



An
Bord
Pleanála

Inspector's Report 300907-18

Development	The retention of a timber and perspex roof over part of the yard and all associated works.
Location	Circular Road, Dunmore East, County Waterford.
Planning Authority	Waterford City and County Council.
Planning Authority Reg. Ref.	17/974.
Applicant	Niall Edmondson.
Type of Application	Permission.
Planning Authority Decision	Permission with conditions.
Type of Appeal	Third Party
Appellant	Tom O'Regan.
Observer(s)	None.
Date of Site Inspection	25 th April 2018.
Inspector	Derek Daly.

1.0 Site Location and Description

- 1.1. The appeal site is located in the built up area of Dunmore East approximately 100 metres north of the beach front. The site has frontage onto a public road which defines the site's western boundary. To the north, south and east of the site are residential properties.
- 1.2. On the site itself there is a licenced premises, the Spinnaker Bar which has frontage onto the local road.

2.0 Proposed Development

- 2.1. The proposal as submitted to the planning authority on the 17th of November 2017 was for the retention of a timber and Perspex roof over part of the yard area of the licenced premises and which is located to the rear of the licenced premises. The structure which is in place is located over the rear of the property is in effect a covered area over the yard area and is accessed from the bar area. The height of the roofed area is approximately 2500mm.
- 2.2. The submission follows correspondence from the director of services for roads, environment and water of the planning authority dated the 15th of November 2017 which informed the applicant to cease music between the hours of 23.30 and 09.00 hours and to engage an acoustic specialist to identify measures in relation to noise control.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to grant planning permission for the development subject to one condition.

3.2. Planning Authority Reports

3.2.1. Planning Report

The planning report dated the 18th of January 2018 refers to:

- The site history

- Relevant provisions of the current development plan;
- submissions received;
- an appraisal of the development;
- the proposal is considered solely on the basis of the retention of the structure as applied for and conditions relating to the use of the area and hours of operation etc. are not being considered.
- permission is recommended.

3.2.2. Other reports.

The report of the environment section indicates no objection subject to conditions.

3.3. Other submissions.

Submissions were made from the residents of the area referring to the development referring to unauthorised development, noise annoyance and loss of amenity.

Reference is made to absence of measures to reduce noise and the level of usage of the development.

4.0 Planning History

4.1. The site has a planning history largely relating to extensions and refurbishments of the licenced premises.

4.2. There is a current reference **ABP 300268-17** in relation to the current proposal and the question of whether the development as constructed is or is not exempted development.

5.0 Policy Context

5.1. Development Plan

5.1.1. The current plan is the Waterford County Development Plan 2011-2017.

5.1.2. The site is located within the development boundary of Dunmore East on the zoning map and written statement as outlined in volume 2 of the plan. The site is zoned Tourism.

5.1.3. Chapter 10 of volume 1 of the plan relates to Development Management and outlines guidance and standards in relation to development.

6.0 The Appeal

6.1. Grounds of Appeal

The appellant in a submission dated the 12th of February 2018 refers to:

- Reference is made to the planning history and in particular recent enforcement matters relating to the site and in particular the development which is the subject of the current appeal.
- The appellant considers that the application was not adequately considered and reference is made to noncompliance with previous planning permissions on the site.
- There is no discussion in the assessment about the extent, design or materiality of the structure to be retained.
- Reference is made to noise and the absence of any assessment of noise impact on residential amenity or the use of the rear garden area as a beer garden or for music events.
- The use of the site has been altered through intensification.
- There are no mitigation measures in relation to noise.
- There is no evaluation in relation to the level of non-compliance.
- The application is invalid and in this regard reference is made to the drawings their scale and discrepancies in the drawings.
- Reference is made to the referral currently with the Board in relation to the development.
- The Board are requested in the event of permission being granted to provide for conditions to protect the amenities of residents.

6.2. Response to the Grounds of appeal

No response received.

7.0 Assessment

- 7.1. The site is an established licenced premises within the village and is in an area which has over time become largely residential.
- 7.2. In relation to the grounds of appeal it is noted that reference is made to the planning history and in particular recent enforcement matters relating to the site and in particular the development which is the subject of the current appeal.
- 7.3. Reference is also made to noise and the absence of any assessment of noise impact on residential amenity or the use of the rear garden area as a beer garden or for music events and there is no discussion in the assessment about the extent, design or materiality of the structure to be retained and there are no mitigation measures in relation to noise.
- 7.4. In general terms the proposed development presents the use of the yard area for music and the area has been covered. In principle I would have no objection to the proposal as submitted. The site is established in relation to the use and is zoned for tourism in the current development plan.
- 7.5. I would accept that as a retention application the planning authority have considered the application in terms of what was applied for which was the retention of a timber and perspex roof over part of the yard but I do not consider that this in itself precludes the regulation of the covered area and to consider conditions to protect amenities in particular residential amenities. In considering a grant of permission it is reasonable that the structure should comply with requirements to safeguard amenities given its proximity to residential development.
- 7.6. I do not consider therefore that this does not preclude conditions in relation to amplified sound and regulating the hours of operation and that it would not be unreasonable to preclude its use in the courtyard area after 11.30pm on any night.
- 7.7. I also consider it reasonable that the applicant should submit to and agree with the planning authority a comprehensive management and mitigation plan in relation to noise, odour and other air emissions arising from the site and also details relating to an ongoing monitoring and review of the agreed mitigation measures should form part of this plan.

7.8. Matters relating to non-compliance and possible unauthorised development on the overall site are matters for the planning authority to address.

8.0 Recommendation

8.1. It is recommended that permission for the development be granted for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the nature of the proposed development and its established use ; the nature and pattern of uses in the vicinity, the provisions of the current plan for Dunmore East and the zoning of the site, it is considered that subject to it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The grant of permission is for a retention of permission and to carry out works submitted accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 17th of December 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 prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interests of clarity

- 2 Amplified sound shall not be carried out or take place in the courtyard area after 11.30pm on any night.

Reason: In the interest of the protection of the amenities of the area.

- 3 Within 3 months of the date of this order the applicant shall submit to and agree with the planning authority a comprehensive management and mitigation plan in relation to noise, odour and other air emissions arising from the site. Details relating to ongoing monitoring and review of the agreed mitigation measures shall form part of this plan.

Reason: In the interest of the protection of the amenities of the area and safeguarding residential amenities.

- 4 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 prior to commencement of development 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.

Derek Daly
Planning Inspector

3rd May 2018