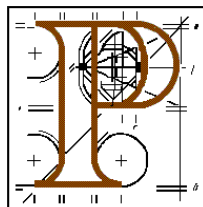


## An Bord Pleanála



## Inspectors Report

**Development:** Construct function room to side of café, 7 no. car parking spaces, increase height of berm and retain car park to rear, at Diamond Rocks Café, West End, Kilkee, Co. Clare .

### Planning Application

Planning Authority: Clare County Council  
Planning Authority Reg. Ref. 15/851  
Applicant: Kevin & Margaret Haugh  
Type of Application: Permission and Retention Permission  
Planning Authority Decision: Grant

### Planning Appeal

Appellant(s): Sinead Cooney

Observers: None

Type of Appeal: Third Party

Date of Site Inspection: 17/05/2016

Inspector: Gillian Kane

## **1.0.0 SITE LOCATION AND DESCRIPTION**

- 1.0.1 The subject site is located at the western end of the town of Kilkee, approx. 1km from the town centre. The subject site is located on the coast, in an area known for the Pollock Holes bathing area and Kilkee Cliff Walk. The site currently comprises a dwelling, a café, an outdoor seating area and car park to the rear. Section of the car park are unsurfaced, sections have tarmac and other sections have a gravel surface. A large concrete slab is located to the west of the café and is used for outdoor seating. The site is bound to the west by an earthen berm leading to the wider elevated undeveloped lands. A pedestrian path runs from the public car park, along the coastal boundary of the site and up to the elevated Cliff Walk. The site slopes from north to south and car park is bound on three sides by an earthen berm. An open drain runs along the western berm, culverted under the concrete slab and discharges to the coast.
- 1.0.2 The site is bound to the north by the coastal walk and Kilkee Reefs, and to the west by elevated agricultural land. To the east of the site, just south of the public car park is the national monument CL056-035 – Fish Pond, also referred to as Lady Isabella’s pond. To the west is the national monument CL056-31, which is described as a Structure on the National Monuments Service Sites and Monuments Record (SMR) and as a Castle on the RMP for County Clare.
- 1.0.3 Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

## **2.0.0 PROPOSED DEVELOPMENT**

- 2.0.1 Permission was sought for the construction of a function room of 355sq.m. to the side of an existing café / restaurant (456sq.m.), 4 no. additional car parking spaces, 3 no. accessible car spaces with access ramp and steps, permission to raise the height of the existing berm at the edge of the existing car park (49 no. spaces). Retention planning permission is sought for the existing carpark to the rear of the existing café / restaurant, all on a site of 0.62ha.
- 2.0.2 The application was accompanied by an Engineers Report and an AA Screening report.
- 2.0.3 Three objections to the proposed development were submitted to the Council.

- 2.1.0 Reports on File following submission of application**
- 2.1.1 **DAU of D.Arts, Heritage & Gaeltacht:** proposed development is within the zone of archaeological potential of recorded monument CL056-035 – Fish Pond. Given the extent and location of the proposed development it could impact on subsurface archaeological remains. Archaeological Impact Assessment should be prepared and submitted as further information. 4no. recommendations on AIA.
- 2.1.2 **Environmental Assessment:** no source-pathway-receptor linkages or potential impact pathways exist between the proposed project area and the River Shannon SAC, River Shannon and River Fergus Estuaries SPA and the Illaunonearaun SPA. Only site identified within the sphere of influence is the Kilkee Reefs SAC. Key potential effects which may lead to significant effects relate to potential for stormwater and foul water discharges to negatively impact on water quality. Proposed usage restrictions will ensure maximum acceptable rates of foul water generated by the project are not exceeded coupled with ensuring traffic levels at the site are maintained at current levels and storm water management regime reflects an overall neutral and positive effect on the environment. Potential for contaminated stormwater to arise from car park is a concern as it could compromise the gravel bed system. Condition recommended that a Class 1 interceptor at the discharge point from the car parking area be installed. Agree with findings of AA screening report that project will not have significant negative effect on the status of Kilkee SAC and associated qualifying habitats of interest and will not negatively affect their conservation objections or integrity.
- 2.1.3 **Irish Water:** No objection
- 2.1.4 **Planning Report:** Two land use zonings on site. Proposed function room is within ‘Tourism’ zoning, objective TOU 2 refers to limited expansion opportunities. Proposed car park within ‘open space’ zone. Planning Authority raise concern regarding scale of development on site, subject development larger than previous proposals. Notes diversification of use. Proposed design is generally in keeping within existing structures, has addressed previous concerns. Proposed earthen embankment to side and rear required to screen development from cliff walk. Views of existing car park reduced by earthen berm. Proposed car park extension requires raising of berm. Proposed works acceptable on grounds of traffic safety. Having regard to location of site within town, and access for pedestrians, town centre car parking standard is applicable – 50 no. spaces required. 56 no. proposed. Recommendation to grant subject to conditions.

### **3.0.0 PLANNING AUTHORITY DECISION**

3.0.1 By order dated 10/02/16 a notification of decision to **GRANT** permission subject to 13 no. conditions. Condition no. 2 required the installation of a Class 1 Oil interceptor in the car park, condition no. 3 requires archaeological pre-testing and reporting to the National Monuments Service Division of the D.AHG, condition no. 5 requires the FFL to be as on the submitted drawings.

### **4.0.0 PLANNING HISTORY**

4.0.1 Planning Authority **reg. ref. P01/2041** Planning permission granted to replace existing shop, accommodation with new enlarged shop, living accommodation and new storage shed.

4.0.2 Planning Authority **reg. ref. P04/753**: Planning permission granted for change use of existing field from agricultural to a golf driving range with a lean-to roofed-over area of the existing storage shed, provision of flood lighting and relocation of existing stone wall.

4.0.3 Planning Authority **reg. ref. P03/2290**: Planning permission granted to construct a single storey extension for use as a café, to the rear of existing shop/dwelling and permission to alter the design of the storage shed.

4.0.4 Planning Authority **reg. ref. P07/1087**: Planning permission granted to retain existing café, retain alterations to storage shed. Permission was refused for the extension of the café, for the conversion of the dwelling into a shop unit and to extend the shed to include a private dwelling.

4.0.5 Planning Authority **reg. ref. P12/207**: Planning permission was granted for extension and alteration of existing dwelling, café and garage.

### **5.0.0 LOCAL POLICY**

#### **5.1.0 Clare County Development Plan 2011- 2017**

5.1.1 Section 2.4.4 of the development plan notes that Volume 6 - The Retail Strategy for the Mid-West Region 2010-2016 sets out the Retail Hierarchy for the Mid-West Region. In the context of retail planning for County Clare, table 6.1 of the strategy lists Ennis and Shannon as Level 1 and Level 2 Major Town Centres respectively. Kilrush, Ennistymon, Scarriff and Killaloe are identified in the next tier of Town Centres; Sixmilebridge, Newmarket-on-Fergus,

Miltown Malbay, **Kilkee** and Tulla are identified as Level 1 Neighbourhood and Village Centres

## 5.2.0 **West Clare Local Area Plan 2012-2018**

5.2.1 Section 2 of the West Clare LAP, as per the Clare County Development Plan 2011- 2017, identifies Kilkee as a small town that acts as an important service centre and tourism resort.

5.2.2 General objectives of the plan that relate to Kilkee are as follows:

- To encourage the further development of the retail and commercial and service sector in the town centre. The redevelopment of existing unused or derelict structures for retail or commercial purposes or for the provision of services will be particularly encouraged
- To facilitate the provision of increased car parking facilities in the West End / Diamond Rocks area of the town.

5.2.3 The subject site is covered by two zones. That section of the site immediately around the café and on which the function room is proposed is zoned "**Tourism**". Section 1.21.1 of the LAP defines Tourism zones as "Lands zoned for tourism development shall be used for a range of activities which are primarily designed for the facilitation of tourism development". Within such zones café / restaurant use is permitted in principle and disco / nightclub and licensed premises are not normally permitted.

5.2.4 The section of the site on which permission is sought to retain the car park is zoned "**Open Space**". Section 1 of the LAP defines open space as "The use of land as 'Open Space' shall be taken to include the use of land for afforestation, playgrounds, housing estate open spaces, landscaped areas and parks. Developments incidental to the enjoyment of open space including sports centres, outdoor recreation centres and landscapes areas, play equipment, dressing rooms and similar facilities are open for consideration. There may be limitations to what 'Open Space' can allow, particularly in relation to sensitive ecological sites." Within such zones, car parks are listed as 'not normally permitted'.

5.2.5 In addition to compliance with the policies and objectives of the Clare County Development Plan 2011-2017, the following specific objectives apply: **TOU2: Diamond Rocks** This small commercial outlet provides a service to visitors during the tourist season on the

south side of the bay, at the start of the cliff walk. Having regard to the sensitive location of the site it is considered that a limited form of expansion may be permitted in order to further enhance the potential of the site and an area of land surrounding the existing business has been zoned to accommodate this expansion.

## **6.0.0 GROUNDS OF APPEAL**

6.0.1 A third party appeal has been lodged on the grounds that the subject development is not in accordance with the proper planning and sustainable development of the area. The Board is requested to refuse permission. The grounds of the third party appeal can be summarised as follows:

- The subject site overlooks Kilkee's Pollock Holes, sea pools that are uncovered when the tide is out. The Pollock holes are well known and well used swimming spots that are unique to the area. The area is unspoilt and free from development apart from the café & car park. A national newspaper describes the Pollock Holes as the eighth wonder of the world. Photos attached.
- The subject site is located beside the Kilkee Cliff Walk, a naturally beautiful and unspoilt walk with many natural features. The walk slopes upwards from the subject site.
- The Diamond Rocks Café is a great amenity.
- The importance of the subject site is recognised in the SEA of the West Clare LAP. The report notes the following:
  - Kilkee Bay is an SAC, pSPA, has unique flora and in the Pollock Holes and is threatened by the rapid physical growth of the town.
  - The report notes the unique character of the Pollock Holes, a C19th bathing place, the sheltered sandy beach, magnificent cliff top scenery and Heritage landscape.
  - The SEA notes concerns about the tourism zoning of the plan area and recommends a specific objective to limit the form, nature and scale of proposed development.
  - The SEA recommends that development in the TOU2 zone must consider environmental parameters into consideration, including but not excluded to appropriate surface water drainage to protect water quality and associated biodiversity.
  - The SEA notes that the robust habitats of the area are not robust enough to absorb the form considered under open space.

- The objective to facilitate car parking at Diamond Rocks will have a negative impact on visual amenity and potential for land erosion / removal and surface water run-off.
- It is important that the heritage landscape of Lady Isabella's pond is retained in accordance with development plan policies.
- Coastal landscape of Kilkee is sensitive and must be safeguarded against inappropriate development.
- It would be inappropriate to increase the provision of permanent car parking as traffic problems are seasonal.
- The appellant notes that the reference to Open space in the SEA includes the area for retention of the subject car park.
- The closest definition for the proposed function room in the land use zoning matrix of the County development plan is disco /nightclub, both of which "will not be acceptable" under the plans tourism zoning.
- The CDP lists some uses as "will not be acceptable" whereas the LAP lists them as "not normally permitted" with the definition "the proposed use will not normally be favourably considered by the Local Authority , except in exceptional circumstances and it may represent a material contravention of the Plan." It is submitted that the LAP contravenes the CDP.
- It is submitted that there are no exceptional circumstances that justify the proposed function room with a bar.
- It is submitted that the Council erred in holding that the subject development constituted limited expansion under objective TOU2 for the following reasons:
  - A 2012 application to increase the footprint of the café was granted as "limited expansion"
  - The LAP envisages the café being made bigger. The proposed development is not a diversification of the café but an entirely separate commercial use - a wedding function room not open to the public.
  - The proposed development does not comply with the zoning objective of the site – the promotion of tourism – as it will be closed during the tourist season.
  - The proposed development will adversely affect tourism as it will detract from the natural beauty of the area, will introduce late night activities which may lead to the cliffs being cordoned off and may result in litter on the reefs, the groundwater and the Pollock Holes will be threatened, the increased waste water generated by the function room would

ultimately discharge to the Kilkee Reef SAC. The café will be closed when the function room is open.

- The area of the car park is zoned for open space. Car parking is not an acceptable use in the CDP and a not permitted use under the LAP. No 'exceptional circumstances' as required by the LAP zoning have been presented.
- The car park is described by the Council planner as a non-conforming use. Non-conforming uses are defined in the LAP as established uses. The car park is not an established use, it is a recent unauthorised use. A google earth image of 2 March 2016 shows the 'car park' as a field.
- The car park has a negative impact on the visual amenity of the area as it can be seen from the Pollock Holes and the cliff walk. It poses a threat to the Kilkee Reefs SAC from run off of hydrocarbons. The field should be reinstated.
- 'Non-conforming uses' refers to 'reasonable extensions and improvements to premises' and therefore permanent erected structures and not gravel laid on a field. Unauthorised development should not be facilitated on a location where it contravenes the zoning. The applicants should have been required to apply for planning permission for the car park and not retention planning permission. Permission for the car park should be refused as it will significantly detract from the natural beauty and public amenity of the area. The car park should be located on the site of the café, within the tourism zone. The existing car park should be removed.
- The subject development has a long planning history and an enforcement history.
- The concrete slab beside the café does not have planning permission and this was brought to the applicants attention in the previous application. The construction of the slab is in breach of percolation rules. This is important as the run-off of surface water into the SAC is identified as a threat.
- The Diamond Rocks café is 1 mile from the town centre and not easily accessible for wedding guests. Town centre car parking standards should not have been used. 83.3 car parking spaces are required for the proposed function room. Under planning permission 12/207 there was a shortfall of 5.8 car parking spaces. This is outstanding so the full requirement for the proposed development is 90 no. car parking spaces.
- The submitted photomontages are inadequate. They fail to adequately show the impact of the proposed development from elevated points along the cliff walk, the final approach to the



café, public car park and Pollock holes. The negative impact of the car park should not be underestimated.

- An Taisce raised concerns about the scale of the development permitted under the 2012 extension. The increase in development scale and height has not been addressed under the subject application.
- The scale and design of the proposed development is inappropriate. The height and floor area of the proposed development is excessive. The proposed function room is significantly higher than the existing café. The design of the proposed function room is industrial, will not weather well and will impose on the viewer's eye. The existing café is modelled on a residential bungalow, is conventional in design and sits well in the landscape.
- The maximum capacity of the proposed function room is not provided. The proposed room at 253sq.m. could accommodate between 220 and 280 people. This is excessive given the sensitive location of the site.
- The recommendations of the SEA have not been taken into consideration. A Masterplan for the area should have been requested.
- The AA screening statement is inadequate, as follows:
  - Inadequate investigation of foul water, the capacity of the Kilkee treatment plant is not addressed, only the fact that the foul water discharge will be less than the café.
  - There is clear evidence of the treatment plant being overloaded.
  - The AA carried out by the Local Authority simply lifts sections of the Applicants engineering report, with no further analysis or investigation.
  - There is no outfall proposed for the car park so contaminants will simply drain to the ground water. There is no-where to install a petrol interceptor.
  - The AA statement does not address the fact that the car park slopes steeply into the SAC.
  - The AA states that the subject site is 30m from the SAC. This is incorrect. The site directly abuts the SAC. The NPWS identify the Pollock Holes as protected reefs. Had the correct distance been applied different considerations would have been taken into account in the screening report.
  - Population impacts from night time wedding guests were not taken into account.

- No information has been provided for the petrol interceptor, foul sewerage sump, rain harvesting tank, access for fire trucks, lighting and the management and storage of waste.
- The impact of population of area effects, waste disposal and foul discharge from a bar has not been considered in the AAS.
- No reasons for stating that an EIA was not required was given in the planning report. Retention permission is not permissible under section 23(c)(12) of the Planning and Development Act 2010 for sites requiring EIA, the determination of whether EIA is required or AA. As the car park abuts an SAC, a determination as to whether an EIA was required should have been made.
- The proposed development involves the removal of the existing ditch and its replacement with a less effective ditch further west.
- The DoAHG's request for an Archaeological Impact Assessment was not addressed by way of FI. The car park to be retained is immediately adjacent to the recorded monument CL056-035-Fish Pond.
- The impact of coaches, delivery trucks and waste trucks on the narrow access road was not taken into consideration in the planning report. The proposed development will create an undue burden on the road, restricting use of the road, endangering pedestrians and overloading the public car park.
- The impact of the possible use of the proposed function room during the summer months has not been addressed. No condition limiting the use of the function room was attached.
- No condition restricting the number of patrons in the café / function room was added. The foul water calculations are based on two weddings a month but no basis for this has been presented.
- Use of the proposed function room as a licensed premises would have to be subject to a further planning application.
- The Board is requested to refuse permission.

## **7.0.0 RESPONSES**

### **7.1.0 Planning Authority Response**

7.1.1 The Planning Authority responded to the appeal stating: "having regard to the intended use of the proposed development, the policies of the current development plan and the pattern of development in the area, it is considered that subject to conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would otherwise be in

accordance with the proper planning and sustainable development of the area”.

## **8.0.0 OBSERVATIONS**

8.1.0 None on file

## **9.0.0 ASSESSMENT**

9.0.1 On reading of all documentation submitted with the appeal, I consider the issues to be:

- Principle of the Proposed Development
- Proposed Function Room
- Car Park to be retained.
- Appropriate Assessment

### **9.1.0 Principle of the Proposed Development**

9.1.1 The subject site is covered by two zones in the West Clare LAP 2012 -2018. That section of the site immediately around the café and on which the function room is proposed is zoned “Tourism”. Within the tourism zone land use matrix, there is no use class ‘function room’. Café, restaurant are permitted in principle and licensed premises, disco and nightclub are not normally permitted. The section of the site on which permission is sought to retain the car park is zoned “Open Space”. Within the open space zone of landuse matrix of the LAP, car parks are not normally permitted.

9.1.2 The LAP defines ‘not normally permitted’ as “The proposed use will not normally be favourably considered by the local authority, except in exceptional circumstances, and in such instances, the development may represent a material contravention of the Plan. This may be due to envisaged negative impact on existing and permitted uses, incompatibility with policies and objectives contained in the County Development Plan or it may be contrary to the proper planning and sustainable development of the area”

9.1.3 I note that the appellant raises issues of the difference in unacceptable use definitions between the CDP and LAP. Her argument is that the proposed uses would be acceptable under the CDP land use matrix but are ‘not normally permitted’ under the LAP matrix. The inference being that while they are not normally permitted, there are instances where they are permitted. I am satisfied that the deviation on the terminology used in the two

documents is not material in this instance. Whilst the principle of a proposed use is the starting point for the Boards assessment of development, the development is subject to assessment under other policies and objectives of the development plan, environmental designations and any other matters within the remit of the Board.

9.1.4 It is sufficient at this point to note that the proposed car park to be retained and the proposed function room are both uses which are listed as being not normally permitted within their respective zoning objectives unless exceptional circumstances exist.

## **9.2.0 Proposed Function Room**

9.2.1 Permission is sought for the construction of a single storey function room of 355sq.m. to the west of the existing café. The application form does not state the proposed use of the function room but further details within the file indicate that the room will be used to accommodate weddings. Details provided with the application state that no functions will be held during high season (Mid-July to Mid-August) but that during inclement weather it will be used to accommodate those who would normally dine on the outdoor patio. I note the information presented in the engineering report which provides calculations for 2 no. events each month from September to July and none in August. I note that the maximum person estimate for the development after construction of the function room is 9,000 which is the number currently served by the existing café. I note that no proposals for restricting the number of persons served by the premises to 300 as proposed in the engineering report have been presented to the Board.

9.2.2 The proposed use of the function room, which has implications for the intensity of development on the site and the environmental impact of that on the wider area, is in my opinion, unclear. It would appear that while the main function of the proposed room is weddings in the off-season, the room will be used as an extension of the café during the high-season should the weather necessitate such use. I share the appellants concern that the extent of the proposed use has not been clarified and given the visual and environmental sensitivity of the subject site, the precautionary principle should prevail.

9.2.2 Within the West Clare LAP a specific objective **TOU2: Diamond Rocks** states "This small commercial outlet provides a service to visitors during the tourist season on the south side of the bay, at

the start of the cliff walk. Having regard to the sensitive location of the site it is considered that a limited form of expansion may be permitted in order to further enhance the potential of the site and an area of land surrounding the existing business has been zoned to accommodate this expansion”.

- 9.2.3 The site is zoned for ‘limited expansion’ to ‘further enhance the potential of the site’. One can read this specific objective to mean that the uses of the site can be expanded or that the existing business can be expanded. I note that the appellant considers the wedding function room to be an entirely new use and one that is not compatible with the term “limited expansion’. One could argue however, that allowing the business to trade in the low / off peak season is in fact an expansion of the trade of the existing premises. Either way, both the overall LAP and the specific objective recognise the sensitivity of the site and this must be given due regard. It is considered that the overall objective of the development plan was to protect the environmental sensitivity of the area whilst allowing the existing business to service the tourist potential of the site. It is a catch-22 situation, however, in that should the environmental sensitivity of the site be damaged, there would be no tourist industry to service.
- 9.2.4 The design of the proposed function room is largely in keeping with the existing café. I am satisfied that the visual impact of the development on the wider area would not be significantly changed by the proposed development.
- 9.2.5 I note the engineering report submitted with the application. The report states that an in-ground rainwater harvesting tank with a capacity of 2,000l. It is proposed to service the function room toilets with the collected rainwater, thereby reducing the demand on freshwater. Waste water treatment proposals for the proposed development include an additional sewerage storage tank for which limited information has been provided. I note that the engineering report provides limited information of the volumes of effluent generated by the proposed development, merely stating that sufficient capacity exists in the off season and that capacity of the development will be capped at 300 persons. As noted above, the estimates for maximum capacity of the function room, have not increased over that currently experienced by the existing café. Given the environmental sensitivity of the site, should the Board decide to grant permission, this should be addressed by way of a further information request.

9.2.6 I find no evidence of exceptional circumstances for which the zoning objective of the area should be set aside. Given the environmental and visual sensitivity of the site, the bar for breaching the zoning objective of the site is even higher.

### **9.2.0 Car Park to be retained**

9.2.1 A public car park serves the wider Cliff Walk and Pollock Holes area and is located to the immediate east of the subject site. On the date of my site visit, the car park to be retained, to the rear (south) of the café was not open or accessible to the public. As noted above, the car park is located in an open space zone, within which car parks are not normally permitted.

9.2.2 Drawing no. 14/103/-P05 submitted with the application shows the car park as compacted free-draining gravel surface. The engineering report states that the surface is 300mm of compacted gravel which will act as a natural filter for stormwater disposal. The report states that the layer of gravel operates as a trickle filter, that any hydrocarbon waste will adhere to the organic matter caught in the stone. The hydrocarbon is then digested within the sub-base and degraded overtime. I note that no evidence has been presented to support this disposal method nor has any detail of the construction of the gravel bed system been provided. Given the proximity of the site to the coast, these details should not be omitted.

9.2.3 I note and share the concerns of the Dept. Of Arts Heritage and the Gaeltacht about the proximity of the unauthorised car park to the archaeological monument Lady Isabella's pond / fish pond. The extent of site works undertaken in the creation of the car park and the associated earthen berms is such that it should, not have taken place without archaeological supervision and monitoring.

9.2.4 Should the Board agree with my recommendation that the proposed function room should be refused, there is no requirement for a larger car park. In that instance, the applicant should be requested to close the car park and restore the site to its previous condition.

### **9.3.0 Appropriate Assessment**

9.3.1 An AA screening report submitted with the Application. Section 4.1 of the report states that the subject site is not within or does not abound a European site and therefore there is no potential for direct impacts. The report notes that the screening exercise

focuses on the possibility for indirect effects. The report notes the potential impact pathways between the subject site and the Kilkee Reefs SAC. The threats to the SAC are identified as storm and foul water pollution and an increase in leisure activities. The screening report refers to the engineering report submitted with the application and predicts that the proposed onsite management of storm water will result in no water pollution of the reefs. In relation to foul water, the screening report notes that Clare CC's sewage mains, to which the subject development is connected, discharges into the SAC. Water quality assessments carried out for the waste water discharge licence show that the water quality is high status and within the range required by the Surface Water Regulations 2009. The screening report notes the measures proposed in the engineering report and states that there is no potential for negative impacts on the exposed subtidal reef complex. The report concludes with a finding of no significant effects.

9.3.2 The subject site is located immediately adjacent to the **Kilkee Reef SAC (002264)**, a distance of 30m at the closest point. The NPWS describe the site as a 12km long site stretching from Ballard Bay to Castle Point, north of the River Shannon Estuary on the Co. Clare Coast. The reefs are exposed to the full force of Atlantic swells from the west. A small shallow bay, Moore Bay, to the east of the subject appeal site, offers some shelter from wave action and a beach is present. The bedrock is Carboniferous millstone grit and flagstone. A few small islands are included, the largest being Bishop's Island. The site is a Special Area of Conservation (SAC) selected for the following habitats listed on Annex I / II of the E.U. Habitats Directive:

- [1160] Large Shallow Inlets and Bays
- [1170] Reefs
- [8330] Sea Caves

9.3.2 The NPWS site synopsis refers to the reefs, noting that they are very exposed to wave action and support excellent examples of communities for this habitat. The SAC is described as having good examples of exposed reef communities that contain species worthy of conservation. The purple sea urchin *Paracentrotus lividus* is abundant in shallow pools on the shore. In the infralittoral zone there are scarce species of sponge, sea fan and nudibranch. The erect and encrusting sponges, anthozoans and nudibranchs in the circalittoral are of particular interest. Species richness can be high: 86 species were recorded by BioMar in the upper infralittoral reef north-east of Ilaunonearaun and 76 species were recorded in the

lower eulittoral reef at Duggerna Rock. While poorly documented the site has examples of submerged marine caves that are presumed of good quality and largely undisturbed. Exposed littoral sediment communities and sheltered infralittoral reef communities add habitat diversity to the area. This site is of conservation importance as it has excellent examples of reefs and includes examples of a shallow bay and marine caves, all habitats listed on Annex I of the E.U. Habitats Directive.

- 9.3.3 As noted by the Appellant, the AA screening report states that the site does not directly abound the SAC and therefore there no direct impacts will arise. I do not agree with this assessment. The subject development site is approx. 30m from the boundary of the designated SAC. No development exists between the café and the coast save a pedestrian path. An open drain currently runs along the boundary of the site and discharges directly into the SAC. There is a clear source pathway receptor link between the two sites.
- 9.3.4 The three qualifying objectives for the SAC are large shallow inlets and bays, reefs and submerged or partially submerged sea caves. The NPWS data for the site identifies that there are no submerged or partially submerged sea caves with the immediate vicinity of the subject site. The site is identified for reefs (both intertidal and subtidal) and large shallow inlets and bays. The Pollock holes, that area of reef exposed between high tides, directly adjoins the site and is clearly visible from the subject site.
- 9.3.5 The conservation objectives for the management of the large shallow inlets and bays is “to maintain the favourable conservation condition of the inlets and bays”. The target for the favourable conservation condition of the inlets and bays is to have the permanent habitat area stable or increasing subject to natural processes and to conserve the distribution of the following community types in a natural condition: sediment community complex, exposed intertidal and subtidal reef community complex.
- 9.3.6 The conservation objectives for the management of the reefs is also to maintain their favourable condition. Similar to the objectives for the bay, the targets for the favourable conservation condition of the reefs are to have the permanent habitat area stable or increasing subject to natural processes, to see the distribution of the reefs stable or increasing subject to natural processes and to



conserve the distribution of the following community types in a natural condition: sediment community complex, exposed intertidal and subtidal reef community complex.

9.3.7 In my opinion, the significant effects of the proposed development on the SAC are contaminated foul, surface or waste water entering the water at the Pollock Holes. As noted above, no information has been given in relation to the construction of the gravel bed system for the trapping of hydrocarbons and their subsequent digestion by a sub soil layer. Nor has any evidence of the success or otherwise of such a system been presented. Likewise, limited information has been presented in relation to the generation of waste water by the proposed function room. This is particularly important where questions exist in relation to the of the function room throughout the year, its capacity and the effects of that on waste water disposal. The discharge of contaminated water into the SAC could have a direct or an indirect effect on the water quality of the SAC. This, in turn, would compromise the achievement of the conservation management objectives of the SAC which is to maintain the favourable conservation status of the three qualifying interests of the site.

9.3.8 It is considered that insufficient or inadequate information has been submitted to the Board in relation to the likelihood or the significance of the effects identified by me on the conservation objectives of the SAC. As per the recommendation of the D.EH&LG Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities, 2009 as amended in 2010, a precautionary approach must be taken and where uncertainty exists it should be assumed that the effects could be significant.

9.3.8 Should the Board disagree with my earlier recommendation that permission be refused on other grounds and agree with the finding of the above, it is recommended that a Natura Impact Statement be requested from the developer.

## **10.0.0 RECOMMENDATION**

**10.0.1** I have read the submissions on file, visited the site, and have had due regard to the provisions of the Clare County Development Plan 2011 -2017 and the West Clare LAP 2012-2018, and the site history. It is considered that the proposed development of a function room and the retention of a car park, which are not normally permitted under the zoning land use matrix of the West

Clare LAP and for which no exceptional circumstances have been presented, would be contrary to the provisions of the development plan and therefore would not be in accordance with the proper planning and sustainable development of the area. Given the proximity of the site to the Kilkee Reefs SAC and that in the absence of an NIS, it cannot be stated that the proposed development would not have a significant effect on the conservation objectives of the designated site. I recommend permission be REFUSED for the following reasons:

- 1 On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site No. 002264, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.
- 2 The retention of the car park is a use that is not normally permitted in an area zoned for 'Open Space', as per the provisions of the West Clare LAP 2012-2018. No exceptional circumstances that would warrant a grant of permission, in accordance with section 1.13 of the LAP, have been presented to the Board. The proposed development if permitted, would contravene materially the zoning objective of the plan and would be contrary to the proper planning and sustainable development of the area.
- 3 The proposed function room is a use that is not normally permitted in an area zoned for 'Tourism', as per the provisions of the West Clare LAP 2012-2018. No exceptional circumstances that would warrant a grant of permission, in accordance with section 1.13 of the LAP, have been presented to the Board. The proposed development if permitted, would contravene materially the zoning objective of the plan and would be contrary to the proper planning and sustainable development of the area.

---

**Gillian Kane**  
**Planning Inspector**  
**30/05/16**