

**SIMON CLEAR & ASSOCIATES
PLANNING AND DEVELOPMENT
CONSULTANTS**

The Secretary
An Bord Pleanála
64 Marlborough St
Dublin 1

AN BORD PLEANÁLA	
LDG-	<u>008796-18</u>
ABP-	_____
08 OCT 2018	
Fee: €	<u>220</u> Type: <u>cheque</u>
Time:	<u>15:45</u> By: <u>hand</u>

8th October 2018

**Re: Declaration by Dublin City Council in respect of the Button Factory,
Curved Street, Temple Bar, Dublin 2**

Dear Secretary,

On behalf of NOTTUB Ltd of No.8 Cecilia Street, Temple Bar, Dublin 2 I wish to refer the decision of Dublin City Council to declare a 'proposed development' at the Button Factory premises to An Bord Pleanála for review and determination. The Planning Authority's reference number is 0320/18 and the decision was made on 11th September 2018.

My clients, as applicants, were served with the Declaration and any person issued with a declaration may, on payment of the described fee, refer the declaration for review by ABP within 4 weeks of the notification of declaration.

I enclose the Planning Authority notification of Declaration and the requisite fee in the sum of €220 (cheque).



Simon Clear B.A. Dip. T.P. MIPI

Darran Quail B.A. MRUP MSc BLUP MIPI



Introduction

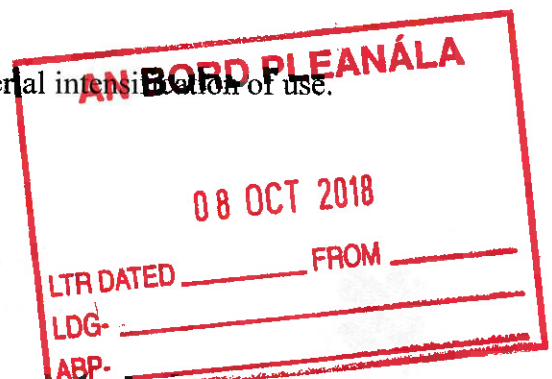
NOTTUB Limited holds a 500 year leasehold on the property, which it received from Dublin City Council extending from September 2017. The Button Factory is a live music venue, comedy, theatre, museum, gallery, multi-media complex, tourism related activities visitor attraction, with bar, café, restaurant, recording studios and educational uses relating to music and to include general use for cultural activities, which was developed by Paddy Dunning with planning permission under the auspices for in co-operation with the Temple Bar Trust.

A declaration on development and exempted development was sought by our client's to determine:-

Whether the use of the existing 60m² Auditorium Bar within the Button Factory, under the provisions of a "7 Day Publican's Licence" instead of the existing "Publican's Licence (Ordinary) Theatre" type of Licence that will continue to apply to the rest of the 1,200m² building is or is not development and if it is development, whether it is exempted development.

The declaration was sought by our clients as it became apparent that a 7 day Publican's Licence would be the appropriate licence for the Crowbar (60m²) part of the building. In the Section 5 application it was submitted that the change of licence for this small part of the building will not have an effect on the operations of the premises as;

- The Auditorium Bar has been operating since 1995 and already opens 7 days of the week and for the same hours of the "7 day Publican's licence" as it is;
- The use is ancillary to the permitted use of the building and is not a separate use;
- The licensed use would be just maintaining and regularising its existing daytime use, not intensifying it;
- There would be no change to the physical bar;
- Activities will remain the same;
- Capacities will stay the same;
- There would be no material change in use or material intensification of use.



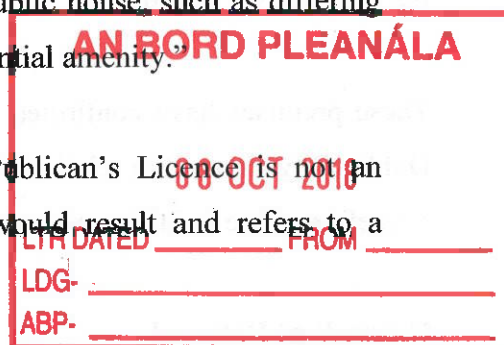
Planning Officer's Report

The Planning Officer acknowledges that there are no structural changes associated with the proposal and that the proposal does not constitute 'development' by reason of works arising.

The Planning Officer states that "the proposed licence change makes the public house use separate to, or independent of, the theatre use" and "forms a public bar in the premises." In relation to this the Planning Officer concludes that the addition of the new use to the premises constitutes a change of use which is deemed as a material change as it alters the functioning of the premises in a substantive way.

The Planning Officer believes that there is a "range of potential substantive planning impacts arising from the use of part of the premises as a public house, such as differing trading patterns and possible impacts on neighbouring residential amenity."

The Planning Officer continues to state that "a 7 day Publican's Licence is not an incidental use to a theatre" and that an additional use would result and refers to a 'precedent' case (ABP Ref. RL2879).



5 Aston Quay (Declaration Ref. 0269/15)

Dublin City Council has previously declared that the type of licence held in an established bar area is not development constituting a material change of use. It was noted that in that case the premises currently had the benefit of a Publican's Theatre Licence and the owner wished to change this to a full 7 day Publicans Licence.

It was indicated in the Declaration that the type of licence was in itself not a planning matter and only relates to the type of Excise Licence attached to the property.

It was the applicant's contention that the change of licence in an operating bar was in fact not development and therefore, exempted from the requirements to obtain planning permission. The proposed use will remain as a bar and licensed premises. The only change related to the change in the type of Publican's Licence, which it was submitted, was in itself not a planning matter.

Notwithstanding, the applicant required from the Planning Authority confirmation that this was indeed the case, hence the Section 5 reference.

Therefore, the Planning Authority appears to have been inconsistent in the application of the exemption. Where there is a bar, the type of licence is irrelevant. Declaring the use of the Button Factory with a Publicans 7 day Licence as exempt would render the Planning Authority's position consistent.

Other Theatres

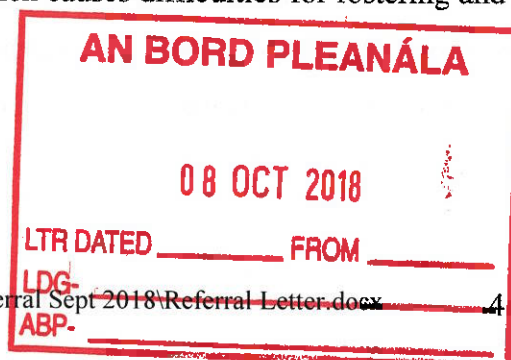
The Olympia Theatre, Vicar Street and the Stella Cinema are three theatres operating in Dublin city as part of the cultural offer and also as competitor venues. Each of these have received a 7-day licence within part of the premises without causing a material change in the use of these theatres.

These premises have confirmed that no planning permission was sought or required by Dublin City Council in relation to the use of part of these premises with a 7- day licence. Therefore, there is further precedent for the matter at issue throughout Dublin city.

Grounds of Referral

The precedent used by the Planning Officer in the assessment of uses pertinent to this case differs significantly from the subject referral, principally because of scale and established activity. In the subject context, the use of the Auditorium Bar exists as permitted and is not a separate use in planning terms. The availability of a 7-day publican's licence would not alter the pattern, nature or intensity of trading, such as to have a material effect in planning terms.

The purpose of licensing is to regulate the daytime use in a more efficient way. The night-time use would be unaffected by possession of a 7-day licence because there are nightly theatre events. Daytime activities are more sporadic and a theatre licence implies regular closing and opening of the small streetside bar, which causes difficulties for rostering and efficient operations.



Each Section 5 Application should be assessed on a case by case basis and on the individual merits of the application. An Bord Pleanala is specifically requested to deal with the matters as described and not based on speculation as to what might arise in hypothetical conditions that are not put before the Board in this Referral and are not intended or even conceived of by the Referrer.

The Auditorium Bar was included as a bar in the original planning permission and has operated as such since the opening of the premises. The "Publican's Licence (Ordinary Theatre)" type of licence allows alcohol to be served starting 30 minutes before a performance and until 30 minutes after a performance. There are irregular Rock n'Roll Tours visiting as part of a Dublin Rock industry interactive foot tour throughout the day. The Auditorium Bar stays open throughout the day, keeping the same times as a typical Public House to facilitate tours, visitors and persons working in the premises, musicians, teachers etc. The use of the premises is consistent with the permitted established use. However, to be strictly compliant with the 'theatre licence', should there be a hiatus in visits as theatre experiences, legally the street side bar should close after 30 minutes of a departure and reopen 30 minutes before an anticipated arrival. Clearly, this is disruptive and an inefficient use of daytime street side capacity of a permitted attraction in Temple Bar.

A change in licence type to a 7-day Publican's Licence in the Auditorium Bar will have no impact on the material use of the premises as the opening hours will remain the same as they currently are.

Although the operation of the Auditorium Bar with a 7-day Publican's Licence would allow refreshments and alcohol to be served to customers not attending the Rock Museum, this would not result in an intensification of the use but would allow the Auditorium Bar to become more sustainable, particularly during the daytime.

Serving refreshments and alcohol to customers attending the Rock Museum, or to customers not attending the Rock Museum, or as tourists on a cultural trail, whether in a guided tour or not, does not materially alter or intensify the use of the premises.

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In addition to the fact that a change in licence type will not result in intensification of use in the Bar, no physical changes are proposed for the bar and therefore the change of licence type does not require planning permission.

The premises would continue its existing established use as a Theatre/Museum and as a Cultural tourist attraction with the full publican's licence in its ancillary Auditorium Bar.

Our clients sought the subject declaration as a hypothetical declaration was previously sought by a 3rd party in relation to the operation of the Button Factory with a 7-day Publican's Licence. The 3rd party declaration has been referred to ABP by our client's for review as it misrepresents the operation of the Button Factory as a cultural venue. The subject declaration was sought by the owners and operators of the Button Factory and accurately represents the operation and intended operation of the Auditorium Bar.

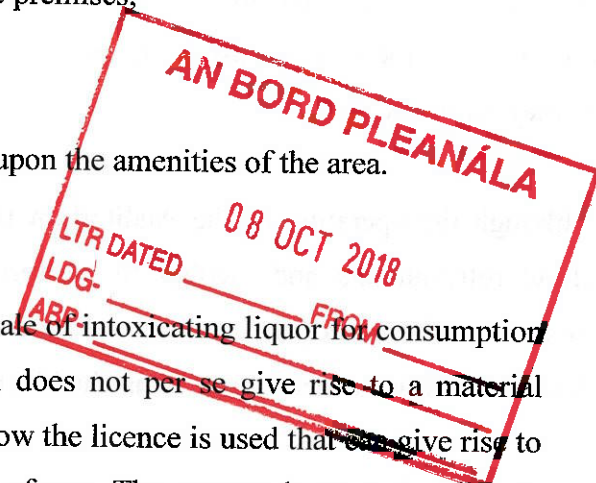
Legal Opinion

The leaseholders submitted legal opinion with the Section 5 Application that this extent of licensing is not development for the purposes of the Planning and Development Act 2000 and:-

- Does not give rise to a material change of use of the entire premises as the use exists as an incidental and ancillary use;
- No new use would be introduced into the premises;
- No intensification of use would occur;
- No new pattern of trading would occur;
- There would be no new material effects upon the amenities of the area.

Conclusion

Possession of a Publican's licence to allow the sale of intoxicating liquor for consumption on the premises to which the licence attaches, does not per se give rise to a material change of use or an intensification of use. It is how the licence is used that can give rise to a material change of use or an intensification of use. The owners have declared their intention to operate as permitted and any unauthorised material change of use or intensification of use (with detectable effects) is amenable only to the Courts.



If there is unauthorised development from a planning perspective by the operation of the licence, there are powers of enforcement under Part 8 of the Planning Act 2000, which can lead to prosecution in the Courts.

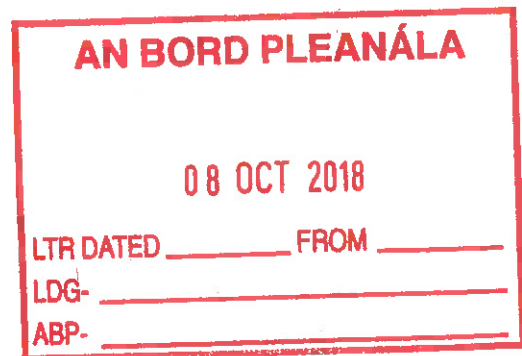
Such prosecution can lead to loss of renewal in the licensing court and the use of a Publican's Licence would require careful operation of the facilities ancillary to and for the improvement of the amenities of the Rock Museum.

Therefore, the possession of a 7-day Publicans Licence relating to the percentage of the premises occupied by the Auditorium Bar will not give rise to a material change of use or intensification of use and in this context is not development for the purposes of this determination.

It is requested that the decision of the planning authority is not upheld.

Yours Sincerely,

Simon Clear





Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

Planning Registry & Decisions, Planning Department
Civic Offices, Wood Quay, Dublin 8

Clárlann / Cinntí Pleanála
An Roinn Pleanála agus Forbartha, Clárlann / Cinntí
Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8
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12-Sep-2018

Simon Clear & Associates
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Terenure
Dublin 6W

Application Number
Application Type
Registration Date
Decision Date
Decision Order Number
Location
Proposal

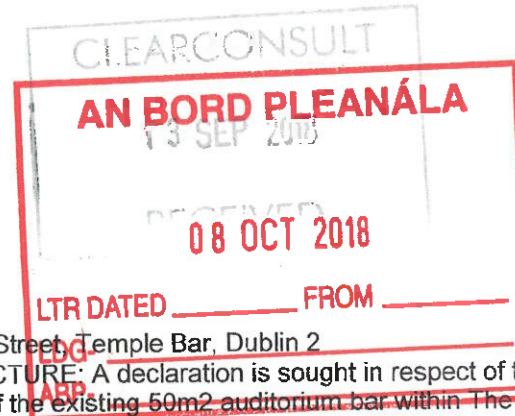
0320/18
Section 5
15-Aug-2018
11-Sep-2018
P3825

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

EXPP: PROTECTED STRUCTURE: A declaration is sought in respect of the following; Whether the use of the existing 50m² auditorium bar within The Button Factory, under provision of a "7 day publicans licence" instead of the existing "publicans licence (ordinary) theatre" type of licence that will continue to apply to the rest of the 1,200m² building is or is not development and if it is development, whether it is exempted development.

Applicant Details

NOTTUB Limited



NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Acts 2000 - 2013, Dublin City Council has by order dated 11-Sep-2018 decided to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Act 2000-2013.

Signed on behalf of Dublin City Council

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.

