



An
Bord
Pleanála

Inspector's Report ABP-301084-18

Development	To construct a 275m ² temporary extension to existing 435m ² temporary events marquee (granted under Planning Refs P11/90 and P14/678 for a period of 5 years and all associated site works.
Location	Lough Derg Holiday Village, Carrownakilly Tld, Killaloe, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	P17/388
Applicant(s)	Jeremy & Jana Mannion
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Lough Derg Management Co Ltd & others
Date of Site Inspection	26 th June 2018
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located at Lough Derg Holiday Village, Carrownakilly Td, Killaloe, Co Clare. The site is part of Anna Carriaga / Lough Derg Holiday Village, on the shore of Lough Derg, approx. 3.2km north of Killaloe. Access to the site is via an existing entrance off the R463. To the north of the access roadway at the junction with the R463 there is a public bar and car parking area which links with the access roadway and which also has a separate entrance to the public road. To the south of the private roadway there are tennis courts, near the R463. Further along the roadway to the south there is a development comprising three sides of a courtyard surrounded by two storey plus dormer houses and to the north two rows of terraced two storey houses, further along the roadway there is an access roadway to the riverbank of the Annacarriaga River which enters the lake at this point and is used for boat moorings. Nine detached dormer dwellings along the south of the access road, have access from the rear to these moorings as well as from the front, to the access road. Access to the subject site is north from the access road opposite the first house.
- 1.1.2. To the north, the Killaloe Sailing club has access via a gateway on the R 463 to facilities at the lake shoreline.
- 1.1.3. The R 463 is a busy scenic route.
- 1.1.4. The site is given as 0.468ha.

2.0 Proposed Development

- 2.1.1. The proposed development is the construction of a 275m² temporary extension to existing 435m² temporary events marquee (granted under Planning Refs P11/90 and P14/678 for a period of 5 years; and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to 9 conditions, including:
- 2 The period during which the development hereby permitted may be carried out shall be from the expiry date of planning permission P11/90 and P14/678 which

shall be the 6th May 2019. Upon expiry of this period, the extension and all associated site works shall be removed from the site permanently.

Reason: Having regard to the nature of the development as proposed and in the interest of orderly development, the Planning Authority considers it appropriate to specify a period of validity of this permission in accordance with the existing permissions for this development.

4 Use of the floor area of the proposed development shall be as per that indicated on the ground floor plan as received by the Planning Authority on the 22nd December 2017.

Reason: In the interests of clarity and orderly development

5 All effluent arising from both the existing development and the proposed development shall be disposed of, off site by a licensed waste contractor.

Reason: In the interests of public health.

6 The temporary toilet block and the two existing containers shall be removed off site within three months of the grant of this permission.

Reason: In the interests of orderly development.

7 All surface water run-offs from roofs, entrances and parking areas within the site shall be collected and disposed of within the site to the surface water drainage system. It shall not be discharged to the public sewer.

Reason: In the interests of proper development.

3.2. The decision was in accordance with the planning recommendation.

3.3. **Planning Authority Reports**

3.3.1. Planning Reports

There are two planning reports on the file.

The first recommending a request for further information on 7 points which issued, and includes:

The applicant is seeking to construct an extension onto the site and rear of the existing marquee thus increasing the overall floor area from 435 m² by a further 257m² total gross floor area 710m². A period of 5 years is sought.

There are a number of supporting objectives in the Clare County Development Plan 2017-2023. However, the scale is significant and the impacts that the additional floor space will create cumulatively may unduly impact on existing residential amenities. A five year permission is not acceptable. The life time should be the same as the parent permission.

Landownership has been raised by 3rd parties.

Access Car Parking – per P11/90, 67 car parking spaces were proposed and there was provision for the use of further additional car park spaces as overflow car parking. It is noted from the application details that up to 100 cars could attend the site per event. The proposed development would require 34 spaces.

Water / Wastewater – P11/90 provided for treatment off-site, given the increase in floor area concerns re the volumes likely to be generated and capacity of existing holding tanks.

It has been highlighted that the existing development is connected to the private wastewater infrastructure of Lough Derg Management Company; clarification required.

Water – water supply will be by means of the existing private well on site.

Surface Water – proposed discharge to soakpits.

Visual amenities – designated heritage landscape pre CDP 16.5 (correct reference is 13.5). the principle of the existing development was established under P11/90. Part of the proposed extension will be attached to the northern elevation and the main part positioned at the rear. Mature broadleaf trees exist between the east facing elevation and the water edge of the lake and minimise the visual impact of the existing development particularly in summer time. Not considered to unduly impact.

Residential amenities – it is stated that the hours of operation will be weekdays 11.00am – 2.30 pm, Saturdays 11.00 am – 2.30pm and Saturdays 12.30 am – 2.30 pm.

Impact on residential amenities to be addressed by reducing scale or limiting hours of operation: Further information.

Flood risk – under P11/90 it was considered that a full flood risk assessment was not necessary. A flood risk assessment should be carried out of both the existing and proposed development.

Other – reference was made to unauthorised development - further information to address.

3.4. Further Information Request

3.4.1. A further information request issued 13/7/2017, which included:

1. Demonstrate sufficient legal interest.
2. Submit proposals in relation to awning constructed to the south facing elevation of the existing marquee and two large container units which are unauthorised.
3. Submit details that address the concern that the proposed development will result in an intensification in use.
4. Car parking provision of 12.5 spaces per 100m² would be required, for existing and proposed. Demonstrate how the site can accommodate requirements.
5. Concerns have arisen in regard to how effluent is treated in respect of the existing marquee development. It has come to the attention of the planning authority that the existing development on site may be connected to the private wastewater infrastructure of the Lough Derg Management Company; clarify. Submit details in relation to the volumes of wastewater to be generated in terms of both existing and proposed developments; details in relation to the capacity of the existing holding tanks on site and whether they have sufficient capacity to accommodate both existing and proposed developments. The sizing of the tanks should be based on relevant guidance applicable to the industry. A revised site layout plan to illustrate the location of the temporary toilet block facilities and the access point for emptying the wastewater tank(s).
6. Submit proposals to demonstrate how surface water will be managed and disposed of within the site.

7. The site is located within a designated Flood Risk Area, flood zone A, as identified in volume 2 of the Clare County Development Plan 2017-2023. Proposals for development in areas where there is a risk of flooding, (based on the Flood Risk Maps contained in Volume 2 of the Clare County Development Plan 2017-2023, or any updated version), shall have regard to 'The Planning System and Flood Risk Management (and Technical Appendices) – Guidelines for Planning Authorities 2009' and any future OPW flood assessment information. Having regard to section 5.58 of The Planning System and Flood Risk Management (and Technical Appendices) – Guidelines, as the proposed development will introduce a significant additional number of people into a designated flood risk area, submit a floor risk assessment to take account of both existing and proposed development and to demonstrate that appropriate mitigation measures can be put in place.

3.5. Further Information Response

- 3.5.1. The further information response received 22nd December 2017 includes:

Re item 1 – a Solicitor's letter.

Re item 2 – the awning structure is removed and will not be re-erected without the required permission, one of the purposes of this application is to provide floor area in the marquee to replace the storage containers. Drawing PL-003-A, ground floor plan, identifies the space allocated to replace these containers.

Re item 3 - The uses proposed are ancillary to the events to facilitate the additional floor area requested. The usage proposed are ancillary to the events to facilitate sanitary facilities, services and storage. With no increase in floor area available for event activities the occupancy levels will remain at 155 guests, as existing.

Re item 4 - per CDP at a rate of 12.5 spaces per 100m² a requirement for the existing of 56 spaces and 33 for the extension total 89 spaces. The site layout Drawing no. 01-01 indicates a total of 210 spaces available.

Re item 5 – the proposed development to extend the existing pavilion is to house the existing ancillary services provided as part of any event. The current occupancy numbers in terms of staff and guests shall remain unchanged. Guest's facilities are

not connected to the private wastewater infrastructure. Staff facilities are connected – please see attached population equivalent (PE) and biological oxygen demand (BOD) calculations per person and per occupancy ratio detailing effluent volumes per event for contribution to the private wastewater infrastructure of LDMC – meeting the Emission Limit value of less than 20 BOD, as required by the 2010 Licence to ~Discharge Trade or Sewage Effluent to Waters issued by Clare County Council.

The temporary toilet block facilities provided on site for guest use accord with ISBN 9789 The Event Safety Guide (Purple Guide) catering for up to 250 people for up to 8 hours, the guest capacity for the existing pavilion, which will not increase in the proposal, is 155. The tank to be emptied after each event.

Drawing PI-002-A illustrates the proposed location of the temporary toilet block facilities and the propose access point for emptying the wastewater tanks.

Re item 6 Surface Water Disposal Plan prepared by JBD Consulting Engineers is attached.

Re item 7 – Flood Risk Assessment prepared by JBD Consulting Engineers is attached.

3.5.2. Flood Risk Assessment & Surface Water Management Plan by JBD Consulting Engineers, includes:

The Annacarriga River is located c 70m to the south. It rises c4km to the west in significant uplands that include Moylussa (523mOD Malin) and flows into Lough Derg to the east (c31mOD Malin). The river has a catchment area of c8.22km² and is steeply sloping, upstream of the R463 Scariff Road. Downstream of the Scariff Road the bed gradient decreases before flowing into the marina at AnnaCarriga where bed levels have been deepened.

Lough Derg and Historic Levels - the site is located on the shoreline of Lough Derg It lies approximately 30m above sea level and has a surface area of 119km². Water level data has been recorded from a number of stations dating back to 1932.

Figures for Portumna and Killaloe are given. The 2009 maximum water level was the highest on record at both locations 31.62m OD Malin at Killaloe and 32.05m OD

Malin at Portumna. The 2015/2016 flood event ranked as the second highest with levels of 31.53 and 31.95 respectively. The site is generally flat with a high point in the centre of 32.01m.

Both the 2015/16 and 2009 flood events were triggered by a steady rise in lake level over a period of weeks, a consequence of the large volume of water flowing down the River Shannon and into Lough Derg.

The high lake levels influenced the Annacarriga River which rose out of the marina and inundated the foreshore but did not extend directly into the site, however as levels drop within the site the high groundwater levels, induced by the lake level, caused ponding on site to occur. The ponding impacted the access road and isolated low spots. An aerial photograph taken in January 2016 is provided.

During the flood events the water levels remained below the FFLs of the dwelling houses and pavilion, constructed post 2009 event. The 2009 event has been estimated as a return period of 1 in 172 years (0.6% AEP). The height of the 2015/16 flood level has been surveyed as 31.56m. Based on anecdotal evidence, the water level in the 2009 event was approx. 100mm higher with an estimated level of 31.66m

The River Shannon was modelled under the SFRAM Study however the Annacarriga River was not included. Finalised flood maps for the 10%, 1% and 0.1% AEP are available through the SFRAM Study website. They provide an extract map which shows the site to be within the 10%, 1% and 0.1% AEP flood extent and therefore within flood zone A. The annotation relating to SAR data refers to the use of lower quality topographic data (SAR – Synthetic Aperture Radar) compared to main study areas which use high quality LiDAR (Light Detection and Ranging) data. The majority of Lough Derg was not explicitly modelled as part of the Shannon CFRAM and the flood extents are therefore indicative at the site location, using lower quality topographic data.

OPW PFRA Maps:

The Preliminary Flood Risk Assessment is a requirement of the EU Flood Directive. The PFRA maps are indicative only. The Annacarriga River was subject to PFRA. The maps were generated using national flow data, derived from catchment characteristics alone and without the use of local gauged data. The mapping shows the Annacarriga River flood extent fanning out upstream of the R463 as ground

levels begin to be less steep compared to the more hilly upstream terrain. The mapping process utilised simple hydraulic techniques to convert flows to levels, taking no account of channel characteristics that could significantly affect flood levels, such as channel capacity, steepness and velocity. Therefore, the maps should be used with caution. Lough Ree was not modelled and the representation is simply that of the normal lake extent and cannot be relied upon.

Operational Lake Levels – during the Shannon CFRAM Study 2012 the consultants Jacobs produced a Technical Review Report: The River Shannon Operation Review. It provides some information on the ESB's Regulations and Guidelines that indicate the operating procedures for both flood management and routine operations at Parteen Weir, Ardnacrusha Power Station and Lough Derg.

The control of levels of Lough Derg is primarily exercised by releases at Ardnacrusha Power Station, but with additional water releases at Parteen Weir.

For flood management the regulations define:

- Maximum normal operating level as 30.86mOD Malin
- Exceptional Reservoir level as 31.30m OD Malin (primarily related to Parteen Basin).

The Exceptional Reservoir level was only exceeded on three occasions:

- February 1995: 31.31m
- November 2009 31.63m
- and in 2015/16 (which was after the River Shannon Operation Review).

The operational lake levels are carefully managed within a finite range only exceeded under exceptional conditions and preceded by significant warnings by ESB.

The report refers to sources of flooding: fluvial & lacustrine, pluvial, and groundwater.

Re fluvial & lacustrine it states that it is clear that the site is at risk of flooding, with parts susceptible to flooding from the lake, however the impacts are not as significant as shown by the predictive mapping: PFRA or CFRAM.

Estimated flood levels for Lough Derg and annual exceedences at the site are interpolated from data recordings at gauging stations in Killaloe and Portumna, and

given in table 4-1. Levels of 31.44 mOD Malin for 1% AEP and 31.90 mOD Malin for 0.1% AEP are estimated. Climate change flood extents can be assessed by using the 0.1% AEP (Flood Zone B) as a surrogate for 1% AEP (Flood zone A)

The Annacarriga River is assessed using its characteristics and two models developed by the Institute of Hydrology for runoff estimation with the more conservative model and outcome used in the assessment; which notes that: the catchment is small, steep and ungauged, as such the methods applied cannot be readily calibrated by local gauge data and the final choice of method is based on judgement and reasoning.

The channel capacity is estimated based on dimensions taken at two points located upstream of the R463 in a section of channel that is presented as being overtopped by the PFRA mapping. The finding (using Manning's equation) is that the conveyance capacity is significantly greater than would have been estimated using the PFRA approach, and is in line with local observations. Downstream of the R463 the river is controlled by the levels in Lough Derg.

The results of the analysis is presented in a revised flood zone map in Figure 4-3 on which the site and proposed extensions to the marquee are shown. Part of the proposed marquee extension, on the landward side, is shown in Zone A.

Mitigation

The finished floor level can match that of the existing pavilion 32.03m OD Malin which is above the 0.1% AEP lake level and above the 2009 lake level.

The work will involve infilling an isolated low spot to the rear of the existing pavilion that is not directly linked to Lough Derg. To minimise any potential impacts on groundwater any fill material used should be at least as permeable as the current soil/subsoil/sediment.

Access will only be cut off in the event of a flood approaching a 0.1% AEP magnitude, and then will be less than 0.5m depth on paths with little or no velocity. Slow lake rise will mean that evacuation can be effectively managed.

Surface Water Management

It is proposed to provide positive drainage to all sides of the existing pavilion and the proposed extension. Infiltration will be encouraged throughout, and there will be a

positive connection to an existing pond within the grassed area fronting the events pavilion, which will need to be lowered by 0.9m. An overflow will be set at 31.475 using a non return valve.

The specific understanding of the lake levels has led to the specification of mitigation measures that ensure the development can manage the impacts of flooding to both the development itself and to neighbouring lands. The surface water management plan has been developed to deal with the potentially poor infiltration characteristics when lake levels are high. The measures represent a suitable and robust response to the management of flood risk.

A drainage plan and storm sewer calculations are provided in appendix C to the report.

3.6. Further Planning Authority Reports

3.6.1. Second planning report recommending permission includes:

Re item 1 – satisfied with response. Sec 34(13) applies.

Re item 2 - the proposed development will not increase the floor area open to attendees. CFO's observations are noted, an advisory note will be issued, satisfied with response

Re item 3 - the proposed development will not increase the floor area open to attendees. It is noted that the applicant states that the occupancy levels will remain at 155 guests, per existing. Satisfied with response.

Re item 4 – adequate car parking available. Satisfied with response.

Re item 5 satisfied with response.

3.6.2. Other Technical Reports

3.6.3. Fire Officer – compliance with the Building Regulations; all storage areas shall be enclosed in fire resisting construction.

3.7. Prescribed Bodies

DAHRRG -22nd June 2017 – Nature Conservation – any additional landscaping of the site should use native trees and shrub species such as willow, alder, ash, birch,

oak and native hedgerow species such as blackthorn and hawthorn. This will enhance species and maintain ecological connectivity along the lake margin. Non-native species should not be used.

External lighting should be kept to a minimum and to minimise disturbance to wildlife, no lighting should be directed at the lake, fringing vegetation or any other features of ecological sensitivity.

No infilling of the lake margin should take place.

No material may be stored in the pNHA or SPA designated area.

All building material generated as a result of the proposed construction should not be stored in the pNHA or SPA designated areas.

The area around the development works should be fenced off from the lake, to prevent disturbance of surrounding sensitive habitats.

An oil spill kit should be in place on site throughout the entire development works.

Any mature trees within the immediate proximity of the proposed development should be screened off and protected during the course of construction to prevent any damage.

Clare County Council should be satisfied that the water quality of Lough Derg is not compromised by this development.

3.8. Third Party Observations

3.8.1. Observations on the file have been read and noted

4.0 Planning History

14/678 Jeremy & Jana Mannion permission granted to continue the use of an existing 435sq m events marquee, along with ancillary site works, for an additional 7 years, previously granted under Reg ref. 11/90; this permission is due to expire 06/06/2019.

R1313 Jeremy & Jana Mannion whether the erection of 2 no. pagodas adjacent to existing permitted marquee is development and is or is not exempted development. The planning authority considers that the propose development constitutes development and not exempted development.

09/1317 Jeremy & Jana Mannion, permission granted to construct an entrance porch and covered terrace, elevational changes, internal modifications and ancillary site works.

212944 appeal against the planning authority decision to refuse permission, PI 04/2011, to Michael Mannion for development comprising construction of two number retail outlets, one number crèche, 12 number terraced houses, eight number detached houses, relocated site entrance, access roads, foul sewer connection to existing treatment plant, surface water outfall, boundary walls and all ancillary site services. The Board granted permission for the crèche, 12 number terraced houses, relocated site entrance and associated works and refused permission for two number retail units and eight number detached houses.

11/90 Jeremy & Jana Mannion permission granted to construct a temporary events marquee, 435sq m, for a period of 5 years. The planning report notes that a temporary toilet block is to be provided with all foul waste to be taken away by a specialist contractor and treated off site by a licensed facility; and that, per the Environmental Scientist of Clare County Council, the practice of holding wastewater for transportation off site is questionable, as continually transporting wastewater would not be considered best practice, but was acceptable in the short term as the proposed development is of a temporary nature . Condition no 4 hours of operation to be agreed with the PA.

96/760 permission granted subject to conditions, to Michael Mannion, for fifteen holiday cottages and related site development works.

5.0 Policy Context

5.1. Development Plan

The Clare County Development Plan 2017-2023 is the operative plan relevant provisions include:

Landscape, Chapter 13 – the site is located in a heritage landscape, on a scenic route and lake shoreline.

Flood risk management, 18.6 and volume 2 of the plan. The site is located in an area indicated as at risk from flooding.

Protection of designated areas.

Protection of waters.

5.2. Natural Heritage Designations

- 5.2.1. The Lough Derg (Shannon) SPA site code 004058, (pNHA Lough Derg site code 000011) is the nearest Natura Site located immediately adjoining.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. This is a third party appeal against the decision to grant permission by Lough Derg Management Co Ltd; Michael Rowan, 107 Sandymount Avenue, Dublin 4 (Director, Lough Derg Management Co Ltd); and Kevin Hegarty, 14 Ballinclea Heights, Killiney, Co Dublin (Director, Lough Derg Management Co Ltd). The grounds includes:

- The applicant has not proved a legal entitlement to carry out the development. The land is awaiting registration since 2012; part of proposed parking is on land outside applicants' control; applicants have been unable to prove right of way.
- Overdevelopment of a temporary development. Estate roads were developed for 9 houses, they are being damaged by use of marquee, and enlargement will make this problem worse.

- Existing temporary development is in breach of conditions: waste water discharge and additional unauthorised structures.
- Five year permission is inconsistent with the existing temporary permission, already extended once.
- The inclusion of an advisory note (sec34(13)) puts a burden on the Management Company which should have been properly addressed by the Planning Authority.
- Copies of submissions made to Clare County Council are attached to the grounds.

6.2. Applicant Response

TBP Planning and Development Consultants, has responded on behalf of the applicant to the grounds of appeal, including:

- Explaining the purpose of the proposed temporary 275 sq m extension: more accessible toilets and storage. The two storage containers will be removed once the extension is in place. Although the Planning Authority note the containers may be in breach of planning, they are nonetheless portable devices. The purpose of the extension is to replace them.
- During the course of the application it was clarified that the extension would allow ceremonies which at present take place outside (under the formerly unauthorised awning which is now removed) to be conducted inside during inclement weather. There is more than adequate parking. The numbers attending will not increase. Flood risk has been dealt with.
- Solicitor's letters regarding legal right to carry out the development and right of way submitted to the planning authority, are supplied.
- Overdevelopment – the purpose of the extension is reiterated.
- Breaches of Planning Permission – awning and containers. The awning has been removed and will not be replaced without planning permission. The extension would replace the containers.
- Life of planning permission – condition 2 refers, this has not been appealed.

- Discharge of foul sewage from staff toilets in existing marquee – staff toilets are discharged to a licensed, on-site LDMC treatment. There is a concern that this does not have planning permission. The matter was addressed in the response to the further information request. This has been addressed in condition 5 of the decision, requiring all effluent to be disposed off site from both the existing marquee, staff toilets and the proposed extension. The applicant did not appeal this condition.
- The proposed development will be beneficial to the operator, those visiting the facility, and those staying/visiting in the area. As a temporary form permission and demountable form of development, it is reversible and so can be removed in due course.
- A copy of a Solicitor's letter, regarding right of way, is attached.

6.3. Planning Authority Response

6.3.1. The planning authority have responded to the grounds of appeal, including

- The applicant was considered to have sufficient legal interest in the lands in question.
- Re overdevelopment – the FI response stated that there is no increase in floor space for event activities and that occupancy levels will remain as existing.
- Effluent Disposal - not carried out in accordance with that originally permitted – this has been referred to the enforcement section; this matter is considered to have been addressed.
- Condition no 2 permits the development to 6th May 2019, only.

7.0 Assessment

7.1. The issues which arise in relation to this appeal are: appropriate assessment, overdevelopment of a temporary development, unauthorised development, the duration of permission, flood risk, residential amenity, legal issues and other and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

- 7.2.1. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision on the proposed development. The process is known as appropriate assessment. In this regard a guidance document, 'Appropriate Assessment of Plans and Projects in Ireland,' was published by the DoEH&LG on the 10 December 2009.
- 7.2.2. The proposed development is the construction of two temporary extensions comprising 275m², in total, to an existing 435m² temporary events marquee, and all associated site works.
- 7.2.3. The temporary extensions comprise a smaller extension of 5m x 15m at the northern end of the marquee (75m²) and a larger extension of 10m x 20 m at the western end of the marquee (200m²).
- 7.2.4. As pointed out in the response to the grounds of appeal, this is a temporary form of development, it is reversible and can be removed in due course.
- 7.2.5. The extension to the north is located where there are existing structures, providing toilet facilities, which it is intended to replace, and in addition provide a cold room.
- 7.2.6. The extension to the west is intended to provide for storage, and as a reception ceremony space. It is intended to maintain the existing floor level of the marquee and to infill this area. In the Flood Risk Assessment & Surface Water Management Plan, it has been shown that the proposed western extension will require the filling in of an isolated low spot to the rear of the existing pavilion, an area which remains within Flood Zone A.
- 7.2.7. The Flood Risk Assessment & Surface Water Management Plan proposes that for the development as a whole, in order to provide adequately for surface water disposal, the existing pond to the west should be deepened by 0.9m.

7.2.8. Lough Derg (Shannon) SPA [004058] is the Natura Site likely to be impacted by the proposed development. The conservation objectives for Lough Derg (Shannon) SPA are:

To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA: Cormorant, Tufted Duck, Goldeneye, and Common Tern; and

To maintain or restore the favourable conservation condition of the wetland habitat at Lough Derg (Shannon) SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

7.2.9. The first exercise to be carried out by the Board is screening, in order to determine if the proposed development, individually or in combination with other plans or projects, is likely to have a significant effect on a European site or sites. If it cannot be excluded, on the basis of objective information that the proposed development will have a significant effect on a Natura site, either individually or in combination with other plans or projects in view of the sites' conservation objectives, it must be subject to appropriate assessment.

7.2.10. A Natura Impact Statement has not been provided.

7.2.11. Due to the nature of the structure, the erection of extensions to the marquee would have limited physical impact on the site and surrounding area. The groundworks required a) for the attenuation of surface water and b) to raise the ground level above the flood risk area would however have significant physical impact. Few details have been provided in relation to these works.

7.2.12. In my opinion the smaller, northern extension to the marquee, which is largely replacing existing structures would, in itself, generate very little additional surface water runoff and could be erected without any additional provision for surface water attenuation. I note that the proposed attenuation includes the collection of surface water from the existing development, however this does not arise as a follow on from the existing temporary permission, and is not therefore a necessary requirement of that development, which has permission to remain on the site until 2019.

- 7.2.13. In relation to the smaller extension, in the absence of any excavation to provide for surface water attenuation, and which would not require importation of soil or other material to raise ground levels, I consider that there is sufficient information available to the Board to determine that this part of the proposed development would not adversely affect the integrity of the European site.
- 7.2.14. For the larger extension, in relation to which groundworks would be required. both to provide attenuation of surface water and to raise the ground level above the flood level, it cannot in my opinion be concluded, on the basis of the information provided with the application and appeal, that this part of the proposed development would not adversely affect the integrity of the European site, in view of the site's conservation objectives; and therefore the Board is precluded from granting permission.

7.3. Overdevelopment of a Temporary Development

- 7.3.1. The current permission runs to 2019.
- 7.3.2. It is a concern of the third parties and an issue raised with the planning authority as well as in the grounds of appeal, that the proposed development involves intensification of the use of this site by facilitating an increase in the capacity of the venue.
- 7.3.3. The first party states that there is no intensification of use and no increased capacity involved, that the extensions will provide more accessible toilets and storage; and to allow ceremonies which at present take place outside (under the formerly unauthorised awning which is now removed) to be conducted inside during inclement weather. The planning authority accepted these arguments and their decision is based on that premise.
- 7.3.4. I do not accept these arguments. The increase in floor area would comprise an additional 275m² which is an increase of 63% over that currently permitted on the site.
- 7.3.5. It could be argued that the smaller of the two proposed extensions, i.e. that to the northern end, will improve the facilities currently available, but even this represents an increase in the capacity from that originally permitted. The planning report states that in the permitted drawings under P 11/90, a toilet block was to be included within

floor plans of the permitted marquee, however this was not carried out and a temporary toilet block was put in place instead.

- 7.3.6. On balance and having regard to the limited period of the permission and in light of the existing situation on the site with regard to toilet provision, I consider that it is appropriate that the northern extension only be permitted.

7.4. Unauthorised Development

- 7.4.1. The issue of unauthorised development was raised in the course of the application and is referred to in the grounds of appeal. It is stated that the existing temporary development is in breach of conditions: waste water discharge connection for staff toilets and additional unauthorised structures.
- 7.4.2. The first party in response states that the unauthorised awning has been removed and will not be reinstated without planning permission, it should be noted that its reinstatement is not part of this planning application/appeal; that the two storage containers will be removed once the extension is in place; although the Planning Authority note the containers may be in breach of planning, they are nonetheless portable devices; and the purpose of the extension is to replace them.
- 7.4.3. In my opinion the unauthorised aspects of the existing development can be remedied by the proposed extension to the north of the marquee and this extension only should be permitted.

7.5. Duration of Permission,

- 7.5.1. The grounds of appeal states that the development is inconsistent with the existing temporary permission, already extended once; the estate roads were developed for 9 houses, they are being damaged by use of marquee; and enlargement will make this problem worse.
- 7.5.2. The existing temporary permission runs to 2019. As pointed out by the first party they have not appealed the condition limiting the duration of the permission.
- 7.5.3. It is considered that the proposed extension to the north of the marquee would not unduly increase the use of the premises and is therefore acceptable for the limited duration of the parent permission.

7.6. Flood Risk

7.6.1. Flood risk has been subject to detailed assessment in the Flood Risk Assessment & Surface Water Management Plan by JBD Consulting Engineers, submitted in response to the request for further information.

7.6.2. In assessing the flood risk, one of the main findings is that the flood risk is associated with levels of Lough Derg, which are managed levels, controlled by the ESB. The control of levels of Lough Derg is primarily exercised by releases at Ardnacrusha Power Station, but with additional water releases at Parteen Weir.

For flood management the regulations define:

- Maximum normal operating level as 30.86mOD Malin, and
- Exceptional Reservoir level as 31.30m OD Malin (primarily related to Parteen Basin).

The Exceptional Reservoir level was only exceeded on three occasions:

- February 1995: 31.31m
- November 2009 31.63m
- and in 2015/16 (which was after the River Shannon Operation Review).

The operational lake levels are carefully managed within a finite range only exceeded under exceptional conditions and preceded by significant warnings by ESB.

7.6.3. In table 4-1 of the report, annual exceedance probability levels (AEP) for the site are listed, with the 1% level, flood zone 'A', given as 31.44m OD Malin and the 0.1% level, flood zone 'B', given as 31.90m OD Malin. It is stated that the 0.1% level can be used as an indicative surrogate for the future climate change 1% level. These flood zones 'A' and 'B' are shown mapped in figure 4-3, and indicate that the existing marquee is located partly in flood zone 'B' and the northern extension is similarly in flood zone 'B'. A significant portion of the western extension is shown located in flood zone 'A'.

7.7. Residential Amenity

- 7.7.1. The issue of residential amenity arises in relation to the nearby residential holiday properties. They do not appear to have a functional connection with the marquee, i.e. the accommodation available in association with the events in the marquee appear to be located elsewhere in the vicinity.
- 7.7.2. The stated hours of operation: weekdays 11.00am – 2.30 pm, Saturdays 11.00 am – 2.30pm and Saturdays 12.30 am – 2.30 pm. There appears to be some confusion regarding these times. In testimonials on the Annacarriga website there is reference to the end of the night. The stated hours suggest that the operation is from late morning to early afternoon, rather than running through to the early hours. It is more likely that the hours of operation are: weekdays 11.00am – 2.30 am, Saturdays 11.00 am – 2.30am and Saturdays 12.30 pm – 2.30 am. It is also a consideration that the marquee structure has poor sound insulation. It should be noted that neither the hours of operation nor the impact of noise, has not been raised in the grounds of appeal.
- 7.7.3. The proposal involves an increase of 63% in the permitted floor area and it is reasonable to assume an increase in capacity, notwithstanding arguments made to the contrary, and this would be likely to involve an impact on the amenities of the area.

7.8. Legal Issues

- 7.8.1. Various issues of a legal nature have been raised in the application and appeal: use of the right of way, ownership of the land, legal entitlement to carry out the development, parking on lands outside the applicants control.
- 7.8.2. The planning authority was satisfied with that the production of solicitors letters in relation to land ownership and right of way.
- 7.8.3. The grounds of appeal states that the inclusion of an advisory note (Sec 34(13)) puts a burden on the Management Company which should have been properly addressed by the Planning Authority.

7.8.4. The use of this advisory note relates to legal issues. It would be beyond the function of the planning authority or the Board to make a determination on such issues and therefore the use of the advisory note is appropriate.

7.9. **Other**

7.9.1. As noted by third parties there are discrepancies in the drawings presented between the layout plans and elevations e.g. location of doors; and in relation to the northern extension, the profile of the proposed roof. These discrepancies are not considered significant.

8.0 **Recommendation**

8.1. In the light of the above assessment I recommend that planning permission be granted in accordance with the following conditions and for the following reasons and considerations.

9.0 **Reasons and Considerations (1)**

9.1.1. Having regard to the limited scale of the proposed extension to the north of the marquee and its purpose which is to improve existing facilities available to patrons, for the limited duration of the parent permission, it is considered that the proposed development would not unduly impact on the amenities of the area and would, subject to the following conditions, be in accordance with the proper planning and sustainable development of the area.

10.0 **Conditions**

1. The development shall be 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 22 day 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 interest of clarity.

2. The period during which the temporary development hereby permitted may be used is for a limited period, to the 6th May 2019, the expiry date of planning permissions P11/90 and P14/678 upon which this development is reliant. Upon expiry of this period, the extension and all associated site works shall be removed from the site permanently.

Reason: Having regard to the nature of the development as proposed and in the interest of orderly development, the Board considers it appropriate to specify a period of validity of this permission in accordance with the existing permissions for this development.

3. Except for the erection of the marquee extension hereby permitted no other groundworks shall be carried out on site as part of the proposed development.

Reason: In the interests of orderly development.

4. All effluent arising from both the existing development and the proposed development shall be disposed of, off site by a licensed waste contractor.

Reason: In the interests of public health.

5. The temporary toilet block and the two existing containers shall be removed off site within three months of the date of this order.

Reason: In the interests of orderly development.

Reasons and Considerations (2)

On the basis of the information provided with the application and appeal, and in light of the assessment carried out above, the Board is not satisfied that the proposed development of the western extension to the marquee, individually, or in combination with other plans or projects would not adversely affect the integrity of European site(s) No. 004058, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

Planning Inspector

30 July 2018

Appendices

- 1 Photographs
- 2 Extracts from the Clare County Development Plan 2015-2021
- 3 Site Synopsis Lough Derg (Shannon) SPA site code 004058.
- 4 Extract from NPWS mapping