



An
Bord
Pleanála

Inspector's Report PL26.246619

Development	Retention of café and two guest bedrooms at ground floor level, retention of two guest bedrooms and plant room at basement level, retention of external alterations, Main Street, Bunclody, Co. Wexford
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	20160225
Applicant(s)	Charles Meyler & Thomas Byrne
Type of Appeal	Third party against permission
Planning Authority Decision	Grant permission subject to conditions
Appellant(s)	Anne & Bridget O'Connor Barty O'Connor
Observer(s)	None
Date of Site Inspection	26 th August 2016
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1. The site is located in the centre of Bunclody town and fronts directly onto Main Street. It is located on the northern side of the street and forms part of a terrace which is broken up by narrow laneways. The northern (rear) boundaries of these properties abut the banks of the Clody River, which forms part of the Slaney River Valley cSAC (Site code 000781), a Natura 2000 site. The property is 3-storeys in height and is bounded to the west by a public laneway and a residential property with a ground floor shop unit facing the street. This property is occupied by Bridget O'Connor (but owned by her son Barty O'Connor). The appeal site adjoins another 3-storey property to the east (property owned by Barty O'Connor), which has a real estate agency on the ground floor fronting the street.

- 1.2. The appeal site has been extended at the rear and is currently in use as a guest house, comprising ensuite guest bedrooms and a reception lobby with circulation space only. However several sections of the building remain vacant and unfinished. These areas include the ground floor shop unit (proposed café) and the majority of the basement floor. The reception area to the guest house is located at ground floor on the western elevation, (towards the rear), and is accessed from the public laneway via a newly formed ramp leading to a landing/platform area, which continues past the reception entrance and joins a newly constructed set of external steps leading to the garden at basement level. The steps are composed of granite with a glass and steel balustrade along the western edge. The northern façade of the basement comprises patio doors which open onto the rear garden/smoking area. There is a flat roof terrace at first floor level which is accessed by means of a glass doorway on the northern elevation from the internal circulation space. The flat roof provides access to a boiler room/water storage tank and the external space is enclosed by a parapet wall. There is a further glass door immediately below the flat roof access door which is located on the rear (northern) wall of the reception lobby, but it does not lead to any floor space and is approx. 3-4m above ground level.

- 1.3. The garden area has been laid out with paving, gravel and lawn and there are a number of manholes alongside the northern site boundary. The stone boundary wall appears to have been rebuilt at some point along the eastern boundary. However, the wall that had previously enclosed the garden along the western boundary with the lane, (evident in historic photographs and plans), has been removed. The wall along the northern boundary of the site with the river embankment has also been reconstructed and a gap has been retained in the central portion, which currently has a chain prohibiting access to the river. Stone piers jut out from the wall onto the embankment. The embankment appears to have been recently altered with gabions forming steps leading down to the river. It is noted that the embankment to the rear of the adjoining property to the east is laid out as lawn and contains garden and play equipment. To the west a large shed occupies the northern end of the adjoining site including any embankment area. On the opposite bank of the river lies a wooded area which forms part of a golf club lands. There is also a Council sewage pump adjoining the northern wall at the end of the laneway.
- 1.4. I refer the Board to the appendices to this report which include maps, photos and aerial photos of site. There is also an extensive history on the site, details of which are on the file and are summarised at 4.0 below.

2.0 Proposed Development

2.1. The proposed development is for the retention of amendments to previously granted planning permission Reg. Ref. 20101100. The main elements of the proposal are as follows:-

- Ground floor level - Retention of café fronting onto street and 2 no. guest bedrooms behind in place of 2 no. previously permitted shop units and 4 no. guest bedrooms;
- Basement level - Retention of 2 no. guest bedrooms and plant room in place of previously permitted café, shop storage areas and 2 no. bedrooms;

- External alterations - Retention of the following external alterations
 - Grey PVC wall cladding in place of previously permitted zinc sheeting on the eastern façade;
 - New northern façade with rendered walls and new windows and doors;
 - Replace zinc sheeting with rendered walls on North and West facades together with window alterations;
- Site works – Retention of external stairs, grassed and paved area, staff access gate to river bank for maintenance of riverbank and all ancillary site works.

3.0 Planning Authority Decision

3.1. Decision

The P.A. decided to grant permission on 29/04/16 for the proposed development as submitted, subject to 16 no. conditions. These were mainly of a standard type. Condition 3 prohibited access to the flat rear roof of the first and second floors for customers, in the interests of residential amenity. Noise emission levels are restricted by Condition 13 to 55dB(A), leq(A) when measured at the boundaries of the site between the hours of 0800 and 2000, Mon. to Fri. with an overall noise emission level of 45dB(A) at any other time. Condition 14 restricted levels of illumination and light emission levels to prevent glare or dazzle on the adjoining roads/properties. Development contributions totalling €12,382.00 were required under conditions 4, 5 and 6.

3.2. Planning Authority Reports

The report of the Area Planner can be summarised as follows:

- It was noted that the front elevations remain the same as previously permitted under 20101100 and that the side elevation has been reduced in size and scale such that the overall development of 804sq.m has been reduced to 630sq.m. The

proposal to replace the zinc cladding with PVC coated cladding instead was considered to be appropriate given that the zinc cladding had been intended to provide architectural merit to an elevation to a café, but this was no longer required at his location. It was noted that the proposed development does not include any parking provision and that 15 no. parking spaces would be required. However, it was considered that as the site is located in the town centre and given the availability of on-street parking, this would be acceptable. I note that one of the development contribution conditions, however, requires the payment of a levy in respect of car parking.

- The Area Planner concluded that the development is located in an area zoned for Town Centre uses and is, therefore, considered acceptable in principle, and that the reduction in size and altered interior is considered more suited to this restricted site than the previously permitted development. It was considered that overlooking from the balcony would be negligible and that loss of privacy would be minimal due to separation distances, but that a condition should be attached to prevent access to the balconies/flat roofs.
- In terms of the riverside works, it is stated that “the issue of an unauthorised gabion basket riverside embankment is not sufficient ground to refuse this planning application”. It was further noted that a Stage 1 Screening Report for appropriate Assessment purposes had been submitted as part of 2010/1100 and that it had been concluded by the consultant Environmental Scientist that no significant effects would arise from the project, alone or in combination with other plans or projects, and that as such there was no need for a Stage 2 AA.

3.3. Other Technical Reports

Chief Fire Officer – Regularisation Certificate required under Building Control Regs.

3.4. Third Party Observations

3.4.1 Third party observations were received from Barty & Anne O'Connor, Bridget O'Connor and Barty O'Connor, all of Main Street, Bunclody. An observation was also made by An Taisce, which stated that consideration was required to resolve ecologically appropriate treatment of the riverbank.

3.4.2 The main issues raised by third parties may be summarised as follows:-

1. Unauthorised works to river bank – construction of a man-made river embankment (with steps constructed from gabions), creation of a gateway providing access to the riverbank and insertion of wing walls jutting out over the river embankment.
2. No Appropriate Assessment of works to riverbank. No attempt has been made to comply with condition 12 of 2010/1100.
3. Overlooking and loss of privacy – issues relate to closer proximity of northern elevation to adjoining residential properties, the incorporation of an external open terrace directly adjacent to observers with the potential for noise and anti-social behaviour nuisance.
4. Inadequacies of accommodation proposed – Proposed Bedroom 11 in the basement has no natural light and Bedroom 12 opens onto the guest smoking area by means of patio doors.
5. Reference to 2010/1100 is misleading as the current application/what has been constructed bears little resemblance to the permitted development. A detailed schedule of inaccuracies, errors and misleading information is set out in respect of the proposed development relative to what was previously permitted. In particular, it is pointed out that the garden is now to be used as a smoking area and terrace and that the application fails to mention that the reception area has been constructed 400mm higher than permitted as a result of the unauthorised basement.

6. Insufficient legal interest and inadequacies in site notice and application details.
In particular it is claimed that the access elements of the development encroach onto the public lane and that the boundaries are incorrectly drawn.

4.0 Planning History

- 4.1. **PA Reg. Ref. 20101100** – PP granted by P.A. for change of use of 3-storey building from butchers shop with residential overhead to guest house and construction of a 3-storey over basement extension at rear and alterations to existing building. Proposed development comprised a 14 bedroom guest house, 2 retail units at ground floor fronting street with basement storage units and a coffee shop and riverside terrace at basement level at the rear. A substantial part of the extension was two storeys in height, (northern-most section), and the proposed extension stretched almost to the rear retaining wall with the river bank. The proposed reception and main entrance to the guest house was proposed from the lane by means of a flight of steps leading directly off the laneway at right angles to the access way. However it is noted that the permitted development did not include any works to this retaining wall other than a proposal to attach a glass railing/balustrade to it from the inside.
- 4.2. Prior to the grant of permission on 20101100, the P.A. had requested FI on three matters, two of which related to Appropriate Assessment and Flooding by reason of being within 50m of the Slaney River Valley cSAC. In response, the applicant provided a Stage 1 AA Screening Report and a Flood Risk Assessment (including Justification Test). These requests seem to have arisen from a submission by the DAU. The Screening report concluded that the proposed development, either alone or in combination with other plans and projects, will have no likely significant adverse impact on the qualifying interests or integrity of the cSAC or on their conservation objectives. The P.A. was satisfied that there was no need for a Stage 2 assessment. The F.R.A. had noted that the development is located on zoned lands and included attenuation proposals, and as such, considered that it would not pose an increased flood risk to the catchment.

- 4.3. Permission was granted for 20101100 subject to 20 conditions, the majority of which were of a standard nature. However, it is noted that condition 12 required the submission and agreement of detailed specifications for the wall adjoining the river and details to protect the river during construction.
- 4.4. **PA Reg. Ref 2009/1056** – Permission Refused for conversion/extension of property to a 20 bedroom guest house with basement coffee shop and riverside terrace and 2 shop units fronting Main St. Reasons for refusal were –
- Adverse impact on property to east due to size, massing and location of 3-storey over basement rear extension;
 - Inadequate information regarding sewerage and flood risk;
 - Potential adverse impact on the Slaney River Valley cSAC;
 - Inadequate proposals for storm-water discharge.
- 4.5. It is noted that letters were received from the DAU (Dept. Arts, Heritage and the Gaeltacht) dated 18/9/09 and 25/02/10 in which serious concerns were expressed about the potential impact of the proposed development on the Slaney River Valley cSAC as a result of construction works on/adjacent to the river embankment. In particular, concern was expressed regarding potential impacts from soiled surface waters. Debris flowing into the river and interference with the river bank itself. The DAU stated that there should be no infilling or alteration of the course of the river, no construction works within 5 metres of the river and that storage of oils/fuels should be bunded and oil interceptors employed. I also note from the drawings that the proposed development indicated that there would be no works to the retaining wall along the banks of the river (other than the railing attached to the inside). The rear extension would have stretched almost to the retaining wall, with a set-back for the proposed terrace in front of the café and there were 4 no. balconies overlooking the river. The proposed reception area and steps were as proposed in 2010/1100.

4.6 **P.A. Reg. Ref. 2008/2478** – permission refused for a similar development to that proposed in 2009/1056. However, the 2008 proposal was larger and incorporated 25 no. guest rooms, a coffee shop and 2 no. shops. The 3-storey extension with basement also extended closer to the northern boundary with the river and included 6 no. protruding balconies on the northern elevation. The reasons for refusal (3.no.) were also of a similar nature. The first reason related to the excessive scale, bulk, height and layout which it was considered would give rise to overlooking and an adverse impact on the adjoining properties. The other two reasons related to inadequacies in the existing and proposed services (water supply and sewerage). There were no proposals to alter the river embankment or retaining wall. The entrance to the reception area was as for 2010/1100.

4.7 **P.A. Reg. Ref. 2006/0033** – PP was granted for a 3-storey extension to rear, alterations to main building and change of use from residential to butcher's shop on GF with basement storage, office accommodation overhead and an apartment at second floor level. The proposal included a large scale external staircase at the rear from garden level to the second floor. It was also proposed to raise the roof of the main building to facilitate dormer windows facing the street and to provide 2 no. balconies at the rear. In response to FI request, the applicant confirmed that the resident of the SF apartment would have access to the rear garden. The drawings and photos indicate that there was a high stone wall along the western boundary with the lane and that the rear garden was completely enclosed by stone walls at that time.

5.0 Policy context

5.1 Wexford County Development Plan 2013-2019

Bunclody is designated in volume 1 of the CDP as a District Town (3.4.7), the development approach for which is to consolidate growth within these towns. Chapter 6 sets out the Employment, Economic and Enterprise policies for the area.

Tourism is listed as one of the key pillars for growth (6.4.3). Objective ED07 seeks to maximise tourism potential in the county. ED46 also promotes the development of brownfield sites subject to compliance with normal planning criteria. Section 7.4 contains the Sustainable Tourism Development Strategy for the area and TM04 seeks to maximise the tourism potential. The County Retail Strategy is contained in Volume 4 of the Development Plan.

5.2 Bunclody LAP 2009-2015

It is noted that the Bunclody LAP 2009-2015 has expired and has not been replaced/renewed. Thus there is currently no zoning objective for the site. However, I note from the archive section of the P.A.'s web site, that the site in question was previously zoned Town Centre and that whilst there was an objective to provide for a river walkway, this did not extend along the Clody River to the rear of the site.

5.3 Natural Heritage Designations

The River Clody forms part of the Slaney River Valley cSAC (00781). The northern boundary of the site overlooks the banks of this river, and the confluence of the Clody and Slaney Rivers is approx. 150m to the North-east. The potential impacts of the proposed development are discussed further in Section 7.7 below.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

1. Residential amenity –

- *Overlooking* from external landing, external staircase, roof terrace at FF, GF window/door at reception on northern elevation, windows on western elevation. Loss of privacy to both property to the west and to the east from

guests accessing the accommodation and loitering on the landing as an unofficial smoking area. It is pointed out that the P.A's current position differs significantly from its previous stance as proposals with less intrusive levels of overlooking had been refused on the grounds of loss of privacy to both sets of appellants.

- *Noise and nuisance* from proposed new elements such as smoking area, external roof terrace, external landing and staircase.
- *Odours from café* – no details of ventilation, extractor fans, type of cooking
- *Replacement of zinc cladding* with metal profile cladding – results in visual impact as unattractive and potential noise issues.
- *Property value* of neighbouring property will be diminished as a result of the proposed development.

2. Adequacy of basement guest bedrooms – natural ventilation and lighting. One room has no natural lighting or ventilation and is located in the centre of the building. The other room is lit by means of a floor to ceiling patio door. It is suggested that if the bedrooms in the basement were omitted, there would be no need for the alternative means of access which has resulted in the loss of privacy and nuisance issues. A means of escape could be provided for by means of the external door from reception at rear. Board should note that the appellants and the applicant (and respective agents) have discussed such solutions on site but have not been followed through despite agreement on site.
3. Lack of parking provision – parking demand likely to be generated by both guest house element and the proposed café. On-street parking availability is limited and lack of parking provision will aggravate situation.
4. Inadequate drainage proposals –

- Surface water run-off from top flat roof is diverted from balcony onto stone boundary wall. Installation of SW pipes on the boundary wall of adjoining property is unnecessary and is not on drawings. These should be removed and fitted as proposed and shown on plans.
 - No foul pumping chamber has been installed (tank only). It is unclear how rain water can be used for toilets etc. if no pumping installed.
5. Unauthorised works – there are a substantial number of unauthorised elements. Notwithstanding the efforts of the appellants to notify the P.A. of these, the P.A. has allowed the works to continue. The result of this is that the FFL of the reception lobby has been built at a higher level than permitted, which has in turn necessitated the provision of a new and different means of access for disability purposes and means of escape from fire. These revised elements have resulted in serious erosion of the residential amenities of the neighbouring properties in terms of overlooking and noise and disturbance.
6. River embankment – The applicant has created a man-made river embankment and has inserted gabion steps leading into the watercourse without permission. The appellant has had a Section 5 Declaration from the Council confirming that these works are unauthorised and are not exempted development. The P.A. has since issued an Enforcement Notice requiring the works to be reversed and the river bank reinstated. It is considered that there has been a deliberate attempt to exclude the river embankment works from the current application, which makes it invalid. Notwithstanding this, it is considered that the works to the river embankment are an integral part of the development and as such, the retention application relies on unauthorised works, and should therefore be refused. However, if the board is minded to grant permission, the appellant wants a condition restricting access to the river and the reinstatement of the stone boundary wall along the boundary with both the lane and the river to prevent anti-social behaviour and loitering in the area.

7. Appropriate assessment – S34(12) of the P&D Act requires that a P.A. must refuse to consider an application for retention of unauthorised development where the authority decides that if an application had been made to it in the first instance, (prior to commencement of development), the application would have required a Stage II A.A. The applicant has sought to avoid this situation by excluding the unauthorised works to the river embankment, but as stated above, this is unacceptable as these works are inextricably linked to the overall development. Furthermore, the P.A. has relied on a Stage I Screening Report which was submitted as part of the application Ref. 2010/1100, which specifically did not include any works to the retaining wall or the river embankment. Thus the screening out of the need for a Stage II AA is based on a different development and is unreliable. This is inappropriate practice and is unacceptable as it should be based on the current development and on the changes that have occurred since the permission was granted.
8. Description of development inadequate and misleading – little or no relationship to what was permitted under 2010/1100. Development to be retained is materially and substantially different to that granted previously. The description excludes a significant number of elements that have been constructed or put in place on the ground.
9. Inadequate legal interest – issues raised in respect of ownership of site, wing walls of retaining wall encroaching on lands outside red line, encroachment of access ramp/stairs and railings onto public laneway; encroachment of works beyond river wall boundary. Appellants seek S131 notice to be issued to ensure applicant has sufficient legal interest to carry out development.

6.2. **Planning Authority Response**

The Planning authority responded by stating that it was satisfied that the proposed retention application was satisfactory and would resolve outstanding issues on the development subject to the conditions outlined.

6.3. First Party Response

Reference is made to the extensive planning history on the site, the need for guest accommodation in Bunclody and the belief that the site presents a unique opportunity to open up access to the river, given its location in the town centre and the access to the river from the adjoining lane. It was stated that once building had commenced on site, ground stabilization issues had arisen which increased the cost substantially and a decision was made to concentrate on the construction of the front section, which had unforeseen consequences for fire safety and disabled access. In particular, the inclusion of bedrooms at basement level meant that the previously proposed flight of steps to the Reception had to be replaced with a ramp and it was considered necessary to have a second means of escape from fire, hence the external staircase. It is stated that the applicants are amenable to the installation of “feasible screening measures so as to protect the privacy and prevent overlooking of neighbouring property”.

7.0 Assessment

7.1. I consider the key issues in determining this appeal are as follows:

- Unauthorised works, description of development and legal interest
- Residential amenity –overlooking, noise, odours and visual amenity
- Impact of additional bedrooms at ground floor and basement levels
- Impact of development on Tully’s Lane
- Adequacy of drainage proposals
- Appropriate Assessment

7.2 Unauthorised works, description of development and legal interest

- 7.2.1 A substantial element of the objection to the current proposals appear to arise from the unauthorised nature of the works undertaken since planning permission was granted in 2010, the extent of those works and the perceived consequences both for the amenity of the neighbouring residents and for the environment/ecology of the River Clody and the European site of which it forms a part. The appellants have expressed the view that their rights to have a say in the matters were undermined by the unauthorised nature of the works and that despite bringing the matters to the planning authority's attention, the works carried on. The situation was exacerbated by the belief that the development has extended beyond both the red line boundary and the lands within the applicants' ownership and that the application designed to rectify matters has failed to include many elements that have materialised on site.
- 7.2.2 Whilst I would agree that there are many discrepancies both within the application documents and between the submitted drawings/documents and what exists on the ground, the issue of unauthorised works and enforcement of same is a matter for the planning authority and not for the Board. What is currently before the Board is the proposed development within the redline boundary and the effects of that development on the surrounding area. However, the unauthorised works to the river bank would need to be considered as part of the appropriate assessment process, particularly in respect of potential 'in combination effects' on the cSAC.
- 7.2.3 It is a matter for the applicants to ensure that they have adequate legal interest to carry out the development, as set out in Section 34 (13) of the Planning & Development Act 2000 (as amended), which states that a person shall not be entitled solely by reason of a permission under this section to carry out any development. The discrepancies in terms of the matters included/excluded from the description of development are noted. However, should the Board be minded to grant permission, it is considered that the description will need to be substantially amended to accurately reflect the development as proposed. These would include the following:-

- **Retention of café and basement bedrooms:**- The café does not exist as yet and the basement has not been fitted out or completed to habitable standard. Thus the proposal to retain these uses is inappropriate and inaccurate and the description should be changed accordingly. In addition, the basement floor area has been extended and the central section (below the reception foyer) was not previously proposed to be excavated. The current layout includes the excavation of this area and the change of use of lobby/circulation areas to bedrooms.
- **FFL of ground floor Reception** – the FFL appears to have been increased but the permitted and current FFLs are not clearly stated. However, this change appears to have facilitated the introduction of bedrooms at basement level and has necessitated revised access and means of escape arrangements, with potential consequences for the amenity of neighbouring properties. This change should be included in the description of development.
- **Revised access arrangements** – the revisions to the access arrangements are extensive and materially different to that previously permitted and have potential consequences for the amenity of neighbouring properties. They include revisions to the width and gradient of the ramp and the introduction of the enlarged, elevated landing area and the new set of granite steps leading to the garden. These changes should be included in the description of development.
- **External terraces** – the provision of an external terrace at garden level for the use of guests of the guesthouse, (labelled on the drawings as a smoking area), in a location which is much closer to the rear elevations of the neighbouring dwellings should be included in the description of development as it is likely to be a material alteration. The revisions to the FF roof terrace, albeit smaller and for maintenance purposes, should also be included in the description, as it is proposed to retain an access door in lieu of a window and the introduction of a parapet wall. These changes should be included in the description of development.

- ***Alterations to windows and doors*** – the revisions to the internal layout has resulted in several changes to windows and doors on the northern and western elevations. These have been necessitated principally due to the alterations from circulation to habitable space at basement and ground floor levels. For example, the permitted rear shop windows were labelled as ‘non-openable’ and are now bedroom windows, which presumably are required to be openable. There is also the anomaly of the window at the rear of the reception area which does not lead anywhere. These matters should be clarified.
- ***Encroachment onto laneway and riverside embankment*** – it would appear that the external staircase and access ramp project further into the laneway than the previously permitted development. Although projecting windows at GF level had previously been permitted, these would have over-sailed the public laneway. The development as proposed to be retained appears to bring the landing and staircase closer to the dwelling to the west and to reduce the width of the public laneway, and this would need clarification and inclusion in the description. In addition, should the Board be minded to grant permission, clarification should be sought on the works to the riverside embankment involving the insertion of gabions, as well as the fact that the retaining wall appears to have been largely demolished and reconstructed with a gap flanked by gate piers.

7.3 Residential amenity

As noted in 7.2 above, the development that is proposed to be retained differs quite substantially from that granted under 2010/1100. Although the nature of the uses are largely similar, the footprint is substantially smaller than that permitted previously and the café use is now at the front instead of at the rear, (adjacent to the river), and the shop units have been omitted. The number of guest rooms has been reduced from 14 no. to 12 no. However, whilst the physical footprint and intensity of the use has been reduced, the layout of the proposed development and arrangement of the uses has resulted in changes which could have a detrimental effect on the amenity of

neighbouring properties. The issues raised by the appellants in this respect are examined below.

7.3.1 Overlooking and loss of privacy

The previously permitted development had been designed to avoid overlooking from guest bedrooms with the outlook at an obscure angle and directed northwards away from the adjoining residents. The entrance to the Reception would also have been by means of a short flight of steps leading to the entrance, whereas the current proposal is for a more elaborate access arrangement which includes several elements from which views into the neighbouring property to the west can easily be obtained. The access includes an external landing and a large and substantial external staircase made of granite with glazed and steel balustrades. I would agree with the appellants that this arrangement is likely to result in a serious loss of privacy to the neighbour to the west. Although the appellants have stated that they would be amenable to screening, no such proposals have been submitted, despite the fact that the appellants state that this had been agreed between the parties within the past year. It is also not clear how this would work, without creating a visually obtrusive element. In addition, the views into the adjoining properties from the roof terrace at FF level would be very intrusive. It is acknowledged that the applicant is agreeable to a condition restricting access to staff only. Notwithstanding this, the degree of overlooking into private internal and external space that would result from this flat roof area is considered to be excessive and would have a detrimental effect on the amenities of these properties to the west and the east.

It is acknowledged that this is a town centre site and that the expectation of privacy levels would not be the same as for a purely residential area in a residential zone. Notwithstanding this, the extent of the areas involved together with the proximity, height and viewing angles are such that the loss of privacy would be unacceptable in my view. In addition, the perception of being overlooked from a number of external viewing points would be detrimental to the amenity of the property to the west.

7.3.2 Noise and disturbance

The previously permitted development included a café with an external terrace at the rear but this was at the far end of the site adjoining the river. It was, therefore, well removed from the residential properties to either side. The current proposal introduces a number of elements that could be a source of noise nuisance in much closer proximity to the habitable areas of the adjoining properties than previously envisaged. I would also agree with the appellants that the design of these elements are such that they would lend themselves to congregation of guests/staff in an informal manner, perhaps as an informal smoking area or merely as a meeting point, which could potentially result in noise and disturbance at unsociable hours. It is considered that there is likely to be an adverse impact on residential amenity arising from noise and disturbance associated with the landing area (outside reception), the external staircase, the garden terrace and the first floor roof terrace.

7.3.3 Odour nuisance

The use of the permitted ground floor retail units as a café is consistent with the town centre zoning and location. However, as mentioned previously, it has not yet been established and as such is a proposed change. There is no indication on the drawings as to how cooking smells and ventilation are to be handled or the type of café involved. Thus it is possible that there would be a need for extractor fans, air conditioning/refrigeration plant, vents etc. which would necessitate the placement of plant/vents on the western or southern elevations, with potential impacts on either visual or residential amenity (or both) in terms of noise, odours and visual obstruction. In the absence of this information, it is not possible to properly assess the likely impacts on residential or visual amenity.

7.3.4 Visual impact of cladding

The replacement of the permitted zinc cladding on the eastern elevation with metal cladding, which is industrial in character, is considered to be less visually attractive. It is more utilitarian in character and is not sympathetic to the residential use of the

adjoining property or to the character of the attractive stone wall below on this boundary. It is also unclear how it would age or weather. However, the applicant has stated that attempts to plaster and render the wall instead were hampered as access was denied. Notwithstanding this, the retention of the cladding is considered to be injurious to the visual amenity of the area.

7.3.5 Property values

Property values are influenced by so many different variables and market conditions, that it is considered to be difficult to ascertain to what extent, if any, an adjoining development would be likely to have such an impact. Given the mixed use character and town centre location of the site, it is considered that in this case it would be even more difficult to reach any such conclusions.

7.4 Impact of additional bedrooms at ground floor and basement levels

As previously highlighted at 7.2 above, the impact of the introduction of bedrooms at both basement and ground floor levels has resulted in substantial changes to the overall development. These include:-

- Increased area of excavation – to create additional lower ground floor space.
- Increased FFL at reception and associated external landing to allow for both internal floor to ceiling heights in basement rooms and level access for ramp, with associated increases in overlooking from elevated/enlarged external areas.
- External staircase required as means of escape and access to garden terrace.
- Escape hatch and means of light/ventilation for internal basement bedroom.
- Windows with opening sections instead of a door and fixed windows onto lane.

The previously permitted development did not include bedrooms in the southern part of the development. The design had taken advantage of the falling gradient and as such, the windows to the proposed bedrooms were located further to the north along

the lane, away from private residences. The degree of excavation required, as well as the height, proximity and number of vantage points from external communal areas where overlooking was likely to occur were considerably less than in the current proposal. Thus whilst the reduced footprint would have reduced the impact on amenity by reason of overshadowing and loss of outlook, the adverse impacts arising from loss of privacy and noise and disturbance would have been increased. The amenity and usability of the proposed bedrooms at basement level are also questionable given the proposed means of light and ventilation.

7.5 Impact of development on Tully's Lane

The development that is proposed to be retained includes many elements that have changed the character of this public lane. It is clear from historic submissions on file that there had been a high stone wall along the full length of the western boundary of the site, with the only public access to the riverbank by means of a type of style which forms an integral part of the stone retaining wall. The applicant argues that it is intended that the development would begin a process which would ultimately open up access to the river bank. However, the current proposal has principally removed any barriers to access to the rear garden of the guest house and effectively blurred any land ownership boundaries. The gap in the wall leading to the river is not alone unauthorised, but its stated intention is for staff to be able to access the river for maintenance purposes. Thus it could be argued that the removal/alterations to the boundary walls have potentially privatised the public realm, as the lane could now be perceived as being part of the garden area.

At the southern end of the lane, it is noted (by comparing the permitted and the submitted drawings), that the revised access arrangements, (including the ramp and the external staircase), have projected further into the lane than previously proposed/permitted. Although there is no evidence to suggest either way whether this amounts to encroachment, the width of the accessway leading to the river is narrower. Furthermore, there are windows and an escape hatch which also seem to project onto/over the laneway.

7.6 Adequacy of drainage proposals

It is considered that disputes regarding drainage arrangements on party boundaries are not a matter for the Board. However, should the Board be minded to grant planning permission, a condition should be attached requiring drainage arrangements to be in accordance with the local authority requirements.

7.7 Appropriate Assessment

The Blackstairs Mountains cSAC (000770) is located approx. 3-4km to the southwest of Bunclody. This European site is designated for Wet Heath and Dry Heath. The northern boundary of the site is defined by a stone wall, beyond which are the banks of the Clody River which forms part of the Slaney River Valley cSAC (000781). This Natura site extends for many kilometres in several directions from Bunclody and has many tributaries. The confluence of the two rivers is located approx. 150m to the northeast of the development site. The Slaney River Valley cSAC is designated for many habitats and species. It hosts a number of protected plants and animal species including Atlantic salmon and there is a significant population of Freshwater Pearl Mussel within the Derreen River. The site also supports important numbers of wintering birds.

It is considered that on the basis of the source-path-receptor model, the Blackstairs Mountains cSAC can be screened out and the remainder of this section is confined to the Slaney River Valley cSAC. It is noted that a Stage 1 Appropriate Assessment Screening Report was submitted in respect of the previously permitted development on the site, P.A. Ref. 20101100. The P.A. Planner noted that this report had been carried out by an Environmental Scientist (MIEEM) and that the report had concluded that the project either alone or in combination with other projects would have no significant adverse impact on the qualifying interests or conservation objectives of the Slaney River Valley cSAC. Having regard to this, the P.A. considered that

“As the proposal is for a smaller modified version of what was granted, the AA screening is considered valid”.

Thus the P.A. did not require the submission of a further Stage 1 report or a Stage II report. I note, however, that the AA Screening Report was based on the conclusions that there would be no significant effects on the cSAC due firstly, to the lack of any proposals to encroach on the riverbank and, secondly, to the inclusion in the proposed development of plans to attenuate surface water run-off prior to discharge to the Clody River.

However, it is considered that the current proposal differs quite substantially from the previously permitted development. Although the recent works to the riverbank, (involving the creation of a man-made embankment and the creation of steps formed by gabion baskets), have been excluded from the retention application, these works are the subject of an Enforcement Notice issued by the P.A. requiring the applicants to reinstate the riverbank. The third parties have submitted several photographs of the works to the river bank at the time that they were being undertaken. In addition, the applicants have demolished part of the stone retaining wall, and created a gap for a gateway along with wing walls protruding into the embankment area, and the creation of the gated access is the only part that is included in the current proposal. It is clear from the previously permitted drawings that the stone boundary wall was to be retained and the only works relating to the wall that were proposed were “new glazed railing inside river bank wall”. The annotation on the northern side of the wall stated “river bank rock formation” and “river bank wall to be repaired only”. Thus in terms of the river embankment and retaining wall, it is clear that the development on which the Stage 1 Screening Report was based differs materially from what currently exists on site and from what is now proposed for retention.

The third party appellants have also raised issues regarding drainage and discharge to the river. Although there is an outflow pipe discharging to the river clearly evident on site, there is no evidence to suggest that the applicant has not installed the attenuation system referred to in the Stage I Report. The appellants also claim that

the foul pumping chamber has not been installed as permitted (just the foul tank). However, it is noted from the 20101100 submissions that the foul pumping system was intended to serve the café adjacent to the river and Bedrooms 13 and 14, which were located to the north of the reception area.

In light of the foregoing, it is considered that it is not possible, on the basis of the evidence before the Board, to come to a conclusion that likely significant effects on the adjoining Slaney River Valley cSAC can be screened out. Although the works to the river bank that have been undertaken are outside the red line boundary, in-combination effects must be considered. It is considered to be inappropriate to rely on an old report which was based on a different development proposal. Thus it is considered that there is insufficient information to carry out a proper screening assessment or to be satisfied that no significant effects on the integrity of the cSAC would arise. Whilst the works in themselves may not be particularly extensive, given the nature of the works, their proximity to the river, and the potential impact on the cSAC, it is considered that the precautionary approach must be applied in this instance. It is considered, therefore, that the proposed development should be refused.

8.0 Recommendation

- 8.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 REASONS AND CONSIDERATIONS

1. Having regard to the revised access arrangements incorporating a large landing area and external staircase and the increased finished floor level at reception arising from the inclusion of guest bedrooms at basement and ground floor levels at the southern end of the guest house, together with the inclusion of a roof terrace at first floor level and a smoking area at

basement level, it is considered that the development that is proposed to be retained would result in increased levels of overlooking, noise and disturbance and in a significant loss of residential amenity to the neighbouring residents to the east and the west by reason of the relative proximity and height of the landing area, external staircase and roof terrace and the increased proximity of the various open space areas, including the smoking area, to these properties. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. The Board is not satisfied on the basis of the submissions made with the application and the appeal, that the development proposed to be retained would not result in detrimental impact on the amenities of the area, including the public realm, by reason of potential nuisance from odour and noise emissions from the café and the need to place plant and ventilation equipment, access facilities and additional windows protruding onto the public lane. The proposed development would, therefore not be in accordance with the proper planning and sustainable development of the area.

3. On the basis of the information provided with the application and appeal, including the Stage I Screening Report submitted to the planning authority on 20/04/11 and the conclusions therein, and in light of the assessment carried out above, I am not satisfied that the proposed development, either individually or in combination with other plans or projects would not adversely affect the integrity of European Site No. 000781 in view of the site's Conservation Objectives. In such circumstances, the Board is precluded from granting permission.

4. The replacement of the previously permitted zinc cladding to the eastern

elevation with profile metal cladding is considered to be visually intrusive and incompatible with the residential nature of the adjoining property to the east. The proposed development would therefore seriously injure the residential amenities of this property and would be contrary to the proper planning and sustainable development of the area.

Mary Kennelly
Senior Planning Inspector

7th September 2016