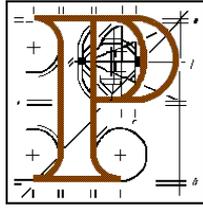


## An Bord Pleanála



### INSPECTOR'S REPORT

**DEVELOPMENT:** (1) Two tent canopies containing mobile pizza oven and cooker (2) Steel storage container for garden tools (3) Timber screen and timber support structure (4) Change of use of shed to dining area.

**LOCATION:** Patsy Dans Bar, Main St. Dunfanaghy, Letterkenny, Co. Donegal.

#### PLANNING APPLICATION

**Planning Authority:** Donegal County Council  
**Planning Authority Reg. Ref.:** 14/51344  
**Applicant:** Cape Verde Sol Ire Ltd  
**Type of Application:** Retention Permission  
**Planning Authority Decision:** Grant

#### PLANNING APPEAL

**Appellant:** Robert & Leona Robinson  
**Type of Appeal:** Third Party  
**Observers:** None

**DATE OF SITE INSPECTION:** 6<sup>th</sup> May 2015

**INSPECTOR:** A. Dineen

## 1.0 SITE LOCATION

Dunfanaghy is located coastal in the north of County Donegal. The town consists of a good range of local level services and facilities and it has an identifiable core area including Main Street. It performs a local function in terms service provision but has a significant tourism role notable in the extent of holiday home developments in the area, the existing level of hospitality and leisure services including the golf course at the eastern end of the settlement.

The appeal site is situated just inside the Town Centre boundary and is positioned to the north of Main Street. The appeal site accommodates Patsy Dan's Bar and outbuildings to the rear, wherein the subject development proposed for retention is located. The area west of the appeal site accommodates residential dwellings while the area to the east of the appeal site is under commercial use.

## 2.0 THE PROPOSED DEVELOPMENT

The proposed development comprises the retention of change of use of a storage shed to the rear of the site, which straddles the west boundary. Retention permission is also sought for two tent canopies containing a mobile pizza oven and a stainless steel cooker and a high level timber screen and associated timber structure. Additionally retention permission is also sought for a steel storage container for the storage of garden equipment.

## 3.0 TECHNICAL REPORTS

The **Chief Fire Officer** has no objection to the proposed development subject to extract fumes from the cooker and mobile pizza oven being in compliance with TGD-J-2014.

The **Executive Engineer** has no objection.

## 4.0 PLANNING AUTHORITY DECISION

The planning authority issued notification of decision to grant planning permission for the proposed development on the 16<sup>th</sup> January 2015, subject to 5 conditions. The conditions were of a generic nature say except for condition No 1, which stipulated the following:

1. A. External seating and standing areas and all use and activities ancillary to the development hereby permitted shall be limited to the area immediately adjacent to the tent canopies and the dining area and shall not extend to the north or northwest of the rear gated entrance.
2. Within 2 months of the date of the final grant of Permission the applicant shall submit revised plans for written agreement making provision for a 1.8 m high close board timber fence or similar to be erected between the northern and end of the rear gated entrance and the existing decking/fence to the southwest of the gated entrance. A position approximately 6 metres from the rear wall (northern end) of the existing storage shed.
3. Following agreement with the Planning Authority in respect of Condition No 1 (a) and (b) the agreed dividing detail shall be erected within a timeframe of one (1) month after the date of agreement and the severed area to the north-northwest including the steel storage shed shall thereafter be used a private garden space.

Reason: To define the development and to cater for orderly development.

The decision of the planning authority reflects the planners report.

## 5.0 PLANNING HISTORY

No recent relevant planning history cited.

## 6.0 POLICY CONTEXT

The operative plan for the area is the County Donegal Development Plan 2012-2018. Dunfanaghy is recognised as a Tier 3 Settlement having the status of 'Strong Towns and Villages', Map 10 under the Settlement Framework.

Proposals for development will be considered in the context of all relevant policies contained within the development plan as well as all other material planning considerations in the context of the planning and sustainable development of the area in conjunction with relevant regional and national policy guidance and environmental designations.

Dunfanahy is classified as an area of Especially High Scenic Amenity (EHSC) and views northwards are Protected Views.

## 7.0 GROUNDS OF APPEAL

- It is submitted that Donegal County Council has not investigated the objections made by the appellants with respect of the stated unauthorised development.
- It is submitted that a complaint was made to the local authority in summer of 2013 however this was not addressed until a further complaint was made in 2014. At this time an enforcement notice (UD 13212) was issued on the 7<sup>th</sup> August 2014, which it is alleged, was ignored by the applicants.
- Noise being generated from the development is causing serious disturbance to the appellants, who are stated to be kept awake every night the business is in operation.
- A section 107 notice was issued on this premises on the 20<sup>th</sup> September 2012, which was based on several noise monitoring surveys carried out by the Executive Scientist for Donegal Co. Co. however since this notice has been in place it has been ignored.
- A DVD is submitted with the appeal which shows noise levels being assessed at 20 dB above what is recommended by the Section 107 Notice. This DVD was recorded after the local Garda asked the licensee to turn the music down.
- With respect of the change of use of the former shed to a dining area associated with Patsy Dan's Bar, it is submitted, that the shed has no noise proofing material installed and in fact as it is a corrugated tin roof the noise is enhanced. The safety of said roof is also in question with respect of the securing of plants on said roof.
- Two chimneys are discharging smoke and smells 9 metres from the appellants' premises and 1 metre below the appellants' first floor bedroom. Accordingly, the appellants are forced to keep their windows closed when the business is in operation. (See attached DVD).
- With respect of the high level screen neither the applicant nor the County Council have given any purposes for such a screen. It is contended to be an eyesore and it also blocks the appellants view to the harbour. It is submitted that this screen serves no purpose.

- It is submitted that there is no adequate parking for the proposed development and that parking is a serious issue in the village of Dunfanaghy.
- The steel storage container is completely out of place. This container has been raised up with a concrete foundation with a 'Bar' sign on top. It is questioned how this can be accepted as a permanent structure.
- With respect of Condition 2, it is submitted that the time limit on food service does not resolve the noise issue with the premises. It is stated that entertainment and service of alcohol continues up to closing time and allegedly, beyond.
- It is contended that the applicants are forced to keep their child's window closed during summer due to noise and therefore there is no ventilation in his bedroom. Additionally the appellants child is deprived of sleep as a result of the noise generation.

## 8.0 RESPONSE OF THE PLANNING AUTHORITY

The principle and appropriateness of the proposed development is deemed to be acceptable for the following reasons:

- It is reasonable to accept that there is a historical beer garden associated with the established premises for a limited area to the immediate rear of the site and the area upon which the canopies have been erected. The area beyond this is not considered to be an historic beer garden. This area can be divided from the rest of the site by way of fencing as provided for under condition 1 of the decision to grant permission.
- It is considered reasonable to permit the retention of the steel container for the storage of garden tools which will be specifically tied to the garden area to the north and east of said structure. Signage on this structure can be removed by way of condition of permission.
- The tent canopies containing a pizza oven and a stainless steel cooker is an acceptable form of development ancillary to an established licensed premises. The change of use of an existing storage shed to be used as a dining area is considered to be an acceptable form of development ancillary to an established licensed premises.
- In order to respect the amenity of adjacent properties the operating hours for the selling of food can be restricted.
- It is considered that the issue of smoke affecting third party properties is a matter for other powers and is outside the remit of the planning process.
- The timber screen and pots with hedging located along the roof of the existing structure which is subject of retention of use, is considered to introduce a form of landscape screening between the commercial and residential uses. It is considered that if this screening was removed the interface between both properties would be exposed and on this basis the planning authority has no issue with the reed screen.

## 9.0 ASSESSMENT

Having inspected the site, considered the file documentation, the prevailing local and national policies and assessed the proposal, I consider that the key planning issues arising from the proposed development are as follows:

- Principle of Development
- Residential Amenity
  - Smoke

- Noise
- Scale
- Other Issues

### 9.1 Principle of Development

The subject site is situated within the Settlement Framework Area for Dunfanaghy village and accommodates an existing licensed premises, called Patsy Dan's Bar. The front of the site accommodates the bar itself and fronts onto the Main Street, while the rear area of the site, is for the most part, devoted to outdoor seating space associated with the existing established bar and additionally the use of a restaurant/pizza bar, which accommodates a mobile pizza oven and stainless steel cooker and two tent canopy's. The northern most area of the site accommodates a garden area. The said oven and canopy's were not physically in situ as per drawings lodged on the date of inspection, however the drawings submitted with the subject retention application supported by photographs on file clearly indicate the positions of same. The storage shed, which straddles the west boundary of the site and which is also the subject of retention, was not under dining 'use' at the date/time of inspection and appears to have temporarily or otherwise, reverted to a storage use.

The planning authority, in its appeal submission, considers that there has been an historical beer garden associated with the established premises for some time and that the proposal is essentially an extension of the existing premises. Given the nature of the established use of a licensed premises at this location and the probability that a beer garden, attendant outdoor space, has existed on part of the subject space for an established time period and given that the use of pizza area appears to be an ancillary use to that of the licensed premises, I am of the viewpoint that the principle of the proposed development is acceptable, however I note the close proximity of residential dwellings to the west of the site and therefore the issue of residential amenity of the nearby properties should be given due consideration.

### 9.2 Residential Amenity

#### Smoke

A considerable portion of the third party submission pertains to dissatisfaction with the pizza area that has evolved at this location during 'seasonal' times. The dissatisfaction expressed predominantly revolves around the issue of noise pollution and smoke generation associated with chimney's attached to the pizza oven and presumably the mobile stainless steel cooker. The third party appellants claim that they must keep windows closed during summer time due to both noise emanating from the subject premises and due to smoke generation from the pizza oven that is released from a chimney just above the parapet of the single storey storage shed (subject of change of use to dining area). This smoke outlet is positioned at a point-height, just beneath the appellants' first floor bedroom windows and given the close proximity of the subject shed/dining area to the appellant's house. This smoke issue is a considerable cause for concern and requires that such windows be closed.

I note that the planning authority in its submission to the appeal considers that smoke affecting third party properties is an issue for 'other powers'. I respectfully disagree on this point as the issue of potentially billowing or drifting smoke into an adjacent property, as a result of any given proposed development, falls quite rightly within the remit of the planning process and has clear implications for the residential amenities of such properties.

While I do not take issue with the principle of the development of a pizza bar/area at this location as an 'ancillary' use to the licensed premises, I am of the viewpoint that such activity including the provision of chimney/or/chimneys should be sensitive to the adjacent residential properties. In this respect, I consider that the height and location of the outlet of said chimney to be radically too low to enable safe dispersion of smoke and avoidance of discomfort within the adjacent residential dwelling(s) to the west of the site. It is acknowledged with reference to the Planners report, that the premises to the east of the site are under commercial use and as such presumably do not have a habitable function. Furthermore, it was clear from the physical inspection of the appeal site that the chimney/flue attached to the shed proposed for change of use, to dining area, does not clear the level of habitable accommodation of nearby adjacent residential dwellings, with respect of height.

Accordingly, I am of the viewpoint that the ventilation and ducting of pipework/flue/chimneys associated with the pizza oven/stainless steel cooker be redesigned to take cognisance of the foregoing. I am of the opinion that such an outlet would be better located on the opposite elevation along the eastern boundary of the eastern containing wall directly opposite the shed (proposed dining area). Owing to the height of this elevation, a potential discharge/outlet point above its parapet (from 600 mm to minimum 1 metre for flat roof as per Diagram 3 of Technical Guidance Document – J – Building Regulations 2014) would ensure sufficient height to ensure the safe ducting and dispersion of smoke from said heat generating appliances and the avoidance and/or mitigation of such nuisance to the neighbouring properties. In the event that the Board is mindful of a favourable decision with respect of permitting the ancillary use at location I consider that this issue should be redesigned with respect of best practice and current building regulations and should be agreed with the planning authority prior to the premises opening for business.

### Noise

With regard to noise generation, I concur with the planning authority with respect of the imposition of a closing time beyond which food cannot be sold on site with the ultimate inferred aim of having the space cleared of people beyond a reasonable time thereafter. However, I am also mindful that the established licensed premises must abide by stipulated prescribed closing hours and the enforcement of this issue falls under the remit of the civil authority.

With respect of the playing of music in the space of the proposed canopies/dining area, I consider that the noise levels of such music should be restricted appropriately by way of condition and that all music in this space attendant to the pizza bar, shall cease at the time imposed for cessation of serving food.

With respect of the proposed retention of change of use of the storage shed to use as a dining area, the structure straddling the west boundary of the site, I consider that said use is appropriate

given the ancillary nature of the use within the context of the established business, however, I also have concerns regarding the structure of same, which essentially remains of similar construct to the established shed. I note that the appellants have raised issue under the appeal submission regarding the galvanised roof, which it is submitted, tends to amplify noise generated therein. I am of the viewpoint that said structure should be sound-proofed given the close proximity of residential dwellings. Sound proofing mechanisms and materials should be agreed with the planning authority and fully implemented prior to the commencement of development on the site and prior to the first operation of the pizza bar.

### Scale

With respect of scale, I concur with the planning authority in that given the 'ancillary' nature of the development that the overall area associated with the pizza area should not extend northwards past the rear gated entrance. However, I respectfully consider that condition 1 (b) as imposed by the planning authority is somewhat ambiguous as it refers to '*a position approximately 6 metres from the rear wall of the (northern end) of the existing shed*'. As there are two existing sheds, one the shed subject of 'change of use' to a dining area and a garden shed, the subject of retention, I proposed to impose a similar condition with respect of the former, by way of controlling the scale of the proposed development.

Furthermore, I consider that this measure as per the planning authority's intention will serve to contain the space associated with the pizza area and accordingly mitigate the negative impacts of adjacent residential amenity.

### 9.3 Other Issues

With respect of the extant steel storage shed straddling the west boundary of the site, I consider it reasonable to provide for such a structure for purposes of maintaining the attendant garden. Accordingly, I concur with condition 4 (a) as imposed by the planning authority with respect of its use.

There was no 'Bar' sign erected on or visible on the steel structure on the date of inspection. In the event that such a sign was in fact situated thereon and possibly disturbed by wind etc., I consider it appropriate to impose a relevant condition in this respect and also limiting future advertisement on site in the absence of planning permission.

The third party appellant considers that neither the applicant nor the planning authority has provided justification for the reed timber screen or the planting on top of the shed proposed for 'change of use' to dining area. The appellant considers that it serves no other purpose but to block the appellants' view of the harbour. In response to this assertion the planning authority, in its submission to the appeal refers that the reed timber screen and planting serve to introduce a form of landscape screening, or a soft interface, between the residential and commercial properties at this location. I find this justification to be reasonable.

With respect of car parking, I am satisfied that given the ancillary nature of the proposed development that the existing parking situation is acceptable.

## 10.0 Appropriate Assessment

There is a Natura 2000 (SAC) and a proposed NHA within the settlement boundary of Dunfanaghy and immediately to the east and south west (pNHA: 000147 Hornhead & Rinclevan and SAC: 00147 Hornhead & Rinclevan). There is also a Natura 2000 SAC and SPA in close proximity to the South and south west of the settlement boundary, (SPA: 004194 Hornhead to Fanad Head refers). Given the scale of the proposed development, I do not consider it is likely that it would have a significant impact on any such site in terms of its conservation objectives.

## 11.0 Conclusion and Recommendation

In conclusion, further to the above planning assessment of matters pertaining to this appeal, including consideration of the submissions of each party to the appeal, and including the site inspection, I consider that the proposed development to be acceptable and to accord with the proper planning and sustainable development of the area, having regard to the relevant provisions of the Development Plan, which are considered reasonable. Accordingly, I recommend that permission be granted for the proposed development for the following reasons and considerations and subject to the conditions set out below.

### REASONS AND CONSIDERATIONS

Having regard to the nature, scale and design of the proposed development and to the planning history of the area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential amenities of property in the vicinity or the visual amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The pizza and dining area hereby approved shall operate as an ancillary use to the existing licensed premises unless authorised by a prior grant of planning permission.

**Reason:** In the interests of orderly development.

3. Service of food on the premises shall cease at 10.00 pm Monday to Sunday inclusive.

**Reason:** In the interest of residential amenity.

4. (a) All seating and standing areas associated with the hereby permitted ancillary development shall be proximate to the canopies and the 'dining area' hereby permitted and shall not extend north of the rear gated entrance and shall be clearly separated by a timber 'divide'.

(b) Revised plans and elevations shall be submitted to and agreed by the planning authority prior to the commencement of development, showing same 'divide' and providing for a 1.8 metre timber fence running from the north-most edge of the rear gated entrance to a point 2 metres or less from the north elevation of the structure indicated as 'generator store' on the submitted site layout (drawing no 4814/001).

**Reason:** In the interest of orderly development and residential amenity.

5. The steel garden shed hereby permitted shall be used for housing garden equipment and shall not be used for any commercial purposes or in conjunction with the established commercial business or the ancillary use hereby permitted.

**Reason:** In the interest of orderly and sustainable development.

6. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

7. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building or within the curtilage of the site, unless authorised by a further grant of planning permission.

**Reason:** To protect the visual amenities of the area.

8. (a) The sound levels from any loudspeaker announcements, music or other material projected in or from the premises shall be controlled so as to ensure the sound is not audible in adjoining premises or at two metres from the site boundary.

(b) Music shall cease being played outdoors on the premises at 10.00 pm Monday to Sunday inclusive.

**Reason:** In the interest of environmental and residential amenity.

9. The development shall be operated and managed in accordance with an Environmental Management System (EMS), which shall be submitted by the developer to, and agreed in writing with, the planning authority prior to commencement of development. This shall include the following:

(a) Proposals for the suppression of on-site noise including sound-proofing the dining area hereby permitted by change of use, previous use being that of storage shed.

(b) Proposals for the on-going monitoring of sound emissions at dwellings in the vicinity.

(c ) Proposals in plan and elevation form in addition to technical specifications for rerouting of ventilation and ducting pipework associated with the pizza area (Heat Producing Appliances) to the eastern most containing wall of the site, whereby fumes and smoke will have an outlet point via flue over and above this structure (600mm to 1 metre to be agreed with planning authority) and in full compliance with Building Regulations 2014.

**Reason:** In the interest of environmental and residential amenity.

10. During the construction and demolition phases, the proposed development shall comply with British Standard 5228 'Noise Control on Construction and open sites Part1. Code of practice for basic information and procedures for noise control'.

**Reason:** In the interest of residential amenity.

11. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

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Aisling Dineen  
Inspectorate  
13<sup>th</sup> May 2015.