



An  
Bord  
Pleanála

## Inspector's Report ABP-300187-17

### Development

Development which will consist of a) alterations to the development granted under parent planning ref: P13-298 to include 1. Change of use from Museum / Visitor Centre to Art Gallery / Craft Demo Area / Retail and 2. The removal of condition no. 18 from the parent planning permission. b) Extension to existing building consisting of a display window and c) Changes to fenestration of existing building to include a new door and window to the rear together with ancillary site works.

### Location

Doolin Td, Doolin, Co. Clare

### Planning Authority

Clare County Council

### Planning Authority Reg. Ref.

17/661

### Applicant(s)

Trad- Time Limited

### Type of Application

Permission

### Planning Authority Decision

Split

<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Trad- Time Limited.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	07 <sup>th</sup> of February 2018.
<b>Inspector</b>	Karen Hamilton

## 1.0 Site Location and Description

1.1. The subject site consists of a large visitor centre, set within the settlement area of Doolin, County Clare. The site fronts onto the main road linking the centre of Doolin (Fitz's cross) to the outskirts (Fisher Street) which includes Doolin Pier, providing access to the Aran Island. There is a recently newly constructed footpath c. 400m along the main road, from Fishers Street, at the south east of the main road, towards the centre of Doolin. The footpath does not meet the subject site and stops c.100m south east of the site. The area along the front of the site, adjoining to road includes a setback and a footpath within the site. The River Aille runs directly along the rear of the site.

## 2.0 Proposed Development

2.1. The proposed development would comprise of the following:

- Change of use from Museum / Visitor Centre to Art Gallery / Craft Demo Area / Retail.
- Extension to existing building consisting of a display window,
- Changes to fenestration of existing building to include a new door and window to the rear together with ancillary site works.
- The removal of condition no. 18 from the parent planning permission (Reg Ref 13/298).

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to grant permission for the change of use and elevation changes with 7 no conditions and refuse permission for the removal of Condition No 18 which was the inclusion of a special contribution for a footpath for reasons listed below:

Having regard to the nature of the permitted and proposed development, and the likely level of usage and associated volume of pedestrian movement, the

Planning Authority considers that a special contribution of €30,000 as provided for in Condition No 18 of the planning permission P13-298 is required to facilitate both the permitted and proposed development and is in accordance with the provisions of section 48 (2) (c) of the Planning and Development Act, 2000, as amended.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The report of the area planner reflects the decision to grant permission for the change of use and external changes to the building and issues relating to the development contribution may be summarised as follows:

- The works to the footpath along the front of the site, between Fitz's Cross and Fisher's Street, have commenced and the available information on the cost of the footpath is €480,000.
- Based on the Boards decision to include Condition No 18 and the direct accessibility benefits that would accrue to the site arising from the provision of the footpath, the condition should not be removed.

#### **3.2.2. Other Technical Reports**

Roads Department- No objection subject to conditions.

### **3.3. Prescribed Bodies**

An Taisce- No objection subject to the inclusion of ABP conditions under 13/298.

### **3.4. Third Party Observations**

None received.

## **4.0 Planning History**

### **PL03.242398 (Reg Ref 13/298)**

The Board refused to remove Condition no 18 which required the imposition of a financial levy as a special financial contribution pursuant to section 48 (2) (c) as the

proposed development , the likely level of usage and associated volumes of pedestrian movement would require the provision of suitable and safe pedestrian linkage between the site and the central area.

## 5.0 Policy Context

### 5.1. Development Contributions

#### 5.1.1. Development Contributions Guidelines for Planning Authorities, 2013

##### Special Development Contributions

A special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution.

##### Double charging

The practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner.

#### 5.1.2. Clare Development Contribution Scheme 2017-2023

The development contribution scheme, adopted in April 2017, includes a scheme for the imposition of development contributions. The council may require *“the payment of a Special Contribution in respect of a particular development where specific costs are not covered by this Scheme or incurred in respect of public infrastructure and facilities which benefited the proposed development”*

##### Appendix 1 Capital Projects

1. Amenities and Community facilities (c. 30 projects listed)
2. Roads- Footpaths: Extensions to and remediation of existing footpath infrastructure

### 3. Flooding Remediation Schemes.

#### Appendix 2 Capital Cost and projected development

## 5.2. Clare County Development Plan 2017-2023

The site is located within the settlement of Doolin, identified as a large village, and is zoned for “*Tourism*” which allows for a range of structures and activities which are primarily designed to facilitate tourism development and where uses are mainly directed at servicing tourists/ holiday makers and visiting members of the public.

The rear of the site is zoned as “*Open Space*” which requires for the lands to be retained open space related activities.

### **West Clare Municipal District- Doolin.**

- Doolin has three individual service areas.
- There is an identified need to connect the three areas through the provision of road improvements and a footpath and lighting scheme.
- It is an objective of the Council to provide a public footpath and public lighting scheme from Roadford to Fisher Street.
- The Council will seek to prepare this scheme during the lifetime of the Plan.

## 5.3. Natural Heritage Designations

The site is located c 1.3km from the edge of the Black Head-Poulsallagh Complex SAC.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal are submitted by the applicant in relation to the refusal of the planning authority to remove Condition No 18 from the permanent permission 13/298 as summarised below:

- Condition No 18 should never have been included on the original grant of permission and the footpath would be essential along the front of the site even if the site was not developed.
- The proposed development is for a change of use for retail, Trad TIME has not opened its doors and therefore the proposed development does not increase the pedestrian activity in the vicinity.
- There is a pre-existing requirement for a footpath since 2005 and the North Clare Local Area Plan 2011-2017 required a footpath and lighting scheme from Roadford to Fisher Street.
- The local authority has failed to provide any basis for the development contribution. The council road works budget in 2016 allowed €40,000 which built 160m of the 480m scheme, therefore €480,000 is not a basis for the calculation of the project.
- Condition No 17 of the parent permission requires a contribution of €4,559.74 for the general contribution scheme and a large proportion of this is for roads (35%) which also includes pedestrian facilities, therefore there is double charging.
- Trad TIME has already provided a footpath along the edge of their site.
- No other Doolin based commercial activities has been levied the Special Contribution.
- Section 48 (2) (c) of the Planning and Development Act allows for the acquisition of lands for the provision of pedestrian facilities.

## 6.2. Applicant Response

The applicant is the appellant.

## 6.3. Planning Authority Response

The response from the planning authority is summarised as follows:

- Condition No 18 includes a special contribution levy for a footpath between Fishers Street and Fitz's Cross which will have an overall cost of approximately €480,000.
- The special contribution levied under planning reference 13-298 of 6.25% of the overall cost of the footpath.
- The proposed development will directly benefit from the provision of the footpath.
- There will be an increase of pedestrian activity arising from both the original proposal and that granted 17/661.
- The figures quoted did not include the purchasing of land as there is an existing grass margin along the side of the road to accommodate a footpath c. 260m.
- There is no double charging as the general contribution scheme, Appendix 1 of the Clare Development Contribution Scheme 2017-2023 has a list of capital projects which the footpath is not included.

## 6.4. Observations

None received.

## 7.0 Assessment

- 7.1. Section 48(10) (b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution



scheme have not been properly applied in respect of any condition laid down by the planning authority.

7.2. The appeal is in relation to a refusal of the planning authority to remove Condition No 18 of the parent permission (Reg Ref 13/298) requiring the payment of a special contribution for the provision of a footpath. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal, which is whether the terms of the Scheme have been properly applied.

7.3. The main issues of the appeal can be dealt with under the following headings:

- Planning History
- Provision of a footpath
- Application of Section 48 Development Contribution Scheme
- Appropriate Assessment

#### **Planning History**

7.4. The existing building was granted permission under Reg Ref 13/298 for an interactive visitor centre with associated retail space, service building, car and coach parking and ancillary works. The applicant appealed the inclusion of Condition No 18 a special contribution under Section 48 (2) (c) for the funding of a pedestrian linkage/footpath between the central area of Doolin and the proposed visitor centre as follows:

*‘Prior to development commencing on the site a Special Development Contribution shall be paid to Clare County Council as a special contribution towards the provision of a public footpath at this location, which is necessary to facilitate the development of the site and the overall area. The contribution payable will be based on the contribution rate applicable at the time of payments and not the rate in existence when permission is granted. The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), in accordance with the terms of the Council’s Development Contribution Scheme. The amount is currently €30,000.*

**Reason:** *In the interest of the proper planning and sustainable development of the area and in accordance with Section 48(2) (c) of the Planning and Development Act 2000-2010.'*

The applicant previously appealed the inclusion of this condition (PL 03.242398, Reg Ref 13/298) and the Board upheld the decision of the Planning Authority to include Condition No 18 for reasons that the proposed development, the likely level of usage and the associated volumes of pedestrian movements would require the provision of a safe pedestrian linkage between site and the central area of Doolin. The Board also concluded that in the absence of this safe linkage the proposed development should not proceed.

### **Provision of a footpath**

- 7.5. The grounds of appeal argue that the reason for refusal relating to the increase in pedestrian activity is no longer relevant as the change of use to retail will lead to decreased pedestrian activity, it is also stated that there was always an identified requirement for a footpath at this location, not only to benefit the proposed development, and there has already been a footpath provided along the front of the site. I have dealt with the principle of the provision of the footpath below.
- 7.6. Development Plan Objective: The site fronts onto the R459 and there is an objective in the development plan to provide a public footpath and public lighting scheme from Roadford to Fisher Street. Roadford is located at the north east of Doolin settlement, whilst Fisher Street is to the south west of the settlement boundary and the subject site is located central between both. A section of this footpath c. 400m, including public lighting, has been provided from Fisher Street which the grounds of appeal state was constructed between 2016 and 2017. I consider the implementation of the objectives of the development plan in relation to the footpath are applicable to this site.
- 7.7. Existing footpath: There is an existing footpath, set back from the edge of the road by 2m which has been provided by the applicant within the site. The applicant argues this is sufficient to provide pedestrian activity. Concern was raised, in the report of the Roads Department, in relation to the unauthorised provision of the footpath along the front of the site instead of compliance with Condition No 14 of the parent permission (Reg Ref 13/289) which requires the omission of the 5 no lateral car

parking spaces along the front of the site and the provision of a roadside curb with grassed verge behind. The footpath provided by the applicant is not designed to align with the existing public footpath developed to the south east of the site. Based on the requirements of the parent permission and the design and location of the existing footpath, I do not consider the current path within the applicant's site is sufficient for the successful provision of an integrated scheme throughout the settlement of Doolin and in compliance with the objective of the development plan.

- 7.8. Pedestrian Activity: The initial engineers report refers to the need to accommodate pedestrians, from Fisher St to Fitz Cross, along the front of the site, the increase in pedestrian activity from the proposed development and the specific funding for the footpath at €30,000. The grounds of appeal argue the change of use from visitor centre to Irish craft retail reduces the pedestrian activity to the site and therefore the footpath is not required. The site is located in the centre of Doolin settlement, c. 500m from Fishers Street which includes the main bus stop, hostel, access to Doolin Pier and the development plan refers to the tourism product in the centre, particularly in the summer months. It is reasonable to assume that the proposed development would attract visitors on foot from the surrounding area, therefore it may be considered a destination in its own right.
- 7.9. Having regard to the objectives of the development plan, the location of the site, the planning history and the proposed pedestrian activity, it is reasonable to conclude that the footpath along the front of the site is required for any development on the site and that path provided by the applicant is not sufficient to provide the integrated provision of a footpath through the centre of Doolin.

#### **Application of Section 48 Development Contribution Scheme**

- 7.10. The grounds of appeal argue that pedestrian footpaths are included in the general development contribution scheme and therefore Condition No 17 of Reg Ref 13/298 and the imposition of a Section 48 contribution levy and the inclusion of a special contribution is double charging. I note the national guidance on development contributions and the Clare Development Contribution Scheme 2017-2023 refer to the need for a Special Contribution in respect of a particular development where specific costs are not covered by this Scheme or incurred in respect of public infrastructure and facilities which benefited the proposed Development. The Clare

Development Contribution Scheme 2017-2023 does not specifically list the footpath for Doolin in Appendix 1 Capital Works, which are countywide works and based on the location of the site along the route between Roadford and Fisher Street, I consider the proposed development will directly benefit from the provision of the footpath and I do not consider double charging has been applied.

- 7.11. Contribution amount: The applicant argues the required amount of €30,000 is excessive, considering only €40,000 was provided in the capital works for a 160m along Fishers Street. The response from the planning authority states that the overall cost of the footpath between Fitz's Cross to Fishers Street is €480,000 and the area along the front of the site is 260m and accounts for 6.25% of the overall cost. The planning authority also state that the figure quoted in Condition No 18 includes land acquisition costs. Having regard to the overall cost of the footpath, the land acquisition and the area to the front of the site, I consider the requirement of €30,000 towards the provision of the footpath reasonable.

### **Appropriate Assessment**

- 7.12. The site is located c. 1.3km from the edge of the Black Head-Poulsallagh Complex SAC and the appeal relates to the inclusion of a special contributions scheme. Therefore, having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1. Having regard to the nature of the condition the subject of the appeal and based on the reasons and considerations set out below, the Board is recommended to treat the case under Section 48 of the Planning and Development Act, 2000, as amended and direct the planning authority, to RETAIN condition number 18 of the parent permission Reg Ref 13/298 in relation to the imposition of a financial levy as a special financial contribution pursuant to section 48 (2)( c) of the Planning and Development Act, as amended, towards the funding of such pedestrian linkage/ footpath which is appropriate in this instance.

## 9.0 Reasons and Considerations

Having regard to:

- a. the Clare County Development Plan 2017-2023, in particular the objectives for the settlement of Doolin relating to the provision of a footpath between Roadford and Fisher Street,
- b. the Clare Development Contribution Scheme 2017-2023,
- c. the location of the site between Roadford and Fisher Street,
- d. the nature of the proposed development and the increase of pedestrian activity,
- e. the planning history on the site,
- f. and the pattern of development in the area,

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out, that the terms of the Development Contribution Scheme for the area were properly applied and that the proposal to remove Condition No 18 of parent permission 13/298 is not permitted.

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Karen Hamilton  
Planning Inspector

22<sup>nd</sup> of February 2018.