

An Roinn Pleanála & Forbairt Maoine, Bloc 4, Urlár 3, Oifigi na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department, Block 4, Floor 3, Dublin City Council, Civic Offices, Wood Quay, Dublin 8.

T: (01) 222 2288

**AN BORD PLEANÁLA**  
LDG- 053124-22  
ABP- \_\_\_\_\_  
12 MAY 2022  
Fee: € 2200 Type: chq  
Time: 16:14 By: Hand

E: [planning@dublincity.ie](mailto:planning@dublincity.ie)

29-Apr-2022

Kevin Hammell  
D5 Swords Enterprise Park  
Feltrim Road  
Swords, Co. Dublin

Application Number	0098/22
Application Type	Section 5
Registration Date	31-Mar-2022
Decision Date	27-Apr-2022
Decision Order Number	P3105
Location	78-82, The Merry Cobbler Public House, Irishtown Road, Dublin 4
Proposal	EXPP: PROTECTED STRUCTURE: The placing of 2 no. free standing detachable steel framed and roofed structures including barrels, benches and planters on the private landings at front of The Merry Cobbler, 78-82 Irishtown Road, Dublin 4.
Applicant Details	James Stafford

- If you have any queries regarding this Decision, please contact the email shown above

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 A Bord Pleanála within four weeks of the date of the issuing of the declaration.

#### NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Act 2000 (as amended), Dublin City Council has by order dated 27-Apr-2022 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 (as amended) for the following reason:

It is considered that the proposed works as summarised below comprise development which would not come within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) as these developments would materially affect the character of the Protected Structure and therefore would require planning permission:

- EXPP: PROTECTED STRUCTURE: The placing of 2 no. free standing detachable steel framed and roofed structures including barrels, benches and planters on the private landings at front of The Merry Cobbler, 78-82 Irishtown Road, Dublin 4.

An Roinn Pleanála & Forbairt Maoine, Bloc 4, Urlár 3, Oifigi na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department, Block 4, Floor 3, Dublin City Council, Civic Offices, Wood Quay, Dublin 8.

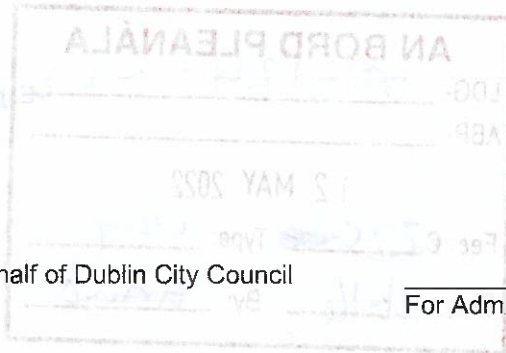
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29-Apr-2022

Signed on behalf of Dublin City Council

For Administrative Officer



Kevin Hammill  
D5 Swords Enterprise Park  
Fahin Road  
Swords Co. Dublin

Application Number: 008823  
Application Type: Section 8  
Registration Date: 31-Mar-2022  
Decision Date: 27-Apr-2022  
Decision Order Number: P2100  
Location: 78-82, The Merry Cuppler Dublin House Watstown Road Dublin 4  
Proposal: EXPP, PROTECTED STRUCTURE. The placing of 2 no. free standing detachable steel framed and roofed structures including panels benches and planters on the private lanings at front of The Merry Cuppler, 78-82 Watstown Road Dublin 4.  
Applicant Details: James Stafford

If you have any queries regarding this decision, please contact the email shown above

Note:

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

#### NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Act 2000 (as amended), Dublin City Council has by order dated 27-Apr-2022 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 (as amended) for the following reason:

It is considered that the proposed works as summarised below comprise development which would not come within the meaning of Section 4(1)(b) and Section 82 of the Planning and Development Act 2000 (as amended) as these developments would not materially affect the character of the Protected Structure and therefore would require planning permission.

• EXPP, PROTECTED STRUCTURE: The placing of 2 no. free standing detachable steel framed and roofed structures including panels benches and planters on the private lanings at front of The Merry Cuppler 78-82 Watstown Road Dublin 4.



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

The Secretary

An Bord Pleanála

64 Marlborough St

Dublin 1

12<sup>th</sup> May 2022

**Re: Declaration by Dublin City Council in respect of the Merry Cobbler public house,  
78-82 Irishtown Road, Dublin 4**

Dear Secretary,

On behalf of James Stafford, The Merry Cobbler, 78-82 Irishtown Road, Dublin 4, I wish to refer the decision of Dublin City Council (DCC) to declare that the proposed development at the front of the above address is 'not exempt' to An Bord Pleanála (ABP) for review and determination. The Planning Authority's reference number is 0098/22 and the decision was made on 27<sup>th</sup> April 2022.

We have been instructed by James Stafford to act as agent for this referral. The declaration was issued to Kevin Hammell, agent for the applicant at the time and therefore on behalf of the applicant we 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

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## 1. The Question

The details submitted with the request for Declaration were described by Kevin Hammell, architect, with an accompanying Opinion prepared by this office. The question that is subject to this referral is:-

*Whether the placing of 2no. free standing detachable steel-framed and roofed structures including barrels, benches and planters on the private landing at the front of The Merry Cobbler public house, is or is not development and is or is not exempted development.*

For clarity, DCC has confirmed that the area in front of the premises is not public footpath and DCC has not granted licences for the furniture for this reason. The area on which the items have been placed are considered to be 'private landings' at the front of the premises, not public domain.

The premises has an established use as a Public House with restaurant service to customers and the established use includes the private landings. There was a change of ownership in 2016. The previous owners of the premises used these landings for customer use and provided furniture there.



**Historical Photo of the front of the Subject Premises**

## **2. Planning Authority's Decision**

The report on the Request for Section 5 Declaration was prepared by an Acting Executive Conservation Architect and focussed entirely on the potential impact upon the visibility of the front of the premises, which is a Protected Structure. The issue was described in the DCC report as follows:

- *The works involve the placement of 2 no steel framed and roofed structures including tables, seating and planters on the private landings to the front of the premises.*
- *This work screens the protected structure.*
- *Where works are considered exempted development the decision is based on the question of whether these works materially affect the character of the protected structure or not.*
- *The works in question screen the front ground floor of the protected structure.*
- *The google street views shown below clearly illustrate the impact of these works on the building.*
- *The permanent and screening nature of this work change the visual nature and also the external character of the protected structure.*
- *It is considered the incremental and cumulative impact of the works are considered to have resulted in a significant visual impact that adversely and materially affects the architectural character of the protected structure.*
- *It should be noted that the Architectural Heritage Protection Guidelines for Planning Authorities (2011) state that 'careful consideration needs to be given to proposals to fix new items to the exterior of a protected structure. Permission should usually only be given for fixtures that respect the architectural design of the structure and do not detract from its appearance' (pg.134).*
- *Therefore, this work is not considered exempted development.*

## **3. Grounds of Referral**

The report format, content and structure of the Assessment is entirely inadequate and does not address the essential elements of a Section 5 Request for Declaration. The reporting officer made a judgement on perceived effect on the character of the protected structure, without having examined the parameters of what the question involved in a planning context. The normal approach to making a Declaration is as follows: -

- Is there development;
- What is the nature of the development – does it constitute works or material change of use, or both;
- If there is development is it exempted development, or not.

The DCC report made no reference to the definition of ‘development’ in Section 3 of the Planning Act 2000, as amended (P+D Act), or of ‘works’ as defined in Section 2. There is no reference to current Regulations or Guidelines in operation at the time of making the Declaration, or Government policy (Section 28) and other clarification (Circular Letter PL06/2021) provided by the Department of Housing Local Government and Heritage (DHLGH) relating to the operation of the Planning Acts during Covid19.

### 3.1 Policy and Planning Context

Under Section 2 of the Planning and Development Act 2000, as amended (P+D Act), *“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

Section 3(1) - In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

This Referral is sought as it is considered that the current items are placed externally and are not attached to the structure. No ‘works’ were involved in their placement, even taking into account that the building behind is a Protected Structure. In this context it should be noted that the DCC report indicated the front ground floor of the Protected Structure was screened, whereas the ground floor shopfront is substantially a modern structure and is not the original fabric of the building.

The reference to ‘fixtures’ and Architectural Heritage Guidelines on fixings in the DCC report in relation to *- fix(ing) new items to the exterior of a protected structure*, is incorrect. It was clearly indicated in the documentation submitted with the Request for Declaration



that there were no 'fixings'. No fixings were mentioned in the question posed and no fixings exist on the front of the premises.

The request for declaration arose in response to allegations put by DCC that unauthorised development had occurred at the premises in respect of these items. The entire premises has been upgraded since its purchase by the current owners in 2016. It should be noted that other issues of enforcement referred to in the DCC report, relating to the upgrading have been resolved and those files indicated as 'open' should be considered 'closed'.

Government Section 28 Guidelines issued on 29<sup>th</sup> March 2020 contained an *Introduction & Background* indicating how the Planning & Development Act (PDA) operates to provide "in the interests of the common good", for proper planning and sustainable development...and noted there were changes due to Covid in how people congregate and socialise, with consequential changes in behaviour and activity - with businesses and employers having to alter previous work practices to ensure safety of staff and customers, including facilitating social distancing.

Specific measures impacted on particular categories, including pub restaurants and cafes, in their capacity to provide services within the (HSE) restrictions. The introductory guidance cited the discretion available to planning authorities under the P+D Act when deciding to pursue, or not, enforcement after investigation. This section of the Guidelines concluded by reference to subsequent paragraphs suggesting (but not limited to) the types of issues which could be reasonably considered to be trivial or minor in the interests of the well-being of society (in the interest of the common good) during a declared civil emergency.

Government guidelines during the pandemic period have been for bar and restaurant premises to operate by serving customers outdoors and support funding has been made available to support operators providing outdoor hospitality facilities and amenities on private as well as public land. This has included incentives and supports to extend and, in view of the Irish weather, to weatherproof outdoor facilities. In view of the extended impact of Covid, a Government grant scheme was put in place to support and encourage investment in, expansion and extension of outdoor hospitality during the summer of 2021, under the

auspices of Failte Ireland. With the impact of Covid continuing through the winter and into 2022, application for support under this scheme was further extended to January 2022.

The shelter and furniture placed on the land is in line with Failte Ireland best practice<sup>1</sup>, which notes, inter alia: - *Due to Covid-19, various new trends and norms are being established that will have a significant impact on how and when public streets and spaces will be used. These may include:*

**Time and availability** | *With more people working from home, there is potential for increased 'family' and social time in the evenings. This may impact on the times of day customers choose to visit urban businesses.*

**Continuation of social distancing and safe socialising** | *This will impact how space is allocated and laid out, with increased circulation space so that everyone feels comfortable in their surroundings. Provision of enhanced hygiene measures e.g. hand sanitiser and sufficient hand washing facilities, is also part of safe socialising and can be integrated into public spaces.*

**Outdoor space and wellbeing** | *There is a heightened awareness and greater appreciation for being outdoors and the ability to access public and green spaces, as well as greater recognition of the importance of mental health and wellbeing. Outdoor spaces will therefore play a key role in providing areas where people can relax, be active and participate in events.*

The Government response to Covid19, in the planning and development context, has been set out in its advice to planning authorities<sup>2</sup> including reference to the context where shelters and furniture are placed on private land. The Planning and Development (Amendment) (No. 2) Regulations 2021 (S.I. 210 of 2021) insert a new paragraph into Article 201 of the Planning and Development Regulations 2001, which prescribes further appliances, apparatus or structures which require a licence under section 254 of the Act. It provides that; awnings, canopies, coverings, parasols, shades, windbreakers, heaters or other similar structure for the purpose of facilitating outdoor dining is development which requires a

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<sup>1</sup> Best Practice Approach to Outdoor Seating and Urban Animation; Failte Ireland/BDP; 2021

<sup>2</sup> Circular Letter PL06/2021 associated with P+D Regulations S.I. Nos 209 and 210 of 2021.



licence in situations where tables and chairs are also licensed under section 254 of the Planning and Development Act 2000.

These items are exempted generally and are subject to licence when located on public roads, subject to observance of restrictions on exempted development under Article 9 of the Planning and Development Regulations 2001, as amended. None of the relevant restrictions apply in the subject case.

#### **4. Assessment and Opinion**

It should be noted in the subject context that: -

- 'Works' for the purposes of planning and development are defined in section 2 of the P+D Act. The placement of a shelter and furniture on private land to the front of The Merry Cobbler building is not development by way of works as no 'works' as defined in section 2 of the P+D Act have been undertaken.
- No 'development' as defined in section 3 of the P+D Act has been carried out as there are no 'works' and no 'material change in the use of any structure or land'.
- The free-standing demountable structures (FSDS) are placed, are freestanding, are not enclosed and are not attached to the building;
- The FSDS are not permanent and can be easily taken apart and removed;
- The emphasis on outdoor dining has increased with Government approval and legal change in light of the ongoing Covid Pandemic, which has not abated in 2022;
- There is a general lack of suitable outdoor dining/meeting amenities in the Irishtown area;
- The entire premises has an established use as a Public House and an established pattern of use;
- There has been no material change in the use of the planning unit by reason of intensification of use;
- There are no current Enforcement Proceedings undertaken or in progress for prosecution by DCC in respect of the planning matters described above.

## 5. Conclusion

There is no development by way of works, material change of use or material intensification of use.

Even if it is considered there is development, by reference to Guidance issued since 2021 such measures, as indicated above, are considered to be exempted development and in accordance with the proper planning and sustainable development in the interests of the common good.

Therefore, the placing of furniture for outdoor shelter for customers on land within the planning unit is exempted development in accordance with all Planning legislation and guidelines.

The DCC report considered that – *‘Where works are considered exempted development the decision is based on the question of whether these works materially affect the character of the protected structure or not’*. That was a wrong consideration and a wrong premise for a conclusion in a Declaration context. Therefore, the basis for the DCC Declaration was wrong.

## 6. Request for Declaration

It is requested ABP determines that the placement of shelter structures associated with the established pattern of use, on private land located to the front of the established public house at No. 78-82 Irishtown Road, is exempted development.

Yours sincerely,



Simon Clear.

### Enclosures:-

- Notification of Declaration by DCC
- Fee for Referral - Cheque €220.