



An
Bord
Pleanála

Inspector's Report ABP-300219-17

Development

To retain a 28.85m² single storey extension (a 4.33m² dessert bar, a 19.02m² store and a 5.50m² smoking area) to the existing Mimosa Wine and Tapas Bar (a protected structure Ref: 100000440 & RPS No. CT79); to construct a 21.77m² extension to the permitted kitchen, a 32.60m² gazebo and to change the use of 160.31m² from residential to a restaurant use. This is further to granted permissions 11/6421 and 16/139.

Location

College Street, Carlow, Co. Carlow.

Planning Authority

Carlow County Council

Planning Authority Reg. Ref.

17/190

Applicant(s)

Figtree Ltd.

Type of Application

Permission & Permission for Retention

Planning Authority Decision

Grant subject to conditions

Type of Appeal	First Party v. Conditions Third Party v. Decision
Appellant(s)	Figtree Limited Patrick Dowdall
Observer(s)	None.
Date of Site Inspection	25 th June, 2018
Inspector	Robert Speer

1.0 Site Location and Description

1.1. The proposed development site is located on the western side of College Street, within the 'Cultural Quarter' and the historic core of Carlow town centre, where it occupies a position opposite the Cathedral, in the vicinity of a number of other structures of cultural, historical and architectural heritage interest, including the County Museum, VISUAL and Carlow College, where it contributes to the wider character of the College Street Architectural Conservation Area. The surrounding area can be described as mixed-use and includes a variety of retail, commercial, entertainment and office uses typical of a town centre location. The site itself has a stated site area of 0.0977 hectares, is irregular in shape, and presently comprises a single-storey, brickwork building, which has been extended to the side and rear, with an enclosed outdoor garden area to the rear of same, that trades as the 'Mimosa Wine Bar and Tapas Restaurant', and an attractive two-storey-over-basement, three-bay, 18th Century house with Victorian alterations that would appear to have been recently renovated.

2.0 Proposed Development

2.1. The proposed development, as initially submitted to the Planning Authority, consists of the following:

- The retention of a single storey extension used for storage purposes to the rear of the existing building (floor area: 19.02m²)
- The retention of a single storey extension comprising a dessert bar area to the rear of the existing building (floor area: 4.33m²)
- The retention of an extension (floor area: 5.5m²) to an existing smoking area to the rear of the premises.
- Permission to construct a single storey extension (floor area: 21.77m²) to the kitchen area to the rear of the premises.
- Permission to erect a free-standing gazebo structure (floor area: 32.6m²) within the garden area to the rear of the premises.

- Permission for the change of use from residential to restaurant at ground and basement floor levels (in addition to a partial section of the first floor in order to accommodate sanitary facilities) of the existing two-storey-over-basement, three-bay building on site.
- Permission for associated site development works, including the blocking up of an existing window ope at basement level, the provision of a new external stairway to basement level, and the construction of a new ESB meter box to the front of the property.
- Permission to open a new accessway / entrance / exit route (with an associated right of way) from the rear yard of the application site through an adjacent property to the immediate south.

2.2. In response to a request for further information, amended proposals were subsequently submitted to the Planning Authority which incorporated the following principle changes:

- A revised design for the proposed rear kitchen extension whereby the new construction would not directly adjoin the permitted kitchen area.
- The omission of the external stairway to basement level.
- The provision of a new external fire escape leading from the first-floor level of the two-storey-over-basement structure to the rear yard area (including the lowering of an existing windowsill within the rear elevation of the structure in order to form an escape doorway).
- The omission of the accessway / entrance / exit route previously proposed from the rear yard of the application site through an adjacent property.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Following the receipt of responses to requests for further information and subsequent clarification, on 1st November, 2017 the Planning Authority issued a notification of a decision to grant permission & permission for the retention of the proposed development subject to 20 No. conditions. These conditions are generally

of a standardised format and relate to issues including drainage & public services, waste management, construction practice, and development contributions, however, the following conditions are of note:

- Condition No. 2 – Refers to external finishes and the construction of the proposed gazebo whilst also clarifying that the proposed access / right of way through the southern site boundary is not authorised by the grant of permission.
- Condition No. 3 – Clarifies that the subject grant of permission only authorises the development as detailed in the public notices and does not relate to any other development on site not the subject of the application.
- Condition No. 4 - Refers to the display of signage and the details set out in the Architectural Heritage Impact Assessment.
- Condition No. 5 – Requires the submission of a 'Conservation Specification and Methodology Report' for the written agreement of the Planning Authority prior to the commencement of development. Furthermore, this condition specifies that an Architectural Conservation Architect is to be appointed to monitor all conservation works in order to ensure that they are carried out in accordance with the aforementioned 'Conservation Specification and Methodology Report'.
- Condition No. 6 – Requires details of the first floor fire door (including reuse of the granite windowsill with original joinery left *in situ*) and the housing for the proposed services boxes to be agreed in wiring with the Planning Authority prior to the commencement of development.
- Condition No. 8 – Refers to the fire safety requirements and the Building Regulations.
- Condition No. 9 – Requires the smoking area to comply with the requirements of the Public Health Tobacco Act, 2002, as amended.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

An initial report details the site context and the applicable planning policy considerations, including the site location within the historic core of Carlow town and its positioning within the College Street Architectural Conservation Area, and further notes the designation of the existing building on site as a protected structure by reason of its inclusion in the Record of Protected Structures contained in the Development Plan. It proceeds to assess the various individual aspects of the development under consideration and notes that none of the structures proposed for retention will impact on the existing streetscape. The report subsequently considers the remainder of the proposed works and states that additional details are required in respect of certain elements of same, however, it was also indicated that the proposal to open an access through the southern site boundary to provide for a new fire escape route was unacceptable. With regard to the proposal to avail of off-site car parking, the report states that the written consent of the relevant landowner is required in order to allow for the consideration of same. The report thus concludes by recommending that further information be sought in respect of a number of items, including the submission of an Architectural Heritage Impact Assessment.

Following the receipt of a response to a request for further information, a further report was prepared which concluded that the issue of car parking warranted further consideration and thus recommended that clarification be sought as regards same, with particular reference to the availability of any off-site car parking provision.

Upon the receipt of a response to a request for clarification of further information, a final report was compiled which stated that consideration had been given to the relevant objectives of the Joint Spatial Plan, including the need to encourage more sustainable transport and to recognise the importance of the economic development and regeneration of the town centre, and that in light of the policy provisions pertaining to development sited within the 'Carlow Town Cultural Quarter' and which involved 'Protected Structures at Risk', the proposed development would give rise to a demand for 4 No. car parking spaces which could be addressed by way of development contribution. The report then concluded by recommending a grant of permission (and permission for retention), subject to conditions.

3.2.2. Other Technical Reports:

Tullow Civic Office: An initial report indicated that there was no objection to the proposed development although it was queried if the applicant could be required to clean up discarded cigarette ends to the front of the building at the close of business. However, a subsequent report raised concerns as regards the proposed car parking arrangements and commented that the proposal would require the provision of 12 No. parking spaces.

Environment: No objection.

Carlow Fire Authority: No objection, subject to conditions.

Water Services: No objection.

Roads: No objection.

Senior Executive Officer (Planning): Refers to the application of development contributions.

3.3. **Prescribed Bodies**

3.3.1. *Health Service Executive / Environmental Health Officer:* Whilst initial reports indicated that there was no objection to the proposed development, subject to conditions, a final submission was of the opinion that the proposal (i.e. the smoking area) did not comply with the requirements outlined in Section 47 of the Public Health Tobacco Act, 2002.

3.3.2. *Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs:* States that whilst the principle of the proposed development is acceptable, a number of details should be clarified, and potentially some design revisions submitted, prior to the making of any decision on the application. In this regard it is felt to be unclear from the submitted plans and particulars if development has been taking place (with the benefit of permission) incrementally within the curtilage of the protected structure and what, if any, has been the impact of such development on the character of the structure. It is also considered to be unclear if the proposal would necessitate material alterations to the internal rooms, spaces, fixtures and features of the protected structure. Furthermore, it has been suggested that any works to upgrade fire safety and / or provide access, such as the proposed external stairway to the

basement, and any necessary lobbies or upgrading of floor structures and joinery, may also affect the architectural heritage character of the building. In addition, with regard to the proposal to block up a rear window at ground floor level, it is considered to be unclear if this retains any original window fittings and, if so, then the works should be reversible. The report further notes that no use has been identified for the upper (first) floor and queries whether there will be any need for signage to be fitted to, or within the curtilage of, the protected structure. It is also stated that a greater level of detail should be provided on the method of the conservation works to be carried out to ensure that the architectural heritage character of the protected structure is conserved.

The report subsequently concludes by recommending that further information be sought to include an architectural heritage impact assessment (and any revised drawings as necessary) as well as an outline specification and conservation method statement of the proposed works.

- 3.3.3. *Department of Culture, Heritage and the Gaeltacht:* Following consideration of the applicant's response to the request for further information issued by the Planning Authority, this report states that the submitted architectural heritage impact assessment responds to the issues raised by the Department. It further notes that the proposed change of use is stated as having a minimal effect on the character of the protected structure and will reuse an existing blocked doorway for access. The proposed signage at the doorway is also considered to be acceptable provided it is in clear acrylic or a similar material with drilling into joints rather than stonework.

With regard to the proposed works outlined in the architectural heritage impact assessment, it is recommended that these should be expanded into a conservation specification and methodology to inform the contractor (specific reference is made to the need to specify appropriate works to address the damp issues at basement level). Works required in order to comply with fire safety requirements should also be included in the methodology as any such works that are not permitted as part of the subject application, but which would affect the character of the structure, would require a further grant of permission. Proposals to protect features which contribute to the character of the building (e.g. the front door, fanlights, internal fixtures etc.) should similarly be included.

The report proceeds to recommend that any grant of permission for the subject proposal should include a condition which requires the following details to be submitted for the agreement of the Planning Authority:

- Details of the first floor fire door including reuse of the granite windowsill showing the original window joinery left *in situ*.
- The dimensions of the extension of the wall at the side of the front garden to house the services boxes.
- Conservation specifications and methodology for the works, including any necessary works to comply with the Building Regulations (e.g. fire, access) and measures to protect all original and early fixtures and features, internal, external and adjoining.

The report concludes by noting that it is of interest that the protected structure is stated to have been used by the architect of the adjacent Carlow Cathedral (Thomas Cobden), during his time on the cathedral, as it gives a useful guide to the latest period the house could have been built. It is further stated that judging by the fine details of the joinery, plaster decoration and stairs, which suggest a date early in the 19th Century, the building could conceivably have been designed by Cobden for his own use, which would add considerably to its historical associations.

3.4. Third Party Observations

3.4.1. A total of 3 No. submissions were received from the appellant and the principle grounds of objection contained therein can be summarised as follows:

- The existing building is the subject of a preservation order (i.e. it has been designated as a protected structure).
- The applicant has previously sought permission for the retention of unauthorised works on site on multiple occasions and the subject application represents a continuation of same.
- There are concerns with regard to the application of development charges / contributions in respect of the subject proposal.
- Concerns as regards the overall suitability of the proposed car parking arrangements.

4.0 Planning History

4.1. On Site:

PA Ref. No. 075966. Was granted on 31st December, 2007 permitting Patrick Dowdall & Marketa Mulvey Kenny permission for change of use of Studio Unit (Protected structure ref no 100000440) into wine bar, and associated site works.

PA Ref. No. 11/6421. Was granted on 23rd September, 2009 permitting Figtree Ltd. permission for a single storey extension to existing mimosa wine bar (Protected Structure Ref No. 100000440 & RPS No. CT79) comprising demolition of rear west wall to existing kitchen and wc, demolition and removal of internal dividing wall to kitchen and wc, removal of existing wc in its current location and proposed single storey extension to rear west elevation of building with total gross floor area of 14sq.m. The proposal includes construction of 2 No wc's for patrons, 1 No staff wc and modifications and extension to existing kitchen and making good to all finishes to match existing. The proposals also include retention, modifications and completion of existing incomplete covered external decking area of 40.12sq.m. with extension to decking area of 0.9sq.m comprising replacement of existing timber and perspex flat roof with new pitched slate roof and timber roof lights, new timber shiplap cladding boards to existing timber structure, replacement of damaged timber window to east elevation with new timber window to match existing. The proposed foul, surface water, water, gas and electrical services will connect to existing services for the building. The proposal includes all necessary ancillary site works required for the development.

PA Ref. No. 16/139. Was granted on 4th July, 2016 permitting Figtree Ltd. permission to retain a 154.06 sq.m single storey extension to the existing Mimosa Wine and Tapas bar (a Protected Structure Ref. 100000440 & RPS No. CT79). This is further to granted permission 11/6421. The development to be retained consists of an 18.82 sq.m extension to the existing permitted kitchen, a 42.24 sq.m coldstore, bar and storage area and a 93sq.m public restaurant area with two wc's and smoking area.

4.2. On Adjacent Sites:

None.

4.3. On Sites in the Immediate Vicinity:

PA Ref. No. 18/259. Application by Oscar Soto & Catriona Carpenter for permission to retain the demolition of an existing building and for permission to build a new two bedroom three storey house on the same footprint as the existing building on lands at College Street, Carlow, Co. Carlow. The building is within an architectural conservation area and the application includes an architectural conservation report. Application is at 'pre-validation stage' with no decision to date.

5.0 Policy Context

5.1. National and Regional Policy

- 5.1.1. The '*Architectural Heritage Protection, Guidelines for Planning Authorities, 2004*' provide detailed guidance in respect of the provisions and operation of Part IV of the Planning and Development Act, 2000, as amended, regarding architectural heritage, including protected structures and Architectural Conservation Areas. They detail the principles of conservation and advise on issues to be considered when assessing applications for development which may affect architectural conservation areas and protected structures.

5.2. Development Plan

- 5.2.1. **Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018:**

Land Use Zoning:

The proposed development site is located in an area zoned as 'Town Centre' with the stated land use zoning objective '*To protect the vitality and vibrancy of the town centre and provide for town centre activities*'.

Other Relevant Sections / Policies:

Part 2: Core Strategy:

Carlow Town Development Plan Core Strategy:

Part 3: Thematic Strategy:

Section 1: Economic Development and Inward Investment:

Commercial Services:

Professional services such as banking, legal and insurance services, trade services such as dry-cleaning and tailoring and catering services including restaurants, public houses and cafes are all well-suited to town centre locations and support the vibrancy and vitality of the town centre.

ECN P15: Encourage the provision of commercial services, civic, religious and high-order community services within Carlow Town Centre to foster synergistic relationships between different uses and support its vitality and vibrancy.

Tourism:

The Cultural Quarter is an area within Carlow Town Centre which contains a number of cultural uses including the VISUAL, Carlow College, the Carlow County Museum, Carlow Tourism Office and the library. It is intended to brand this area and encourage the development of further cultural uses (Part 4 Section 1).

ECN P17: Protect special natural, archaeological and architectural heritage assets along with the vitality and vibrancy of the town centre in order to support the development of tourism in the Greater Carlow Graiguecullen Urban Area.

ECN P18: Promote the marketing of the Cultural Quarter within Carlow Town Centre.

Section 2: Transport Movement and Access:

TRANS O06: Ensure new developments are adequately served by transport infrastructure, both off-site (capacity and quality of roads in the vicinity and their lighting, footpaths, cycle paths, capacity of junctions relating to a new development) and on-site (adequacy of estate roads, including foot and cycle paths, signage, car and cycle parking, traffic calming, turning circles for emergency service vehicles, loading bays, set down areas, lay-bys, service lanes).

Car Parking:

TRANS P36: Discourage the provision of extensive surface-based car parking within the town centre and free up such town centre sites for re-development.

TRANS P42: When considering applications for change of use, allowance and regard will be given to whether demand for car parking would be less or more intensive than for the existing use.

TRANS P44: Provide for 5% of car parking spaces to be set aside for disabled parking and located as close as possible to destination entrance points, highlighted by surface colour variation and designed in compliance with relevant design specifications.

TRANS P45: Apply the following car parking standards in association with new development, except where special circumstances apply, detailed below.

Restaurants, cafes: 1 per 20m² GFA (Carlow Town Centre Zoning)

In order to encourage sustainable transport (minimise additional car travel, reduce trip lengths and encourage use of sustainable means of travel) and in recognition of the importance of economic development and regeneration of Carlow Town Centre, the Planning Authorities will consider a relaxation of car parking standards in the following areas

1. Carlow Town Cultural Quarter:

Carlow Town Council will consider car-free development proposals within the Cultural Quarter because of the importance of this area to economic development and cultural vitality, its accessible location and the constraints associated with its fine urban grain and architectural heritage designations. The extent of the Cultural Quarter is indicated on the Objectives Map.

2. Protected Structures at Risk:

The Planning Authorities will consider car-free development proposals in the case of Protected Structures at Risk, where it is proposed to re-use, conserve or renovate such a Protected Structure to best-practice standards. Car

parking will be required in association with the provision of new floor space within the curtilage of the protected structure (extensions or other infill development).

3. *Carlow Town Centre:*

Carlow Town Council will consider a reduction in the parking requirements for mixed-use developments within Carlow Town Centre based on an evaluation of existing available car parking and a needs assessment associated with the proposals, to be carried out in a robust and scientific manner e.g. TRICS using modes from similar sized settlements. The extent of Carlow Town Centre is indicated on the Carlow Town Zoning Map.

Section 9: *Built and Natural Heritage:*

- HER 007:* Ensure the protection of the special interest or character of all structures on the Record of Protected Structures within the Greater Carlow Graiguecullen Urban Area.
- HER 008:* Preserve and enhance the special character of Architectural Conservation Areas within the Greater Carlow Graiguecullen Urban Area.
- HER 009:* Preserve the integrity, character, value and settings of Recorded Monuments from inappropriate development and protect the settings of National Monuments from inappropriate development.
- HER 010:* Ensure the appropriate management of development within Zones of Archaeological Potential to preserve monuments and artefacts in situ or by record.
- HER P16:* Encourage the sensitive maintenance and full use of all structures within the Greater Carlow Graiguecullen Urban Area that form part of a Record of Protected Structures.
- HER P18:* Encourage the imaginative and sensitive design of proposals to extend or modify protected structures or develop new structures within their curtilage or attendant grounds, having regard to their special character.

- HER P19:* Ensure that works to a Protected Structure or to buildings or spaces within an Architectural Conservation Area do not adversely effect or cumulatively erode the special character of the Structure or ACA concerned.
- HER P20:* Request more detailed information, specialist assessments or specifications as necessary in order to fully assess proposals for works to a Protected Structure or in an Architectural Conservation Area.
- HER P22:* Offer a relaxation of development management policies and standards, where the repair and refurbishment of a Protected Structure or key building within an ACA that is in poor or fair condition is proposed and where works are to be carried out to best practice conservation standards. Relaxation of these standards is at the discretion of the planning authority and will be considered on a case-by-case basis.
- HER P24:* Consider favourably development proposals within an ACA that would either preserve or enhance the special character or appearance of the ACA. In considering applications for changes of use within ACAs, the Council will be concerned with maintaining the character of that area.

College Street ACA:

It shall be an objective of the Council to consider replacing the wall between St. Patrick's College and Carlow Cathedral with railings. This would have the potential to open up this area, displaying the impressive architectural details of Carlow Cathedral and St. Patrick's College. The removal of the wall between St. Patrick's College and College Street would provide the opportunity to develop.

Section 10: Urban Design and Built Form:

- DBF P28:* Provide for smoking shelters and beer gardens subject to the amenities of nearby residents and environmental health standards.

DBF P29: Ensure new advertisements (DBF P23-25 address shopfront advertisements) do not by reason of size, siting, design, clutter or illumination cause harm to the appearance of a building, space or general visual amenities and do not adversely affect traffic safety and having regard to the NRA policy Provision of Tourist and Leisure Signage on National Roads.

Part 4: Sub-Area Spatial Strategy:

Section 1: Carlow Town:

Objective:

CTO2: Reinforce the quantum and diversity of uses within Carlow Town Centre.

Policies:

CT P5: Encourage the provision of a wide range of shopping, commercial, community, civic, tourism, amenity and transport services within Carlow Town Centre.

CT P6: Direct high-order commercial, civic and tourism services to town centre locations.

CT P9: Encourage the use of upper storeys of commercial buildings as dwelling units within the town centre in order to enhance passive surveillance of the town centre and deter anti-social behaviour.

Objective:

CTO3: Advance and market the concept of the Cultural Quarter.

Policies:

CT P19: Encourage the development of commercial uses associated or supporting existing cultural uses within the quarter as well as opportunities for Carlow College.

Appendix 4: Record of Protected Structures:

RPS No. CT79

NIAH No. 10000440

Composition: Two storey three bay 18th century house with Victorian alterations (1740-1750), Wine Bar, College Street.

Rating: Regional

Importance: Architectural, Historical, Interior & Personality

5.3. Natural Heritage Designations

5.3.1. The following Natura 2000 sites are located in the immediate vicinity of the proposed development site:

- The River Barrow and River Nore Special Area of Conservation (Site Code: 002162), approximately 400m northwest / west of the application site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Third Party Appeal (Mr. Patrick Dowdall):

- It would appear that the applicant has already carried out a significant amount of the works for which planning permission has been sought and thus the subject application should be for the retention of same.
- The existing building is a protected structure, however, the applicant has a planning history of undertaking unauthorised works and subsequently applying (and obtaining) permission for the retention of same.
- Notwithstanding the car parking requirements set out in the Development Plan, the Planning Authority has accepted the applicant's proposal to avail of car parking located within the rear yard area of a licensed premises located at a distance of c. 600m from the proposed development site in lieu of the payment of financial contributions.
- The subject proposal necessitates the payment of a development contribution towards the provision of 12 / 13 No. car parking spaces, however, the Planning Authority has limited the financial contributions required by Condition Nos. 20 & 21 of the notification of the decision to grant permission (and

permission for retention) to a figure which equates to less than half the number of spaces required by the Development Plan.

- With regard to the inclusion of Condition No. 5 in the notification of the decision to grant permission which requires the submission of a conservation specification and methodology report prior to the commencement of works, it is not possible for the applicant to comply with the terms of same in respect of the retention element of the subject application.
- It is not possible for the retention element of the proposed development to comply with Condition Nos. 6, 8 & 14 of the notification of the decision to grant permission.
- In reference to the imposition of Condition No. 10, the existing wheelchair toilet is not accessible to wheelchair users.

6.1.2. First Party Appeal:

- With regard to the requirement to pay a development contribution in the amount of €24,000 towards the provision of 4 No. car parking spaces as imposed by Condition No. 20 of the notification of the decision to grant permission (and permission for retention), the applicant objects to the inclusion of same.
- The existing restaurant is open 5 No. nights (Wed-Sun) per week from 17:00 hours and in this respect the Board is referred to the accompanying map which identifies those car parking spaces within Carlow town which are free from 17:00 / 18:00 hours and are located within an easy walking distance of the site. Accordingly, it is submitted that there is no need for any further parking to facilitate the restaurant given its central location i.e. there is no parking issue in Carlow after 17:00 hours as the number of available free car parking spaces shows.
- Policy TRANS P45 of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018 seeks to '*Apply the following car parking standards in association with new development, except where special circumstances apply*':

'In order to encourage sustainable transport (minimise additional car travel, reduce trip lengths and encourage use of sustainable means of travel) and in recognition of the importance of economic development and regeneration of Carlow Town Centre, the Planning Authorities will consider a relaxation of car parking standards in the following areas

1. Carlow Town Cultural Quarter:

Carlow Town Council will consider car-free development proposals within the Cultural Quarter because of the importance of this area to economic development and cultural vitality, its accessible location and the constraints associated with its fine urban grain and architectural heritage designations. The extent of the Cultural Quarter is indicated on the Objectives Map.

2. Protected Structures at Risk:

The Planning Authorities will consider car-free development proposals in the case of Protected Structures at Risk, where it is proposed to re-use, conserve or renovate such a Protected Structure to best-practice standards. Car parking will be required in association with the provision of new floor space within the curtilage of the protected structure (extensions or other infill development).

3. Carlow Town Centre:

Carlow Town Council will consider a reduction in the parking requirements for mixed-use developments within Carlow Town Centre based on an evaluation of existing available car parking and a needs assessment associated with the proposals, to be carried out in a robust and scientific manner e.g. TRICS using modes from similar sized settlements. The extent of Carlow Town Centre is indicated on the Carlow Town Zoning Map'.

The subject proposal can be accommodated under all three of the foregoing headings in that it is located in the centre of the Cultural Quarter, involves the restoration of a protected structure, and is surrounded by hundreds of free car parking spaces which are within an easy walking distance and are available after 17:00 / 18:00 hours.

6.2. **First Party (Applicant) Response to Third Party Appeal**

None.

6.3. **Third Party Response to First Party Appeal**

- The restaurant is also open on a Tuesday night as is clear from its website.
- The car parking spaces referenced by the applicant in its grounds of appeal are operated by the Local Authority and have been paid for over many years by all the other developments in Carlow on foot of the applicable development contribution schemes.
- The proposed development, if granted, will increase the size of the subject premises to in excess of 4,500 sq.ft. The only car parking contribution imposed in the 4 No. planning applications lodged on site to date is contained in the subject grant of permission.
- The Board is referred to PA Ref. No. 16/139 wherein the Planning Authority permitted the applicant in that grant of permission to satisfy the development contribution scheme by producing a licence to park cars at the rear of a public house located c. 600m from the development.
- The contents of the third party grounds are reiterated in support of this submission.

6.4. **Planning Authority Response**

6.4.1. Response to First Party Appeal:

- The Board is advised that the Carlow County Council Development Contribution Scheme, 2017-2021 includes the following in relation to car parking:
 - Section 21 – Surface Carparking Shortfall, (a) Carlow Town and Environs, €6,000 per space.
 - Section 29 – *“Where the development is unable to meet the requirements relating to car parking, a development contribution, commensurate with the shortfall in spaces shall be paid to the Planning Authority to facilitate the provision of car parking spaces elsewhere”.*

- In its calculation of the development contribution arising from the shortfall in surface car parking provisions, the Planning Authority had regard to the provisions of Page No. 73 of the Joint Spatial Plan for the Greater Carlow Graiguecullen Area, incorporating the Carlow Town Development Plan, 2015-2021, which seek to encourage more sustainable transport and recognise the importance of economic development and regeneration in the town centre. Those provisions also cite that a relaxation in car parking standards will be considered in the following areas: *'Carlow Town Cultural Quarter'* and *'Protected Structures at Risk'*.

It is submitted that the Planning Authority has reasonably sought a development contribution in relation to the shortfall in car parking having given due consideration to the aforementioned provisions.

- The particulars of the grant of permission previously issued in respect of PA Ref. No. 16/139 have also been given consideration in the assessment of the subject application i.e. the availability for use by Mimosa Wine and Tapas Bar of a total of 8 No. car parking spaces to the rear of a separate premises, namely, 'Carpenters' public house, Barrack Street, Carlow. The availability of the car parking was dealt with in Condition No. 11 of that grant of permission which states the following:

'Car parking to be provided for this property shall be located as per map submitted to the Planning Authority on 10th May, 2016, however, any changes to this property containing the allocated car parking spaces, which would affect the car parking spaces in the future, will result in a car parking levy being applied in respect of the development the subject of this planning permission.'

Reason: In the interests of public safety'.

The applicant has again proposed to use (18 No.) existing car parking spaces to the rear of 'Carpenters', however, it has not addressed the actual availability of these spaces, with particular reference to the potential for conflicts of use to arise when the car park is being used at the same time by customers of Carpenters (the public house and funeral home) and Mimosa Wine and Tapas Bar.

A further consideration was that the proposed increase in the size of the restaurant would place extra demands on the off-site car parking not envisaged under previous planning applications.

6.4.2. Response to Third Party Appeal:

- The Board is advised that the Carlow County Council Development Contribution Scheme, 2017-2021 includes the following in relation to car parking:
 - Section 21 – Surface Carparking Shortfall, (a) Carlow Town and Environs, €6,000 per space.
 - Section 29 – *“Where the development is unable to meet the requirements relating to car parking, a development contribution, commensurate with the shortfall in spaces shall be paid to the Planning Authority to facilitate the provision of car parking spaces elsewhere”*.
- In its calculation of the development contribution arising from the shortfall in surface car parking provisions, the Planning Authority had regard to the provisions of Page No. 73 of the Joint Spatial Plan for the Greater Carlow Graiguecullen Area, incorporating the Carlow Town Development Plan, 2015-2021, which seek to encourage more sustainable transport and recognise the importance of economic development and regeneration in the town centre. Those provisions also cite that a relaxation in car parking standards will be considered in the following areas: *‘Carlow Town Cultural Quarter’* and *‘Protected Structures at Risk’*.
- Allegations of unauthorised development on site are presently being investigated by the Planning Authority under Enforcement File No. UD17/59. This file relates to the painting of the front boundary wall, front railings & external front façade, the laying of hardcore material, and the erection of signage.
- The application site was also previously the subject of Enforcement File No. UD15/27 which has since been closed. That file concerned unauthorised extensions, alterations to the front facade, windows & door, and the insertion of a gas meter box.

- There are also ongoing investigations pursuant to Enforcement File No. UD17/37 which relate to the demolition of a property on an adjoining site (i.e. to the rear of College Street through an archway opposite Carlow Museum / Former Presentation Convent). An Enforcement Notice dated 25th August, 2017 was served requiring the retention of the original built fabric on site and the reinstatement of the building in its totality in a like manner, dimension and fabric as existed prior to the demolition thereof.

6.5. Observations

None.

6.6. Further Responses

6.6.1. Response of the Planning Authority to Section 132 Notice:

This submission repeats the contents of the Planning Authority's earlier response to the first party grounds of appeal.

6.6.2. Response of the First Party to the circulation of the Planning Authority's Submission:

- It is considered that the only impact of the third party appeal has been to jeopardise much needed jobs in Carlow Town for no reason other than to impede the opening of the premises.
- The subject premises is a highly regarded restaurant, and with no extra customers arising as a result of the subject proposal, the proposed development is intended to raise the customer experience to an even higher level.
- The function of the new premises is to accommodate patrons who have come to the restaurant and are required to wait as their table is being prepared / vacated. This waiting area will not increase the maximum number of people attending the restaurant as permitted under the Fire Regulations.
- There will be no impact on parking consequent on the proposed development as there are hundreds of parking spaces available in Carlow Town within easy reach of the restaurant, particularly after 17:00 hours when the premises opens on Wednesday – Sunday.

- The Planning Authority has clearly confirmed that the parking issue was taken into account in their assessment of the subject application. The relaxation of the parking standards was considered under the categories of 'Carlow Town Cultural Quarter' and 'Protected Structures at Risk'.
- The suggestion by the Planning Authority that *'the proposed increase in the size of the restaurant will place extra demands on the off site carpark'* is rejected as the proposed development will not give rise to any additional customers attending the restaurant. Accordingly, there should be no requirement to provide further parking facilities or to pay a development contribution towards same.
- There will be no increase in the numbers of customers attending the restaurant consequent on the proposed waiting area as this is determined by the Fire Safety Certificate, specifically the width of the doors along the escape routes which cannot be widened as this is a protected structure.
- Condition No. 11 of PA Ref. No. 16/139 states the following:
'any changes to this property containing the allocated car parking spaces in the future, will result in a car parking levy being applied in respect of the development the subject of this planning permission'.

The subject proposal cannot increase the numbers of people using the restaurant and the applicant is amenable to the imposition of a condition similar to that referenced above.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the 2 No. appeals are:

- The nature of the planning application
- The principle of the proposed development
- Overall design and layout / impact on built heritage considerations
- The proposed car parking arrangements

- Appropriate assessment
- Other issues

7.2. These are assessed as follows:

7.3. **The Nature of the Planning Application:**

7.3.1. Concerns have been raised in the third party grounds of appeal that a significant amount of the works for which planning permission has been sought have already been carried out on site and thus the subject application should instead include for the retention of same. In this respect I would advise the Board that following a site inspection on 25th June, 2018 I can confirm that a significant proportion of the development proposal for which the applicant has expressly sought 'permission' (as distinct from 'permission for retention') in the subject application has already been completed (or is nearing completion) on site. Most notably, this includes the change of use of the existing two-storey-over-basement, three-bay, former dwelling house on site (a protected structure) from residential to restaurant at ground and basement floor levels (in addition to the first floor level of the rear return in order to accommodate associated toilet / sanitary facilities) and all the ancillary refurbishment / renovation / reconstruction works etc. associated with same, including the remodelling of the internal spaces, the insertion of a bar counter, service area and seating areas at ground floor level, the installation of various food preparation, wash-up and storage areas at basement level, the application of new finishes, the erection of signage, and the installation of various fire safety features (alarms, signage etc.) (N.B. The likelihood is that associated electrical, plumbing, damp-proofing and fire safety works were also undertaken during the course of the aforementioned works). Further works which have already been undertaken on site include the installation of an enclosure for a meter box to the front of the property and the provision of a new external fire escape stairway leading from the first floor of the two-storey-over-basement property to the rear yard area.

7.3.2. The subject appeal concerns an application which includes for two distinct elements, namely, '*permission*' to undertake certain proposed development and '*permission for the retention*' of specified existing development that has already been carried out on site. Given that certain aspects of the 'proposed' development for which '*permission*' has been sought have already been completed on site and thus would necessitate

'permission for retention', it is clear that the description of the subject proposal as set out in the submitted public notices and the application documentation does not reflect the situation as currently exists on site. Consequently, I am of the opinion that the Board is precluded from considering a grant of permission with regard to those elements of the overall development proposal which do not accord with the public notices etc.

7.4. **The Principle of the Proposed Development:**

7.4.1. The proposed development site is located in an area zoned as *'Town Centre'* in the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018 with the stated land use zoning objective *'To protect the vitality and vibrancy of the town centre and provide for town centre activities'* wherein there is an acknowledgment that services, including restaurants, public houses and cafes, are well-suited and serve to support the vibrancy and vitality of the town centre. Moreover, the subject proposal is located in a mixed-use area and involves the expansion of an existing commercial premises (i.e. a restaurant / wine bar) which would in turn accord with Policy ECN P15 of the Development Plan which seeks to encourage the provision of commercial services within Carlow Town Centre in order to foster synergistic relationships between different uses which support its vitality and vibrancy.

7.4.2. Accordingly, having regard to the site location in Carlow town centre, the applicable land use zoning, the existing and historical usage of the property in question, the surrounding pattern of development, and the wider strategy of the Joint Spatial Plan as regards the promotion and development of Carlow town, I am satisfied that the subject proposal is acceptable in principle.

7.5. **Overall Design and Layout / Impact on Built Heritage Considerations:**

7.5.1. The proposed development site is located within the College Street Architectural Conservation Area and includes a building which has been designated as a protected structure by reason of its inclusion in the Record of Protected Structures set out in Appendix 4 of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018. This protected structure (RPS No. CT79) is described as comprising a two-storey, three-bay, 18th Century house with Victorian alterations constructed c. 1740-1750 and is considered to be of *'Regional'* importance due its *'Architectural'*, *'Historical'*, *'Interior'* and *'Personality'* qualities of special interest (*N.B.*

The building has also been indicated in the Spatial Plan as having been included in the National Inventory of Architectural Heritage under NIAH Ref. No. 10000440, although I have been unable to view the relevant records). Accordingly, in view of the foregoing, it is necessary to examine the impact, if any, of the various aspects of the wider development proposal on built heritage considerations.

7.5.2. With regard to the retention of the existing single storey extensions to the rear of the property i.e. the new storage area, dessert bar, and the expansion of the smoking area, given the limited size and scale of these structures and their relationship with the existing construction on site (i.e. they involve additions to the more contemporary components of the existing premises which are not of built heritage significance having previously been approved and constructed under PA Ref. Nos. 11/6421 and 16/139), the positioning of these elements of the development relative to the key built heritage aspects of the protected structure on site (i.e. the two-storey, three-bay, 18th Century house), and as the structures in question are screened from view by existing construction, it is my opinion that the retention of said extensions will not detract from the character of the prevailing streetscape, the protected structure, or the College Street Architectural Conservation Area and will not have any significant detrimental impact on built heritage considerations.

7.5.3. In relation to the proposal to construct a new free-standing gazebo-type structure within the rear garden of the site, having regard to the overall design, size and scale of this aspect of the development, with particular reference to its lightweight timber-frame construction and external finishes (as detailed on Drg. No. 17-685/PP/02-A Rev. F.I. received by the Planning Authority on 11th October, 2017), the likely reversibility and temporary nature of the construction, its location to the rear of the property alongside high stone walling, and as the structure in question will not be visible from any public area, I am satisfied that it will not have any adverse impact on built heritage considerations.

7.5.4. In respect of the remainder of the proposed development, I would refer the Board to the revised proposals submitted in response to the request for further information issued by the Planning Authority which provide for the following:

- The change of use from residential to restaurant at ground and basement floor levels (in addition to a partial section of the first floor in

order to accommodate sanitary facilities) of the existing two-storey-over-basement, three-bay, protected structure (and all associated works);

- The construction of a single-storey ground floor extension to the rear of the existing two-storey-over-basement, three-bay, protected structure which will accommodate a new kitchen area;
- The provision of a new external fire escape leading from the first-floor level of the two-storey-over-basement protected structure to the rear yard area (including the lowering of an existing windowsill within the rear elevation of the building in order to form an escape doorway);
- The construction of a new ESB meter box within the area to the front of the protected structure;
- The blocking up of window opes at basement and ground floor levels within the rear elevation of the protected structure; and
- Associated site development works.

7.5.5. It is of further relevance to note that these amended proposals have been accompanied by an 'Architectural Heritage Impact Assessment' which includes a building survey of the '*two-storey, three-bay, 18th Century house with Victorian alterations*' i.e. the protected structure, as well as more detailed specifications of the various works to be carried out to the property as part of the proposed change of use.

7.5.6. At this point I would reiterate my earlier comments to the Board that a significant proportion of the aforementioned 'proposed' development has already been carried out on site, with specific reference to the change of use of the protected structure from residential to restaurant at ground and basement floor levels (in addition to the first floor of the rear return which provides for associated sanitary facilities) and all the ancillary refurbishment / renovation / reconstruction works etc. (including the remodelling of the internal spaces, the insertion of a bar counter, service area and seating areas at ground floor level, the installation of various food preparation, wash-up and storage areas at basement level, the application of new finishes, the erection of signage, and the installation of various fire safety features), the provision of the external fire escape stairway from the first floor of the two-storey-over-basement

property to the rear yard area, and the construction of an enclosure for a meter box to the front of the property.

7.5.7. Whilst I would acknowledge that the submitted plans and particulars of the aforementioned 'proposed' development would appear to have taken due cognisance of the need to minimise the impact of the proposal on those features of the existing building which contribute to its built heritage interest, it is notable that the Department of Culture, Heritage and the Gaeltacht sought the imposition of a series of conditions in any decision to grant permission to protect the character of the structure, including a requirement to submit an expanded conservation specification and methodology for the proposed works (to include for any necessary works to comply with the Building Regulations (e.g. fire, access) and measures to protect all original and early fixtures and features, internal, external and adjoining) in order to inform the contractor. Accordingly, given that significant works have already been carried out on site which directly impact on the protected structure in the absence of any agreed conservation specification or methodology, it is not possible on the basis of the available information to verify that the said works have been completed in accordance with best conservation practice. This is of particular concern in light of the 'Regional' importance afforded to the property and its special interest qualities (i.e. 'Architectural', 'Historical', 'Interior' and 'Personality'), which possibly derive from its inclusion in the National Inventory of Architectural Heritage, and the suggestion by the Department that, judging by the fine quality of the joinery, plaster decoration and stairs, the building in question could conceivably have been designed by the architect of the adjacent Carlow Cathedral (Thomas Cobden) for his own use which would add considerably to its historical associations and its significance from a built heritage perspective.

7.5.8. Therefore, on the basis that a significant proportion of the development proposal for which the applicant has sought 'permission' (as distinct from 'permission for retention') has already been carried out and, therefore, has already directly impacted on the built heritage character of a protected structure, and in the absence of any information to verify that said development has been carried out in accordance with best conservation practice, I am not in a position to comment further on the acceptability or otherwise of this aspect of the development proposal.

7.6. **The Proposed Car Parking Arrangements:**

7.6.1. In the interests of conciseness, and in order to avoid unnecessary repetition, I propose to consider the contents of the first and third party grounds of appeal as regards the issue of car parking together. Furthermore, by way of clarity, I would advise the Board that I have limited my assessment of the car parking requirements of the proposed development to that element for which I am recommending a grant of permission (and permission for retention) i.e. the retention of the 28.85m² single storey extension (a 4.33m² dessert bar, a 19.02m² store and a 5.50m² smoking area) to the existing Mimosa Wine and Tapas Bar; and the proposed construction of a 32.60m² gazebo.

7.6.2. Accordingly, I would refer the Board to Policy TRANS P45 of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018 which details that within areas zoned as 'Carlow Town Centre' car parking for new restaurant development is to be provided at a rate of 1 No. space per 20m² of gross floor area, save where special circumstances apply. Notably, the Development Plan makes no distinction between seating / dining areas (i.e. 'public' floorspace) and ancillary service areas such as kitchens, stores, W.C.s etc. and, therefore, it is appropriate to calculate the car parking requirement as follows:

$$\text{Gross Floor Area: } 28.85\text{m}^2 (4.33\text{m}^2, 19.02\text{m}^2 \text{ \& } 5.50\text{m}^2) + 32.6\text{m}^2 = \underline{\underline{61.45\text{m}^2}}$$

$$61.45\text{m}^2 (\text{GFA}) / 1 \text{ No. space per } 20\text{m}^2 = \underline{\underline{3 \text{ No. car parking spaces}}}$$

7.6.3. Having established the 'minimum' parking requirement for the proposed development, it is necessary to considered whether any of the 'special circumstances' set out in the Development Plan apply with regard to the subject proposal. In this respect I would draw the Board's attention to the provisions contained in Section 2: '*Transport Movement and Access*' of the Joint Spatial Plan which state that in order to encourage sustainable transport and in recognition of the importance of the economic development and regeneration of Carlow Town Centre, a relaxation of car parking standards will be considered in the following areas:

- Carlow Town Cultural Quarter
- Protected Structures at Risk
- Carlow Town Centre

- 7.6.4. The proposed development site is located within Carlow Town Centre and the Cultural Quarter whilst the wider development proposal also provides for the renovation and re-use of a protected structure and, therefore, in principle, I am amenable to a relaxation in the applicable parking standards.
- 7.6.5. Given the restricted configuration and nature of this town centre site, it is clear that the provision of on-site car parking is neither practical nor feasible and, therefore, it would be entirely appropriate in this instance to address the additional demand on public parking facilities arising as a result of the proposed development by way of a development contribution towards the provision of same by the Local Authority. However, in order to address the parking requirement for the overall development proposal (thereby avoiding any requirement to pay a development contribution in lieu of the provision of same), the applicant initially proposed to avail of a total of 18 No. car parking spaces located to the rear of an entirely separate premises, namely, 'Carpenters' public house, Barrack Street, Carlow, within an approximate 400m walking distance of the application site, which would be reserved for use by both the existing and proposed development. Whilst I would acknowledge that the applicant has obtained the written consent of the relevant third party landowner to avail of the parking spaces identified on Drg. No. 17-685/PP/04 (received by the Planning Authority on 14th June, 2017), and although there may be some merit in suggesting that there is a synergy between the respective businesses, I am inclined to concur with the Planning Authority's assessment that such a proposal could likely give rise to difficulties as regards the actual availability of the parking spaces due to the existing demands of the public house, restaurant, off-licence and funeral home which already avail of the parking at 'Carpenters', Barrack Street. I would further suggest that the practicality of reserving parking spaces at this off-site location would likely encounter difficulties and in this regard it was noted during the course of a site inspection that the parking area at 'Carpenters' was strictly reserved for use by customers and would appear to be used in part for outdoor functions and as a beer garden given the presence of an outdoor bar area within same. In addition, I am unconvinced that patrons of the 'Mimosa Wine Bar and Tapas Restaurant', particularly non-locals and visitors to the area, would necessarily be aware of their entitlement to park off-site at 'Carpenters' given its distance from the application site. I would also have concerns as regards placing an overt reliance on the use of

parking facilities in the ownership of a third party given the potential difficulties that could arise should those lands be redeveloped for other purposes or disposed of to another party.

- 7.6.6. Therefore, having considered the foregoing, and although the Planning Authority has previously accepted the use of 8 No. car parking spaces at 'Carpenters', Barrack Street, in its assessment of earlier development proposals on site (i.e. PA Ref. No. 16/139), in the absence of any clear breakdown of the usage of the existing car park by other businesses etc., and in view of the difficulties outlined above, I am not amenable to the use of the off-site parking spaces as proposed by the applicant.
- 7.6.7. With regard to the applicant's alternative proposals which seek to rely on the sole usage of existing (public and private) car parking facilities located throughout the town centre, in my opinion, any reliance on the usage of third party lands (particularly in the absence of the written consent / agreement of the landowner) is likely to give rise to similar difficulties as previously outlined in this report. Moreover, I would suggest that it is only reasonable that any use of public facilities should be contingent on the payment of a development contribution towards same.
- 7.6.8. Accordingly, on balance, I am inclined to suggest that the element of the subject development for which I am recommending a grant of permission (and permission for retention) i.e. the retention of the 28.85m² single storey extension and the construction of the 32.60m² gazebo, would necessitate the provision of 3 No. car parking spaces as per the requirements of the Development Plan, however, in light of site location within the town centre and the Cultural Quarter, I am amenable to a relaxation of this requirement to 2 No. spaces with a development contribution in lieu of the provision of same to be paid to the Local Authority.

N.B. In the event that the Board deems it appropriate to assess the entirety of the wider development proposal, including the proposed change of use from residential to restaurant, it will need to reconsider the parking requirements accordingly.

7.7. **Appropriate Assessment:**

- 7.7.1. From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that whilst the proposed development site is not located within any Natura 2000 designation, it is situated approximately 400m east / southeast of the River Barrow and River Nore Special

Area of Conservation (Site Code: 002162). In this respect it is of relevance to note that it is an objective of the Planning Authority, as set out in Section 9 of Part 3 of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018, to seek to realise the conservation objectives of the River Barrow and River Nore candidate Special Area of Conservation. By way of further clarity, Policy HER P01 of the Plan aims to ensure that all planning applications are screened to determine whether a full Appropriate Assessment is necessary in accordance with the 'Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (2010)' whilst Policy HER P03 restricts development that would be likely, either individually or in combination with other plans or projects, to give rise to significant adverse effects on Natura 2000 sites having regard to their conservation objectives.

- 7.7.2. In effect, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.
- 7.7.3. Having reviewed the available information, and following consideration of the 'source-pathway-receptor' model, it is my opinion that given the nature and scale of the development proposed, the site location outside of any protected site, the limited ecological value of the lands in question, the availability of public services, and the separation distances involved between the subject site and nearby Natura 2000 designations, the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of any Natura 2000 site. Therefore, I am inclined to conclude that the proposed development would not be likely to significantly affect the integrity of Natura 2000 sites and would not undermine or conflict with the Conservation Objectives applicable to same.
- 7.7.4. Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site in view of the

relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

7.8. **Other Issues:**

7.8.1. **Previous Instances of Unauthorised Development:**

In relation to the appellant's concerns as regards previous instances of unauthorised development on site, it should be noted that the Board has no function in respect of issues pertaining to enforcement and that the pursuit of such matters is generally the responsibility of the Planning Authority. It is also of relevance to note that the subject application would appear to have been lodged in an effort to regularise certain unauthorised works which have been carried out on site.

7.8.2. **Compliance with the Building Regulations:**

In reference to the appellant's concerns as regards adherence to the Building Regulations (i.e. wheelchair accessibility), it is my opinion that such issues are essentially building control matters which are subject to other regulatory control / legislative provisions and thus are not pertinent to the consideration of the subject appeal.

8.0 **Recommendation**

8.1. Having considered the contents of the application, the decision of the planning authority, the planning history of the site, the grounds of appeal, and my assessment of the planning issues, I recommend that a split decision be issued as follows:

- **GRANT** permission to retain a 28.85m² single storey extension (a 4.33m² dessert bar, a 19.02m² store and a 5.50m² smoking area) to the existing Mimosa Wine and Tapas Bar (a protected structure Ref: 100000440 & RPS No. CT79); and permission to construct a 32.60m² gazebo; for the reasons and considerations, and subject to the conditions, marked (1) hereunder.
- **REFUSE** permission to construct a 21.77m² extension to the permitted kitchen, and to change the use of 160.31m² from residential to a restaurant use, as amended by the revised plans and particulars lodged as significant further information with the Planning Authority on the 31st day of August, 2017; based on the reasons and considerations marked (2) hereunder.

Reasons and Considerations (1):

Having regard to the location of the site in Carlow town centre, the nature and scale of the development proposed to be retained and carried out, the pattern of development in the area, and the planning history and existing use of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not adversely affect the character or setting of a protected structure or Architectural Conservation Area, would be acceptable in terms of traffic safety and convenience, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 31st day of August, 2017 and the 11th day of October, 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority within three months of the date of this order and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

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

Reason: In the interest of public health and to ensure a proper standard of development.

3. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid

within three months of the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Reasons and Considerations (2):

1. The public notices submitted in connection with the planning application include reference to an application for 'permission' to 'change the use of 160.31m² from residential to a restaurant use' whilst the application documents submitted to the planning authority similarly refer to the application as including for "permission" for said change of use. However, elements of the proposed development, including the change of use from residential to restaurant, have already been carried out on site and, therefore, the public notices of the development and the application documents do not properly describe the nature of the application, which should be in respect of an application for the retention of the said development which has already been carried out. Accordingly, the application does not accord with the provisions of Articles 18(1)(c), 22 & 23 of the Planning and Development Regulations, 2001, as amended, and the Board is precluded from further consideration of the application and appeal.

Robert Speer
Planning Inspector

20th July, 2018

