a week and used by patrons of the building and the general public. There is a ticketing foyer adjacent, with a larger venue to the rear with stages and theatre seating, which is used by all people entering the building as patrons or visitors to the Rock n'Roll experience.
- The first floor includes permanent tiered seating for patrons along with an outside terrace area and a separate small performance space.
- The second floor includes storage and office space.
- The third floor is a purpose built education space and recording studios.

In addition to the above the Rock n' Roll museum operates throughout all these facilities bringing visitors through the working music complex to experience what bands and artists do from rehearsing, performing and recording. This has become a really popular Dublin attraction as it is one of the few remaining complexes in the country where all are done under the one roof.

The venue charges patrons for some events and other events are free.

The auditorium bar, aka Crowbar, includes a bar and small stage. Food and drink is served in this bar 7 days and nights a week and is an integral facility for those performers and workers meeting there and for those dropping in through curiosity and to attend tourist and cultural events.

There is also a large auditorium, accessed from the foyer with ground floor and upper mezzanine with tiered seating, theatre style, which incorporates a large performance stage, running programmed events 7 days and nights a week. There are 5 performance stages within the building with 9 exit and access points. Other levels and rooms are accessed by stairs around the theatre levels.

A myriad of activities is programmed, including open-days, workshops, special events, comedy, and cinematic screenings. People come and go throughout the day and night 7 days a week - musicians, tourists, music lovers, students, industry professionals, sound engineers and the general public. All these people utilize and experience the many diverse activities within the premises.

The building is used by a wide variety of people and the bar at street level is the entry point and the focal point for arrivals. It helps support collaboration between all of these activities. The 'Theatre licence' is not an appropriate licence for the street-level Crowbar, which by the terms of a Theatre Licence should open to coincide with particular events and close within a particular time of these events. A 7-day licence would be the appropriate licence and confined to this part of the building.

The change of licence for this small part of the building will not create any new use and/or intensification of use within the overall premises, as activities will remain the same; times of opening and closing will stay the same; and capacities will stay the same.

The internal details are contained in the Music Centre Building Services Fit-Out document dating from 1995. Please refer to Appendix 2.

The premises was designed to be and is, multi-functional. It accommodates professional musicians, provides professional modern music industry management, holds multiple live performances 7-days and acts as a centre for the multi-locational Dublin Rock n' Roll visitor experience, with an associated museum on Cecelia Street. The experience is long duration, is guided and requires role-playing by participants. These are cultural activities carried out in a purpose-built centre. DCC has confirmed that Guided Tours within the premises is acceptable (Declaration 0359/17, Appendix 3).

TBCT decided to divest its portfolio by selling properties to occupants. In 2017 the Button Factory was the first such disposal. Paddy Dunning financed the purchase with the aid of investors, who carried out due diligence. This revealed that the operation of the intermittent guided tours through the Crowbar, which currently trades under the buildings Theatre licence, would cause unnecessary disruption if operated strictly in accordance with such a licence, requiring constant closing and re-opening around events. This would cause difficulties with operations and staffing, which inefficiency would threaten the viability of the entire cultural centre. Therefore, in accordance with the provisions of the 500-year lease, NOTTUB Ltd (the new ownership entity) approached TBCT's solicitor to seek permission for an application for a 7-day licence to overcome this conundrum. A letter was sent by NOTTUBs solicitors on the 22nd November 2017 requiring consent and outlining the reasons for the request, which also identified that the request for the change of licence was just for a part of the building, inter alia including: -

- They committed to continuing to run the Venue themselves and have commenced booking a significant and diverse programme of shows, concerts and corporate events. In order to do this and be fully legally compliant the Venue requires a 7 day bar licence;
- In order to make the venue commercially viable they need to be able to open the venue bar for longer than the Theatre licencing law allows;
- The 30 minute limit allowed under the theatre licencing law is too restrictive for the Venue to be commercially viable;
- Promoters, client's event managers all require a longer lead in time to shows;
- The promoters are trying to facilitate more corporate bookings which require them to have longer opening times for the venue and if they are to facilitate these requests currently, it forces them to technically breach the rules;
- The existing bar which currently operates daily using the museum experience as the "performance" could be questioned as to its validity. While it is common practice around Town that theatre licences hours are commonly abused, technically this bar should close down after the last tour at 5:30pm and reopen 30 minutes before the evening show or 30 minutes before a late show if we were to fully follow the law. This is obviously impractical and our Client needs to rectify these current operational breaches and be compliant;

- The change in licence will have no negative effect to the surrounding neighbourhood. It will in fact discourage loitering before events as the venue can open earlier to accommodate the patrons;
- It will protect the recent investment, thus protecting the jobs and the uses within the property and the head lease whilst making the venue compliant with the law;
- For the avoidance of any doubt, it is not the intention to operate the premises as a Bar, it only allows the Theatre venue to have the necessary bar flexibility.

Please refer to Appendix 1 for the full correspondence.

500-Year Lease

The disposal from TBCT to NOTTUB Ltd was by 500-year lease. The lease described the 'Permitted User' as – “the use of the premises as a music centre including a live music venue, comedy, theatre, museum, gallery, multi-media complex, tourism related activities visitor attraction, and bar with a theatre licence, café, restaurant, recording studios and educational uses relating to music and to include general use for cultural activities” (see Appendix 1). This is consistent with the 1995 description of accommodation, so nothing new is indicated.

The lease was signed on 19th September 2017 and included a provision that for a period of 5 years the purchaser would comply with user restrictions and in the 10th year, the purchaser has the option to buy out the lessor's interest (i.e. to become freehold)(see Appendix 1).

It is with respect to the first provision that solicitors for NOTTUB Ltd wrote to solicitors for TBCT explaining the 'due diligence' concern about operational matters relating to the ground floor bar daily operation in relation to the museum experience, which would require intermittent and impractical closures and re-openings. It was in that context that the availability of 7-day publican's licences in similar venues at Vicar Street, Grand Social, Academy and Olympia was mentioned (and more recently Stella Cinema was added) as examples of cultural venues operating with publican's licenses.

For avoidance of doubt it was explained that it is not the intention to operate the entire premises as a Bar; rather to operate the existing bar with the flexibility of a 7 day bar licence.

It was the interaction between solicitors that led to the Section 5 Declaration. Solicitors on behalf of TBCT suggested planning permission was required. Solicitors for NOTTUB Ltd responded with Counsel's Opinion (Michael O'Donnell), with which solicitors for TBCT disagreed, suggesting material change of use in planning terms. Rather than dealing with the issue as explained, the solicitors referred to - "alterations to the property"; Building Regulations and Fire Safety Certification (matters relating to other codes) – requesting plans and specifications of alterations. Solicitors for NOTTUB Ltd responded indicating the issue was a technicality, and as there were no proposed fabric changes to the building, there were not any proposed plans or specifications.

TBCT applied to the planning authority for S5 Declaration setting out an appalling vista for change of use and intensification of use, giving rise to anticipated material effects including anti-social behaviour etc.

To be clear, NOTTUB Ltd disagree with what has been set out in the grounds for Declaration and in the response to the grounds of Referral by agents for TBCT. With a 7-day licence, Crowbar will operate as a pub in the street as it is and will physically remain exactly as it is. There will be no new use or intensification of use. There will be no appalling outcome with material effects for the neighbourhood. This is a continuation of activities established since 1995 when the planning permission was put into effect.

The existing use has a night time use and operates with permission as a late night venue. As explained, it is the daytime operation that needs addressing. Closing and reopening will cause congregation outside between daytime/early evening events. Once night time arrives, this premises operates throughout under theatre licensing as there are nightly performances.

Matters for Consideration

From the outset and in a submission to DCC, NOTTUB Ltd disputed the nature of the question posed to the planning authority. It is argued by NOTTUB Ltd that the implications of the possession of a 7 day Publican's licence and use of the premises thereafter should be considered in the context of the limited area of the building that currently operates, and will continue to operate, as a bar.

While the question put to the planning authority referred to "in whole or in part", the implications described in the submissions to DCC on behalf of TBCT and in this response to the Referral by Doyle Kent, refer to the implications on the basis that the entire premises would be used as a public house, with the capacity and capability to be a "superpub". In that context please refer to the details of the Response to Request for Declaration submitted by NOTTUB Ltd to DCC, as summarised below.

NOTTUB Ltd, in response to an invitation from DCC, submitted to the Planning Authority, in summary in the planning context, as follows: -

- We consider that you have been asked to rule on something unintended and hypothetical rather than rule on something that we, as effective owners of the property, propose to do in reality and in accordance with Licensing and Planning Law;
- It appears you have been asked two questions that should have two different answers – referring to the whole or part of the premises;
- In shorthand, you have been asked *"Whether the use of the Button Factory premises (in whole or part) having a "7 day Publican's License" instead of the existing "Publican's Licence (ordinary) Theatre" type of Licence is or is not development and if it is development, whether it is exempted development"*;
- The issue we take with this is that the Declaration question refers to the whole premises in the phrase in parenthesis;
- We would be the first to acknowledge that if the question to you was *"Whether the WHOLE of the Button Factory having a "7 day Publican's License" instead of the existing "Publican's Licence (ordinary) Theatre" type of Licence requires Planning Permission"*, we would agree that this would indeed be a material change of use and would therefore, require Planning Permission;

- However, that eventuality would be dealt with by planning application prior to change of use if that was ever envisaged or intended, which it is not;
- In this context, the use to be assessed is as it is operated, not how it could potentially be operated, bearing in mind that our Auditorium Bar occupies 60 sq. metres in our 1,800 sq. metre building, plus the fact that it has always been open 7 days and operates the same hours as a public house;
- The possibility of a change of ownership is irrelevant, as planning law applies to whoever uses the land and the requirement to do so in compliance with the law and there are provisions in planning law to deal with non-compliance with the law;
- We suggest that the question for consideration by you should be rephrased as follows: -

"Whether the use of the Auditorium Bar within the Button Factory, having a "7 day Publican's License" instead of the existing "Publican's Licence (ordinary) Theatre" type of Licence is or is not development and if it is development, whether it is exempted development".
- If the question was to be rephrased, the answer to the Declaration request would be different;
- In planning terms this would not be development (either by material change of use, whether by type or by intensification of use), so your answer should be - *"It is not development"*;
- Within the Licensing arena, what we are looking for is not uncommon;
- There are numerous Theatres around the Country that have opted to make the additional expenditure for the more expensive "7 day Publican's Licence" and operate their Bar with more flexible time constraints, e.g. The Olympia Theatre, Vicar Street and more recently, the refurbished Stella Cinema in Rathmines;
- We are advised that it is not uncommon and indeed it was a frequent practice of An Bord Pleanála to rephrase a question posed in a Section 5 Referral and to thereafter deal with the net point of what is at issue in the Declaration request;
- Therefore, we request that DCC should rephrase the question posed by TBCT to the wording we have offered in lieu, concerning only the Auditorium Bar "part of" the building.

The planning authority did not rephrase the question and made the declaration taking into account the high level of speculation included in the grounds for declaration and its own anticipation of potential for unauthorised development.

Parent Permission

In response to the Essential Point, as set out in the Doyle Kent submission, we have reviewed the parent permission, referring to more than just the Newspaper Notice, which is entirely relied upon by TBCT. The drawings submitted with the planning application show a bar and it is annotated as such on the drawing legend. Please refer to Appendix 4. The onus of proof has been discharged. In fact the application documentation describes a multi-purpose cultural venue, which is what exists.

While the permitted bar was originally shown on the 1st floor, it is exempted development and within the provisions of the planning permission to relocate this internally to the ground floor. Therefore, referring to the items included in the Doyle Kent report under 'Essential Point', we would respond as follows:-

- A. An additional use would not be introduced in the premises arising from the publicans 7 day license;
- B. The proposed license would not in itself be an intensification of use or a change of use which would be materially different from the permitted use, by reason of changes to trading patterns; likely impacts on neighbouring residential property; and increased potential for anti social behaviour; thus constituting development;
- C. There is no intention or reality for a change of use from a theatre or concert hall to a public house by reason of licensing of a small part of the premises that is set out as a bar within the premises. The building was designed to and accommodates multiple uses.

It is our submission that the essential point argued by TBCT in the detailed Declaration submission to the planning authority, that the effects and implications of the possession of a publicans licence relating to a small part of the premises, was unduly exaggerated and extrapolated into a material change of use of the entire premises, and the creation of a "superpub". For clarity, the entire premises operates under a Theatre licence throughout at present. A 7 day Publican's licence will be sought for the Crowbar, which represents c.5%

of the floor area of the premises, with 95% operated with a Theatre licence as it does at present.

Superpub

In addition, it is our experience with An Bord Pleanála, in relation to several planning appeals against decisions to refuse permission by DCC for licensed premises in Dublin City Centre on the basis that to grant permission would give rise to the creation of a 'superpub', that there is no definition of a 'superpub', anywhere, including within the Dublin City Development Plan. The extrapolation of effect and potential creation of a 'superpub', as described in the TBCT submission to DCC and again in this submission to ABP, was/is entirely exaggerated.

This practice had previous occasion to refute this line of thinking in relation to an appeal involving the Market Bar on Fade Street/ South Great Georges St (ABP Ref 242410 – Chelsea Drugstore premises) and more recently An Bord Pleanála has granted permission for proposed development as a restaurant / café bar on Montague Street / Montague Lane (Ref 29S.249126), in a context where potential superpub was given as a reason for refusal by the planning authority.

In assessing those appeals the layout of the floor plans meant that these establishments could not constitute superpubs. In the subject context, the theatre, music training school and museum/cultural venue is operated as set out and agreed with TBCT since at least 1995. Therefore, there is no potential for a superpub layout as suggested by TBCT, without planning permission for gutting the building.

In our submissions we have demonstrated that other theatres in Dublin City, which operate with the availability of a publican's licence, have not changed the nature of the cultural/theatre activity in a material way; particularly they have not become superpubs. Therefore, what should be considered is the practical operation and not the potential capable operation. As indicated above, no more than 5% would operate with the benefit of a 7 day Publican's licence, which is an incidental amount of space.

Relevance of Precedents

This leads to the relevance of the cases cited by Doyle Kent and Senior Counsel in their responses to the grounds of referral.

Carrick Hall Holdings – v – Dublin Corporation was dealt with in relation to an intensification of use - after the fact. It was not the possession of the license per se but how the license was operated that gave rise to a material change in the use and this was what was found in the Court.

In the context of the Tivoli, the issue at question in the Licensing Court was that the license was sought for the entirety of the premises, which extended over 8,000 square feet. This led the Judge to estimate that the capacity of 800 people could be accommodated and this, if operated to that extent, could constitute a material change of use in planning terms. The reference by the judge to the owner/operator in that case was related to the fact that the Licensing Court deals with the suitability of the applicant as an individual.

However, the Court was careful and correct to note that the planning code and licensing code are separate and distinct codes of law and that the breach of the planning code through the use of the license over a greater area could be restrained under the planning code and could be then used as a ground of objection to renewal of license.

Status of the Section 5 Request

Specifically in relation to the TBCT response, it is not disputed that an individual or a body (including a body going out of existence), may ask any question it wishes, or make any argument it wishes and submit it to an authority in respect of what, whether a real prospect or not, would be a development or not or would be exempted development or not, and the body or person may make any argument or extrapolation in doing so, within the provisions of Section 5 (1) of the Planning & Development Act.

As explained by the Senior Counsel, the Section as included in the legislation is without restriction. However, it should be expected from a responsible public body that the arguments should be kept within the realm of record, reality and practicality.

In the response to our grounds of Referral, both the agent and the Senior Counsel (as instructed by TBCT) have made no reference to the plans and other particulars submitted with the planning application, other than the headline description contained in the public notices. TBCT is being disingenuous in its interpretation of the parent permission and in its suggestion that it has not been made aware of the intentions of the operators of the Button Factory. The information on the planning file is preserved on microfiche and is a matter of a public record. Information shared with TBCT in 1995 is available from NOTTUB Ltd. Please refer to Appendix 4.

In the current situation, TBCT has been informed since 2017, through solicitor's letters, through direct joint meetings with the body and DCC at Deputy City Manager level (as the authority taking over the functions of the departing body) and in written submissions directly to the planning authority in relation to the Declaration, as to the limited extent and nature of the area for which licensing would be sought.

Reciprocally, NOTTUB Ltd was not notified prior to the submission of the Section 5 declaration request by TBCT. Therefore, NOTTUB Ltd was not aware of any issue of concern to TBCT prior to notification of the existence of the Section 5 request by DCC. When the opportunity was given, NOTTUB Ltd identified clearly, that it only ever had an intention to license a small area of the floor area of the premises. Regardless of when it happened, that information is now before An Bord Pleanala (as it was with DCC), along with a request that the issue be assessed, adjudicated and determined in relation to a limited (part of) floor area, as opposed to "in whole" and the implications that that might instigate.

It is undoubted that the extent of the area described to the planning authority by NOTTUB Ltd, prior to its determination of the declaration request, was a very limited area and the use was already permitted and ancillary to the operation of the subject premises.

It was explained that the possession of a seven day publican's license in this context would not give rise to any material change of use in terms of effects that could be experienced outside the premises to a material degree, with parameters similar to those considered by the Court by the Carrick Hall case.

Intensification/Material Change of Use

The fundamental proposition being put forward by TBCT is that – ‘once a 7 day license has been obtained it would be relatively easy to widen its scope’. This proposition is incorrect, particularly in relation to what was held in the Tivoli Judgement, which clearly put distance between the planning code and the licensing code, whereby the use of the license over a greater area could be restrained under the planning code and such restraint might then be used as a ground of objection to renewal of the license. Therefore, the mere possession of a license does not imply and/or give an unlimited right to transgress through a material change of, or intensification of, use.

The point made in this context in the Grounds of Referral is that such consideration must be based on the fact of the operation and the consequences thereof, which are adjudicated in the Courts through the enforcement procedures available under Part VIII of the planning legislation, not through Part 1 in an anticipatory manner through speculative questions posed in a Declaration request that are not based in any practical reality. That is the point that was made in McDowell – v – Roscommon County Council. The Court clearly indicated that alleged unauthorised development (or potential therefore) cannot influence the decision making processes provided for in Part 1 of the Planning and Development Act 2000. Part VIII deals with unauthorised development.

Fundamentally, it is not the possession of a publican’s license that gives rise to a material change of use; it is the abuse of such a license that might give rise to material change of use or intensification of use that may become an issue. This can only be determined in planning terms after an abuse occurs and, if it occurs, it is adjudicated through enforcement proceedings in the Courts. Section 160 is also available in this regard, in anticipation.

It is not disputed that in Carrick Hall, the Court had regard to increased numbers, traffic and noise and the impact on the amenity of the residents of the area, because this had already occurred prior to the Court addressing the issue. The Court was dealing with abuse and not responsible use.

The speculation by the Senior Counsel that “the legal effect of the grant of the new license would be to elevate the bar use from incidental and ancillary use to a principal use in its own right”, is not based on any proposition ever put forward by NOTTUB Ltd. It has always been the declared intention of NOTTUB Ltd that the bar use would be entirely ancillary and incidental, as it is, and would not displace the principal use as a cultural venue. This was what was stated in the legal opinion given by the Barrister for NOTTUB Ltd. To put it succinctly, serving alcohol to customers who drop in casually for a drink into a premises that is open to the public and which already has a bar service area on the ground floor, does not give rise to a material change or intensification of use of the existing premises as it is operated – as a cultural attraction open to the public and associated with the history and performance of modern music in Dublin.

The TBCT submission seeks to misconstrue the advice given by the NOTTUB Ltd Barrister in relation to Section 4 (1)(h) of Planning & Development Act (in relation to internal works). The Barrister’s advice has been confirmed in relation to internal works, by reference to the Judgement in relation to the Clarence Hotel, whereby it was held that it is within the provisions of this section to move elements within the premises from one part of the premises to another.

In respect of Ref. PL 29S.RL2879, the difference between The Button Factory and a guest house is that The Button Factory is, in principle, a public access establishment whereas An Bord Pleanala has held that a guest house is not. It is reiterated that it is the actuality of the use that is at issue and not the potential for use; i.e. the mere possession of a license under one code does not mean that it can be exercised excessively under another code.

It is agreed that The Button Factory could not reasonably be described as a public bar however, it is a permitted multi-purpose public premises. In a public premises context, the environmental impacts of the use of part of the premises to consume alcohol, which already occurs in the premises, would not represent an entirely different set of circumstances to those already pertaining within The Button Factory.

We again concur that should a material change of use or intensification of use arise, which has extraneous effect, enforcement action in the Courts is the correct remedy for

unauthorised development after the fact (or the use of Section 160). What is sought in this Declaration is to prevent the possession of a licence before the fact, or abuse of the licence, by extrapolation of an appalling vista should the operators come into possession of a publican's license. Note again, that the purpose of licensing hearings is to assess the premises and whether the applicant individually is a suitable person to hold one of these licences, which licence(s) is/are renewable on an annual basis.

We dispute the implications taken by TBCT from the interpretation of the Judges comment in the Tivoli case; that planning permission enures to the person. Under Section 39(1) of the Planning Act 2000, *except as may be otherwise provided by the permission, the grant of permission shall enure for the benefit of the land and all of the persons for the time being interested therein*. Whoever the person is, the permission sets down the parameters of the development, which must be applied by the operator in the future. Failure to do so is regulated under Part VIII of the Act.

The Judge in the Tivoli case clearly set a considerable distance between the two codes – planning and licensing. In the licensing code it is the individual who is assessed on a renewable annual basis and the Court clearly said that if there was an abuse in relation to the planning code this could be adjudicated within that code and the results could be used as a case to prevent the renewal of a license which is done on an annual basis.

The conclusion in the TBCT submission that *“there would be no impediment under the planning code to prevent the operation of The Button Factory principally as a public house in the future”*, is simply incorrect.

Furthermore in the initial letter dated the 2nd November 2017 it was specifically made clear to TBCT that NOTTUB Ltd was bound by the permitted uses in the lease. Please refer to Appendix 1 for full correspondence.

Legal Points and Planning Practice

Due to the briefing given to Senior Counsel the description of the venue operations at the Temple Bar Music Centre and Button Factory are incorrect. The current use of the "Crowbar" auditorium bar gives full access to patrons of the music centre, tourists and the

general public throughout the day and the facility operates the same times as a publicans 7 day licence allows. The legal submissions relate to a play in a Theatre rather than ongoing events that take place in a multi use cultural centre, which gives access to all and operates ticketed events throughout the day and into evening/nighttime.

The point made by the Senior Counsel, indicating a right that any person may refer any matter for Declaration and that the determination is squarely within the jurisdiction of the local authority under Section 5 of the Planning and Development Act 2000, is acknowledged. However, as with any right there is a corollary responsibility for a body with a statutory responsibility to act reasonably.

It is also noted that the Supreme Court case cited Cronin (Readymix) Ltd v ABP refers to Section 5 in the past tense “any person may apply to the relevant authority for a declaration as to what has occurred in a particular development or is or is not development; or whether it is exempt development.”

The judgement does not extend to cover what a person might do as a matter of unauthorised development, which is speculated in the TBCT submission. The judgement acknowledges that such a question might legitimately come before the Courts in, for example, enforcement proceedings. The latter is based on what has occurred.

The issue of concern is the use of part of a large public venue with a publican’s licence as opposed to a ‘theatre licence’. This has nothing in common with a judgement relating to attaching a sign to an external wall and has no logical connection with the subject case cited by the Senior Counsel.

The possession of a licence for a small part of a large venue would not elevate the existing bar use from incidental and ancillary to a principal use in its own right i.e. unconnected with the principal use. We note the Senior Counsel is not definitive and holds, “*from a legal viewpoint, the change in liquor licence type is capable of constituting a material change of use.*” This confirms that an actual material change in use must be determined on the facts of use after possession and operation of a licence.

In relation to RL2093, again this is a determination after the fact. It was based on the fact that the bar had become a separate entity, with separate name, entrance, management, hours of operation, signage and car parking, with late night use having resulted in the intensification of use. It demonstrates that abuse is capable of constituting a material change of use, but it does not always, or logically, follow that this will always be the case. Each case must be treated on its individual merits or demerits, based on facts.

The Button Factory is located in a city centre location where activity is encouraged and where car traffic is now almost totally banned from the centre of the Temple Bar precinct. Carrick Hall, when it existed, was located in a quiet suburban setting and extraneous effects were intensified significantly with footfall, noise, traffic and parking. As indicated above, the publican's licence will adjust daytime legal use of the premises and will not in any way affect the nighttime use of the premises, or increase footfall, noise, traffic and parking.

The Carrick Hall Supreme Court judgement concluded that "*intensification of use can be a material change of use. Whether it is or not depends on the degree of intensification.*" Again, there is no comparison between the environmental setting of Carrick Hall in Rathgar and the Button Factory in Temple Bar. The possession of a particular licence does not instigate a material change of use, it depends on the degree of intensification (after the fact) and the sensitivity of the receiving environment assessed on individual case basis.

In terms of classes of use, many restaurants in Dublin now hold 7-day licences and this is an increasing trend. Restaurants, although not separately defined in planning law, are not contained in any of the Classes of Use, as described in the Planning Regulations and nor are Public Houses. However, possession of a Publican's Licence does not make a restaurant a pub. They are regarded as materially different in planning terms and this demonstrates that holding a licence does not per se give rise to a material change of use in planning terms.

The subject building is permitted as a multi-functional entity that includes auditorium, training, museum, bar etc. and does not fit into any single class of use as defined in the Planning Regulations Part 4.

Vicar Street exists as a successful music and concert performing venue with a publican's licence and has displaced the Tivoli as a venue. There is no question but that it is operated responsibly. Permission has been granted for the demolition of the Tivoli, which was unviable after the advent of Vicar Street with its greater seating capacity and flexible licensing. What will be the viability of the Button Factory if it is not operated flexibly?

The inconclusive Conclusion of the Senior Counsel opinion is noted – from a legal perspective a “*change in liquor licence type is capable of constituting a material change in use.*” This is less than assertive. From a planning perspective, the material change or material intensification of use must be based on the facts of the operation of the planning permission; on the detectable material impacts in the vicinity and how they impact on the amenities in the area on a case by case basis, which is in line with the Supreme Court judgement in the Carrick Hall case.

Nub Issue

Therefore, we refer back to the issue as described in the heading of the Bord Pleanála letter dated 11th June 2018. The issue is “*whether in the case of the premises known as The Button Factory (formally the Temple Bar Music Centre), the use of the premises (in whole or in part) with a publicans “7 day license” in lieu of the use of the premises with a Publican's License (ordinary) Theatre is or is not development or is or is not exempted development.* The nub of the issue lies within the brackets – “in whole or in part”?

The Referrer's submission is that there is not nor ever was an intention to use the premises “in whole” under the provisions of a publicans 7 day license, or in any way to replace the principal use of the premises as a public house, as opposed to as a cultural venue.

TBCT have not put forward any grounds which refer to an ‘in part’ use of the premises with a publicans 7 day licence or consequences thereof. Therefore, ABP has no grounds relating to consequences of an ‘in part’ use from TBCT but does have an explanation

from NOTTUB Ltd. In that context the 'in part' issue should be dealt with separately and assessed on the information provided by NOTTUB Ltd.

Therefore, it is open to An Bord Pleanála to rephrase the question and to deal with the nub of the issue as identified by the operators of the premises, in their public declarations, that the intention is to provide flexibility to the existing operation by the possession of a different type of license under a separate code, in what is a public building serving as a cultural attraction to the visiting general public and which is not and never was only a theatre.

It is our submission that, if the Board rephrases the issue and address the limits of the intention, there is no potential for a materially different use, or a material intensification of use.

We suggest that the question for consideration by you should be rephrased as follows: -

"Whether the use of the Auditorium Bar within the Button Factory, having a "7 day Publican's License" instead of the existing "Publican's Licence (ordinary) Theatre" type of Licence is or is not development and if it is development, whether it is exempted development".

Under the provisions of Section 5 any number of questions and propositions can be proposed and each separate declaration stands only within the question posed and a subsequent declaration can exist in its own right (whether as a declaration or a referral, as happened in a Retail Park in Waterford – ref. Treacy v ABP). If this question is not rephrased, NOTTUB Ltd could ask another question – one based on actual intentions.

Conclusion and Request

For the subject Declaration to have any value it must relate to some reality. It is requested that the question be rephrased to deal with reality and that the Board should determine in respect of the particular history and circumstances that the possession of a 7-Day Publican's Licence in respect of the existing Auditorium Bar area within the Button Factory –

- Is not development;

- Does not introduce a new category of use that was not envisaged in the original permission;
- Does not represent a material change of use or a material intensification of use.

It is requested that the question be rephrased as requested and that the possession of a publican's licence at this multi-functional cultural venue be determined to be not development.

If ABP considers it inappropriate to rephrase the question, then it is requested that the Board deal with the matter, 'in whole or in part', as two separate questions.

NOTTUB Ltd request a determination in relation to the 'in part' question as a discrete issue.

They have no concern with the 'in whole' issue as they are on record as having no intention of operating, or seeking to operate by licence, the whole of the premises as a bar and a determination in that regard would have no effect on operations.

It appears TBCT wishes to leave an unreasonable legacy for this property, which may affect its viability as a public cultural venue in the future.

Yours sincerely,

Simon Clear

Appendix 1 – Correspondence between Solicitors of TBCT and NOTTUB Ltd and Specifications agreed with TBCT.

Appendix 2 – Extracts from Music Centre Building Services Fit-Out Document

Appendix 3 – Declaration Ref. 0359/17

Appendix 4 – Microfiche file of Planning Documents

MARTIN E. MARRÉN

S O L I C I T O R S

10 Northumberland Road, Dublin 4. D.X. 58 DUBLIN

COMMISSIONERS FOR OATHS & NOTARY PUBLIC

Our Ref: LAN/r/DUN001/0072 Your Ref: TEM001/113/TOR/CL Date: 2nd November 2017

Tony O'Rourke, Esq.,
Patrick F. O'Reilly & Co.,
Solicitors,
9-10 South Great Georges Street,
Dublin 2.
DX 134

Re: Your Client Temple Bar Cultural Trust Limited
Our Client Paddy Dunning / Nottub Limited
Premises The Button Factory Curved Street North Temple Bar Dublin

Dear Tony,

I refer to previous correspondence herein.

Our respective clients recently had a meeting whereby my client gave your client an update regarding the plans for the Temple Bar Music Centre going forward. This included the installation of automatic smoke vents in the two stair wells, upgrading of the fire alarm system, emergency lighting, plant equipment and upgrading over 100 doors. This upgrade will improve the rehearsal, recording, training and venue area within the building. They are also adding operational strength to the Team. More importantly, they have decided not to sub-let to an external Operator as previously discussed due to the fact that all the external Operators wanted to convert the Venue and wind down the existing Training, the School of Music and Rock n Roll Museum tour that are currently used in conjunction with the Venue.

Therefore my client has committed to continuing to run the Venue themselves and have commenced booking a significant and diverse programme of shows, concerts and corporate events. In order to do this and be fully legally compliant the Venue requires a 7 day bar licence.

In order to make the venue commercially viable they need to be able to open the venue bar for longer than the Theatre licencing law allows. The 30 minute limit allowed under the theatre licencing law is too restrictive for the Venue to be commercially viable. Promoters, client's event managers all require a longer lead in time to shows. In addition they are trying to facilitate more corporate bookings which require them to have longer opening times for the venue and if they are to facilitate these requests currently, it forces them to technically breach the rules.

The existing bar which currently operates daily using the museum experience as the "performance" could be questioned as to its validity. While it is common practice around Town that theatre licences hours are commonly abused, technically this bar should close

• Paul V. Marren • Linda Nicholson •
• Áine Coghill •

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V.A.T. No: IE 9667036P

Established 1958 by Martin E Marren

down after the last tour at 5:30pm and reopen 30 minutes before the evening show or 30 minutes before a late show if we were to fully follow the law. This is obviously impractical and our Client needs to rectify these current operational breaches and be compliant.

This issue has been raised by my client's Lenders. My Clients are in discussions with them regarding access to further funds for the exploration and implementation of a fit-out for the building and curved street. We of course, will liaise fully with TBCT during that process.

My client is eager to remain compliant as they have invested heavily in the purchase of the building and their recent investment in the venue must now be protected. They are very much aware that they must be compliant while endeavouring to facilitate the needs of their business, the general public, event Managers, Customers and Promoters.

My Client would like to reiterate their commitment to continue on as a music Venue and adhering to the user clause in the Head lease. We understand their competitors all have the benefit and flexibility of a full bar licence i.e Vicar Street, Grand Social, The Academy and The Olympia Theatre.

This change in licence will have no negative effect to the surrounding neighbourhood. It will in fact discourage loitering before events as the venue can open earlier to accommodate the patrons. It will protect the recent investment, thus protecting the jobs and the uses within the property and the head lease whilst making the venue compliant with the law.

For the avoidance of any doubt, it is not the intention to operate the premises as a Bar, it only allows the Theatre venue to have the necessary bar flexibility. My clients are more than aware that for there to be any stand-alone Bar in the premises it would require Planning Permission, etc. This will not and cannot become a bar, it will simply be a Theatre venue with the flexibility of a full bar Licence.

Based on the above, our Client is enquiring if you could check and confirm that the Temple Bar Cultural Trust would have no objection to the application for a 7 day bar licence for the Venue.

I look forward to hearing from you at your earliest convenience.

Yours sincerely,



Linda Nicholson
Martin E. Marren Solicitors
LindaNicholson@memarren.ie
Tracking Reference 247,349



PATRICK F O'REILLY & CO.
SOLICITORS

Our Ref: TEM0001-1138/TOR/CL
Your Ref: LAN/DUN001/0072

14th November 2017

Linda Nicholson
Martin E. Marren
Solicitors
10 Northumberland Road
Ballsbridge
Dublin 4
Email: lindanicholson@memarren.ie

Re: Our Client: Temple Bar Cultural Trust Limited
Your Client: Paddy Dunning (Nottub Limited)
Property: The Button Factory, Curved Street North, Temple Bar, Dublin 2

Dear Linda,

I refer to your letter of the 2nd of November which I passed on to my client.

Temple Bar Cultural Trust feel that, notwithstanding the provisions of the Lease under which your client holds the Property, a change of use from a Theatre Licence to a Seven Day Ordinary Publican's Licence may require planning permission. Such change of use might also require alterations to either the structure or layout of the Property to comply with the Intoxicating Liquor Acts.

Without prejudice to its position as your client's landlord under the Lease, my client would therefore require to be furnished with copies of any proposed planning application before it is lodged together with copy plans and specifications and at that point my client could give the matter its full consideration.

I await hearing from you.

Yours faithfully,

PATRICK F. O'REILLY & CO.
Email: anthony.orourke@pforeilly.ie
543791

9/10 South Georges Street,
Dublin 2, Ireland
DX: 253010 Dame Street

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MARTIN E. MARREN

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10 Northumberland Road, Dublin 4. D.X. 58 DUBLIN

COMMISSIONERS FOR OATHS & NOTARY PUBLIC

LAN/r/DUN001/0072

TEM001/113/TOR/CL

12th January 2018

Our Ref:

Your Ref:

Date:

Patrick F. O'Reilly & Co.,
Solicitors,
9-10 South Great Georges Street,
Dublin 2.
DX 253010 DAME STREET

Re: Your Client Temple Bar Cultural Trust Limited
Our Client Paddy Dunning / NOTTUB LIMITED
Premises The Button Factory Curved Street North Temple Bar Dublin 2

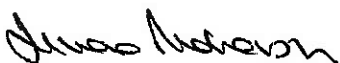
Dear Sirs,

We refer to previous correspondence in relation to the above. We have taken the advice of Planning Counsel, Michael O'Donnell BL, who has pronounced himself satisfied that there is no requirement to apply for planning permission for change of use. We enclose copy of his Opinion herewith.

In the circumstances we look forward to the Consent of your client to substitute the expression "bar with a theatre license" to "bar with publicans license" in the Lease.

We look forward to hearing from you.

Yours faithfully,



Martin E. Marren Solicitors
lindanicholson@memarren.ie

Enclosures

Tracking Reference 252,076

• Paul V. Marren • Linda Nicholson •

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V.A.T. No: IE 9657036P

Established 1958 by Martin E Marren

20th December 2017

Martin E. Marren & Co.,
Solicitors
10 Northumberland Road,
Ballsbridge,
Dublin 4.
DX: 58

Opinion

Re: The Button Factory, Curved Street, Temple Bar, Dublin 2

Querist holds the property known as The Button Factory under a lease from Temple Bar Cultural Trust Limited. The property currently is used as a theatre and is entitled to sell alcohol under a theatre licence, but it now wishes to apply for a seven-day ordinary publican's licence and I am asked to advise as to whether such a licence would give rise to any planning issues, for the purposes of the Planning and Development Act 2000 and the Planning Development Regulations 2001.

I have been furnished with a letter dated 14 December 2007 from Patrick F. O'Reilly & Company Solicitors for Temple Bar Cultural Trust Limited, who referred to the lease under which Querist holds the property and which refers to Temple Bar Cultural Trust Limited having concerns that the application for a seven day ordinary publican's licence would amount to a change of use for the purposes of the Planning and Development Act 2000 and may require planning permission. The letter goes on to refer to possible alterations that might be required to comply with the Intoxicating Liquor Acts and the suggestion is that this also may require planning permission, although this is not expressly stated.

It is appropriate that I deal with each of these issues in turn, having regard to section 2 of the Planning and Development Act 2000, which defines use and works as being in two separate categories and that works will not amount to a material change of use, having regard to the definition of use in section 2.

The first issue raised in the letter of 14 November 2017 refers to a change of use of the theatre by virtue of obtaining a seven-day ordinary publican's licence, but this is misconceived on two grounds.

A change of use is not development for the purposes of the Planning and Development Acts. The change of use must be material for planning purposes and development is defined in section 3 of the Planning and Development Act in the context of use as requiring that there be "a material change of use". Material for the purposes of a change of use, must be material in planning terms. It must be demonstrated in order for there to be a material change of use, that the new use is materially different, either being a different category or class of use, or having some very significant impact in planning terms on the area relevant to the previous use.

I am instructed that there will be no change of use, much less a material change of use, in the particular circumstances of what is proposed. The premises will continue to

be used as a theatre and therefore falls within the same category of use as it has always been used for. In those circumstances therefore, the assertion that there will be a change of use is misconceived and what is being sought here is not a change of use or an activity that will change the use of the premises which will continue to remain as a theatre, but merely permission under the Licensing Acts to authorise the activity from that perspective. It is difficult to see in those circumstances how an assertion could be made that there is a change of use, and while the Solicitors, Patrick F. O'Reilly & Company, quite properly do not make such an assertion and refer to the Temple Bar Cultural Trust having a concern, any such concern can be assuaged simpliciter by a letter confirming that the existing use is to continue.

The second issue raised is one relating to the second limb of the definition of development, namely works, in a concern that works may be required, which of themselves would require planning permission. Before I deal with this, as I must, my clear instructions are that no such works are proposed. The definition of works, as defined in section 2 and 3 of the Planning and Development Act, gives a very broad definition of works and the definition includes any act of construction, excavation, alteration, demolition, extension, repair or renewal. There is no doubt that the definition of works is all embracing and it would be difficult to carry out any alteration of a premises without such alterations falling within the definition of works.

However this is resolved by the exemptions contained in section 4 of the Planning and Development Act and in particular, section 4(1)(h) of the Planning and Development Act 2000. Section 4(1)(h) provides that works which are internal to the property are afforded a complete exemption, as the provisions of section 4 and in particular section 4(1)(h) are without limitation and qualification. The specific exemptions contained in section 4 are very different than the exemptions contained in the Planning and Development Regulations 2001, which are limited not just within the particular exemptions themselves, but also by article 9 of the Planning and Development Regulations 2001, but none of this complexity applies to the exemption in section 4(1)(h). In simple terms, if works are being carried out within a premises, then unless the premises are a protected structure, these works will prima facie be exempted development.

Conclusion

Having considered the letter from Patrick F. O'Reilly & Company, Solicitors on behalf of the Temple Bar Trust, in my opinion, there are no planning implications arising from the application for a seven-day ordinary publican's licence, as this is a matter to be considered under a separate statutory code, namely the licensing law. There is no suggestion that the existing premises or any part of it is unauthorised. In light of the nature of the use that is proposed, which will continue to be a theatre but with the facility to serve alcohol without such service being connected to a "performance", it is my considered opinion that this cannot amount to a change of use, much less a material change of use, for the purposes of the Planning and Development Act 2000.

Nothing further occurs.

Michael O'Donnell BL



PATRICK F O'REILLY & CO.
SOLICITORS

Our Ref: TEM0001-1138/TOR/CL
Your Ref: LAN/RL/DUN001/0072

16th January 2018

Linda Nicholson
Martin E. Marren
10 Northumberland Road
Ballsbridge
Dublin 4
Email: lindanicholson@memarren.ie

Re: Your Client: Nottub Limited
Our Client: Temple Bar Cultural Trust DAC
Property: Button Factory, Curved Street, Temple Bar, Dublin 2

Dear Sirs,

Thank you for your letter of the 12th of January and Counsel's Opinion is noted. We would not however entirely agree with the conclusions drawn by Counsel, particularly in relation with the change of use.

We would be of the view that the operation of a public house which has the benefit of an Ordinary Publican's Seven Day Licence would be materially different from the operation of a theatre, which has the benefit of a Theatre Licence. It is arguable therefore that this would be material change of use in planning terms and would likely result in an intensification of the use involving sales of and consumption of intoxicating liquor from that previously carried on under the Theatre Licence.

With regard to any proposed alteration to the Property, we are unable to advise our clients on this without the production of plans or specifications. Notwithstanding the issue of planning permission, presumably the building regulations would apply and depending on the alterations, a new fire safety certificate might well be required. It will be necessary therefore that if alterations to the existing Property are proposed that these plans be submitted to our client for consideration in the first instance.

Regardless of whether or not planning permission is required for the proposed change of use, our client's consent would be required for both that and any proposed alterations to the Property. Our client will need to have regard to its general policy and overall responsibility for the Temple Bar area.

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Fax: +353 1 679 2812
Email: info@pforeilly.ie

Our client was established by Statute as a development company for the Temple Bar area and in addition to that, its sole shareholder is the local authority, Dublin City Council.

We await hearing from you.

Yours faithfully,

PATRICK F. O'REILLY & CO.
Email: anthony.orourke@pforeilly.ie

569197

MARTIN E. MARRÉN

S O L I C I T O R S

10 Northumberland Road, Dublin 4. D.X. 58 DUBLIN

COMMISSIONERS FOR OATHS & NOTARY PUBLIC

LAN/r/DUN001/0072

TEM001/113/TOR/CL

22nd January 2018

Our Ref:

Your Ref:

Date:

Patrick F. O'Reilly & Co.,
Solicitors,
9-10 South Great Georges Street,
Dublin 2.
DX 253010 DAME STREET

Re: Your Client Temple Bar Cultural Trust DAC
Our Client Paddy Dunning / NOTTUB LIMITED
Premises The Button Factory Curved Street North Temple Bar Dublin 2

Dear Sirs,

We are in receipt of your letter dated 16th day of January 2018.

We are most concerned at the contents of this letter.

Our client, in good faith, purchased a 500 year lease at significant cost from your clients with a view to making a commercial success of the Button Factory as a Theatre/venue.

In this regard, our client wishes to continue the use of the premises as a Theatre/venue with the benefit of a full seven day publican's on-licence.

Our client does not and will not trade from the premises as a public house.

With respect, our client has requested that we point out to you that there are a number of venues in the city including the Olympia Theatre on Dame Street in Temple Bar which operate as a Theatre with a seven day publican's on-licence.

In our last letter, we explained in the clearest possible terms the following:-

- Our client intends to make no internal alterations whatever. In these circumstances no question of sending you a map regarding proposed alterations arises, nor does any question arise as to applying for a fire safety certificate.
- Our client emphasised his commitment to continuing the use of the premises in the future as a Theatre/venue and is happy to assure you and your client that he has no intention whatever of using the premises as a public house or as anything other than a Theatre/venue.

• Paul V. Marren • Linda Nicholson •
• Áine Coghill •

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V.A.T. No: IE 9657036P

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- Our client has taken our advice and has gone to the expense of obtaining an Opinion from Ireland's leading Planning Counsel, Mr Michael O'Donnell, who expressed the view that no planning application of any nature is required.

Our client has requested that you revert to us with a definite response to our client's request once you had an opportunity to take your client's instructions in this matter.

Yours faithfully,


Martin E. Marren Solicitors
lindanicholson@memarren.ie

Tracking Reference 252,587

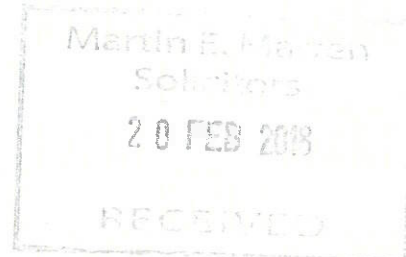


PATRICK F O'REILLY & CO.
SOLICITORS

Our Ref: TEM0001-1138/TOR/CL
Your Ref: LAN/DUN001/0072

19th February 2018

Linda Nicholson
Martin E. Marren
10 Northumberland Road
Ballsbridge
Dublin 4
DX 58



Re: Your Client: Nottub Limited
Our Client: Temple Bar Cultural Trust DAC
Property: Button Factory, Curved Street, Temple Bar, Dublin 2

Dear Sirs,

Further to previous correspondence, we have had a preliminary discussion with Senior Counsel on behalf in this matter, in relation principally to whether or not planning permission would be required.

Counsel has indicated that he is unable to give a definitive view in view of the lack of detail as to what is proposed. You have indicated that your client will continue the use of the premises as a theatre and venue and that being the case it is difficult to see why an Ordinary Seven Day Publican's Licence is required. While your client's intentions are not doubted, the following excerpt from the judgement in *Re Tivoli Cinema Ltd [1992] 1 412* should be noted:

"Mr Byrne is undoubtedly a committed theatre enthusiast and not interested in running a mere public house but Mr Byrne may not always be the person in charge of these premises."

We have requested that you indicate the extent proposed for the Ordinary Seven Days Publican's Licence. It would seem that if it is to be restricted to the bar and venue, that portion should be structurally separated from the remainder of the Premises. If however it is intended to apply for a Publican's Licence to attach to the entire of the Premises, that is another matter altogether.

In line with the advice of Senior Counsel, our client will now proceed with the Section 5 application pursuant to the Planning and Development Act 2000. Among the questions to be put to the Authority

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is whether or not the change of licence to an Ordinary Seven Day Publican's Licence would constitute and intensification of use requiring Planning Permission. We will forward you a copy of the Submission in due course.

As indicated previously also in correspondence questions of planning is not the only matter to be considered by our client. Its remit is currently as a development company for the Temple Bar area as a cultural quarter. It must therefore take into account the fact as to whether or not another Publican's Licence in this area conforms to its objectives.

We await hearing from you.

Yours faithfully,



PATRICK F. O'REILLY & CO.

Email: anthony.orourke@pforeilly.ie

581875

"Insured Risks" means loss damage or destruction whether total or partial caused by (subject always to such exclusions, excesses and limitations as are normally available and as may be imposed by the Lessor's insurers for the time being) fire, storm, tempest, flood, earthquake, lightning, explosion, impact, aircraft and other aerial devices and articles dropped therefrom, riot, civil commotion, terrorism (if available at a reasonable cost) and malicious damage, bursting or overflowing of water tanks, apparatus or pipes, public liability, property owners liability and such other risks as the Lessor may in its absolute discretion from time to time determine;

"Lessee" means the party or parties named as "Lessee" and includes the successors in title of the Lessee and permitted assigns of the Lessee and, in the case of an individual or individuals, his or their personal representatives;

"Lessor" means the party or parties named as "Lessor" and includes the person from time to time being entitled to the reversion immediately expectant on the determination of the Term;

"Lease" means this Lease and any document which is made supplemental hereto, or which is entered into pursuant to or in accordance with the terms hereof;

"Permitted user" means use of the Premises as a music centre including a live music venue, comedy, theatre, museum, gallery, multimedia complex, tourism related activities visitor attraction, and bar with a theatre licence café, restaurant, recording studios and educational uses related to music and to include general uses for cultural activities

"Plan" means the plan or plans annexed hereto;

"Planning Acts" means the Local Government (Planning and Development) Acts to 1962 to 1999 and the Planning and Development Act 2000 to 2015;

"Premises" means the property hereby demised as described in the First Schedule hereto;

"Prescribed Rate" means EURIBOR plus 5% and so that EURIBOR means the rate per cent per annum from time to time published by the European Banking Federation as being the rate at which Euro Inter Bank Term Deposits of amounts in excess of €100,000.00 (One hundred thousand Euro) for a three month period are being offered within the Euro Zone by one prime bank to another such rate to be confirmed by Allied Irish Banks plc as of each of the Gale Days immediately preceding each such occasion when the Prescribed Rate falls to be determined and if during any period when the same falls to be calculated hereunder the rate should be varied from time to time then the rate so varied shall apply or in the event that such rate is

THIS AGREEMENT made ^{19th} day of ~~September~~ 2017 BETWEEN **TEMPLE BAR CULTURAL TRUST DAC** of Block One, Floor Three, Civic Offices, Wood Quay, Dublin 8 (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the One Part and **NOTTUB IMITED** having its registered office at 8 Cecilia Street, Temple Bar, Dublin 2 (hereinafter called "the Purchaser" which expression shall where the contexts so admits or requires include it's successors and assigns) of the Other Part.

WHEREAS:

- A. The Vendor and the Purchaser have entered into an Agreement of even date herewith for the Purchaser of the premises known as the Button Factory situate at curved Street Temple Bar, Dublin 2 (hereinafter called "the Premises");
- B. The sale to the Purchaser of the Premises is by way of Lease (hereinafter called "the Lease") and the Vendor has agreed that the terms and conditions set out hereunder are supplemental to and in addition to the terms set out in the said Lease of the Premises.

NOW IT IS AGREED as follows:

- 1. For a period of **five years** from the Date of Commencement of the Lease the Purchase agrees **to comply with the user restrictions** contained in the Lease **PROVIDED** however that nothing herein will prevent the Purchaser from entering into a contract for the operation of the **Venue and Bar portion** of the Premises by a third party by way of Contract for services with no interest passing in the premises or part thereof;
- 2. In the event of the Vendor consenting to a disposal of the Premises within the aforesaid period of five years the Purchaser will thereupon pay to the Vendor 50% of the amount by which the proceeds of such sale exceed the sum of €3,000,000 (Three Million Euro) less 2.46% of such excess in respect of disposal costs. The provisions of this paragraph will also apply in the event of the Purchaser disposing of the shares in the Purchaser or

a majority of such shares on the basis that the disposal of such shares is the equivalent of the disposal of the Premises;

3. It is agreed by the parties hereto that the restrictions herein contained are reasonable on the grounds that the disposal to the Purchaser of the Premises is on favourable terms and the Vendor is obliged to ensure that its objectives for the Temple Bar Area are continued for a minimum period of five years;
4. In the **tenth year** of the term of the Lease, the Purchaser shall have the option of purchasing the Lessor's interest in the Lease from the Vendor for the sum of €10,000 (Ten Thousand Euro) plus VAT **PROVIDED HOWEVER** the Purchaser gives to the Vendor three months' notice in writing of their intention to exercise the Option;
5. The Purchaser shall not be entitled to assign the benefit of this Agreement and the terms and conditions of this Agreement are personal to the Purchaser and the terms of this Agreement shall terminate and cease to apply in the event of the Purchaser resolving to liquidate, have a liquidator appointed or have a receiver or examiner appointed.

PRESENT when the **Common Seal**
of **VENDOR**
was affixed hereto:

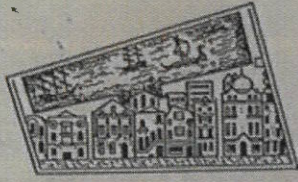
Brendan Henry

John Duba

PRESENT when the **Common Seal**
of **THE PURCHASER**
was affixed hereto:

[Signature]

B. Kearney



TEMPLE BAR PROPERTIES

February 8, 1995

MUSIC CENTRE

BUILDING

SERVICES

FITOUT

TEMPLE BAR PROPERTIES LIMITED
18 EUSTACE STREET, TEMPLE BAR, DUBLIN 2. TELEPHONE 6772255. FACSIMILE 6772525
Directors: Pat Kenny (Chairman), Laura Maguire (Managing Director), Owen Vickers (Property Director), Patricia Quinn (Cultural Director),
Eileen Bowler, Derek Brady, Peter Cahill, John Cullen, Sean Haughey, Michael McSherry, Joe Mureau, Mary Walsh, Eivonne Cullenan (Secretary)
Registered in Dublin. Company Registration No. 165710
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2.0 GROUND FLOOR

Ground floor consists of venue, foyer with access to venue, bar and box office as well as the main entrance to STC, MusicBase and Rehearsal rooms from stairs no.1 at the Eustace Street end of the building.

VENUE FINISHES & SERVICES

Walls and ceiling are of plasterboard and painted. A metal skirting will provide some protection against damage. Auditorium has a timber platform stage measuring 4.8m deep x 9.2m wide currently made as tongued and grooved boarding. The issue of a fixed vs a mobile stage is pending discussion between design team and endusers.

ACCESS & SECURITY

The main access to the auditorium is from the foyer. There is a rere stage access for performers directly off Temple Lane which leads directly onto the stage with stairs down to the backstage area. Access to back stage door is controlled by a swipe card for permanent staff. Access to the toilets when using the auditorium is out through the door in the foyer and down stairs no. 3 in the basement level. There are three exits directly from the auditorium onto Temple Lane which can be used only when the seating is retracted. The venue is accessible to the disabled at ground floor level. Special arrangements would be required with MusicBase to provide for disabled access to the balcony.

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BOX OFFICE

The box office has a window with a fitted microphone on the Curved Street and a desk onto the foyer space. Box office desk, shelving and storage fitout in internal room are pending specification by enduser. Box office to have a computerised ticket sales system pending further review of fitout budget and enduser requirements. Closed Circuit TV system is located in box office (including 2 no. cameras, monitor, switcher and VCR unit) pending enduser agreement of proposed security system. Voice intercom access to box office, motion detectors and panic buttons are also proposed for this area.

BAR ACCESS

The bar is accessed directly from the foyer, from a door in from Temple Lane, and from stair no.2 which descends from the venue balcony. There is also direct access from the ground floor of the auditorium only when the seating is retracted.

BAR FINISH & SERVICES

Bar has polished concrete floors, walls plastered and painted with a suspended plastered ceiling. The bar is fitted out with a bar counter and shelving and a walk-in bar store which has blockwork walls, concrete floor and plastered ceiling. There are two built-in, recessed seating areas. There is a disabled toilet with tiling to walls and polished concrete floor directly off the bar and foyer. Lights and sockets, fire alarm and services are provided.

PREAMBLE

It is understood from an initial briefing from the architect to provide both rehearsal and performance facilities standards within the Dublin area.

The building occurs over five levels, and Equations lists the following areas and elements of the building:-

1. Basement

Rehearsal Rooms
Corridors, Reception Space & Stairs
Backstage Space
Toilets

2. Ground Floor

All Circulation Spaces
The Bar
The Lift Lobby
The Box Office
Exterior Canopies

VENUE

Balcony to auditorium has polished concrete floor and is served by stairs no. 4 directly from foyer, stairs no. 2 running from bar and with direct access from Temple Lane. Retractable seating to balcony as noted. Security interface between first floor endusers pending further discussion and incorporation into security proposal subject to available budget.

Sound box designed into balcony provides front of house microphone position and is cabled to receive audio from the stage and from Central Apparatus Room (CAR) on the third floor and has a feed for allow for future usage. The audio feed from the CAR could be foldback for filmscore recording in the venue or for incoming from other events to allow for the multi-location type of event.

SERVICE GANTRY

Service gantry runs all around building between Temple Lane and auditorium. Access is via corridor at stairs no. 2. This gantry also runs around behind stage to exit at staircase no. 3 leading down to foyer and to toilets. Backstage storage shelving is located along backstage wall pending enduser specification. Auditorium has two tv balconies which are finished in metal with perforated floors. One is accessed from service gantry, the second directly from raised courtyard. Each of these



23-Nov-2017

The Planning Partnership
29, Oliver Plunkett Street
Mullingar
Co. Westmeath
N91 XWV5

RECEIVED 24 NOV 2017

Application Number	0359/17
Application Type	Section 5
Registration Date	01-Nov-2017
Decision Date	21-Nov-2017
Decision Order No.	P4062
Location	Temple Bar Music Centre, Curved Street, Dublin 2
Proposal	EXPP: The purpose of this request for a declaration is to confirm our understanding that no act of development would occur in respect of the following: - Operation of a guided tour of a venue does not result in a material change of use of a venue. In effect, we are principally seeking to confirm that the 'ancillary' and 'occasional and intermittent' use of the premises for the purposes of the operation of guided tour does not result in a material change of use of the venue.
Applicant	Paddy Dunning

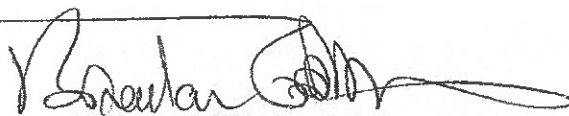
NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Acts 2000(As Amended), Dublin City Council has by order dated 21-Nov-2017 decided to issue a Declaration that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000(As Amended).

Reasons & Considerations:

It is recommended that the referrer be advised that having regard to the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001, the Planning Authority has considered that based on the submitted plans, the proposal would be exempted development. Issue declaration confirming that the submitted proposal is acceptable under exempted development legislation.

Signed on behalf of Dublin City Council

A handwritten signature in black ink, appearing to read 'Brendan Johnston', written over a horizontal line.

Brendan Johnston
for Assistant Chief Executive

Note:

Any person issued with a declaration on development and exempted development, may, on payment of the prescribed fee, refer a declaration for review by an Bord Pleanála within four weeks of the date of the issuing of the declaration.

