



An  
Bord  
Pleanála

## Inspector's Report ABP-301595-18

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| <b>Development</b>                  | RETAIN the following a) The external ramp serving the entrance to SeaWorld, b) The existing outdoor seating area serving Randaddy's Restaurant, c) Minor alterations made to the external façade of Randaddy's Restaurant as granted permission under P17-545 |
| <b>Location</b>                     | The Promenade, Dough, Lahinch, Co. Clare  |
| <b>Planning Authority</b>           | Clare County Council  |
| <b>Planning Authority Reg. Ref.</b> | P18/129   |
| <b>Applicant(s)</b>                 | Randaddy's.   |
| <b>Type of Application</b>          | Permission.   |
| <b>Planning Authority Decision</b>  | Grant Permission subject to conditions.   |
| <b>Type of Appeal</b>               | Third Party   |
| <b>Appellant(s)</b>                 | Isobel McDonald   |
| <b>Observer(s)</b>                  | Alan Logue.   |

**Date of Site Inspection**

23<sup>rd</sup> August 2018.

**Inspector**

Brid Maxwell

## 1.0 Site Location and Description

1.1. The appeal site has a stated area of .380 hectares and comprises the Lahinch SeaWorld complex located to the east of the car park at the Promenade, Lahinch Co Clare. Lahinch is a popular tourist resort leading on Liscannor Bay and contains a famous golf links and is a popular surfing location. The appeal site relates to Lahinch SeaWorld and leisure centre complex which includes a pool complex, gym, sports clinic, an activity / entertainment centre, and a surf centre as well as Randaddy's Restaurant located to the front of the complex and to which the appeal relates. The public toilet and amenity block is located at the northern end of the building. The public car park serving the strand is located to the west of the building and a playground is located to the north. The town centre of Lahinch focused on Main Street and Kettle Street, with numerous commercial uses including shops, restaurants bars hotel and ice cream parlours is located a short distance to the south of the appeal site.

## 2.0 Proposed Development

2.1. The development as described in the public notices seeks permission to retain the following

- (a) The external Ramp service the entrance to SeaWorld
- (b) The existing outdoor seating area serving Randaddy's Restaurant
- (c) Minor alterations made to the external façade of Randaddy's Restaurant as granted permission under P17/545

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 17<sup>th</sup> April 2018 Clare County Council issued notification of the decision to grant permission and two conditions were attached. Condition 1(b) Stated "The grant of permission does not include the timber windbreak structures in front of the steel columns in the outdoor seating area. Photographic evidence that

these structures have been removed shall be submitted to the Planning Authority within 3 months of the date of this permission.”

Condition 2 required the payment of €946.00 in accordance with the Development Contribution Scheme.

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

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

Planner’s report asserts that whilst the principle of outdoor seating is acceptable the timber windbreak structures detract from the character and visual amenities of the area. Report notes that original permission did not restrict internal rearrangement of permitted uses and the area of the café as largely relates to that permitted under 17/545. Issues with regard to internal layout are more appropriately addressed through enforcement process if deemed necessary. Development contributions are payable in respect of increase floor area associated with the outdoor seating area. Permission was recommended subject to conditions.

### **3.3. Third Party Observations**

3.3.1 Submission by Coleman and Associates Consulting Engineers and Planners on behalf of Isobel Mac Donald, a nearby resident. Concerns are expressed in relation to intensification of use change to scope of service being provided and questions are raised with regard to the permitted use of the premises. It is contended that the outdoor seating area obstructs pedestrian movement. Drawings deemed to not adequately represent the extent of windbreakers in the outdoor seating area and the wording of application should have included retention of windbreakers and screening / fencing to outdoor seating area. It is contended that the windbreakers are visually unsightly. Development will exacerbate car parking problems in the promenade.

## **4.0 Planning History**

**17-545** Randaddy’s Permission granted November 2017 to alter and extend the existing premises along with all associated site works including a) increase indoor

and outdoor floor areas of the existing premises b) install new windows and doors on the new external façade, c) construct / extend the existing roof over the new floor area. Permission granted subject to three conditions. Condition 2b stated “The grant of permission does not permit an extension to the outdoor seating area. Condition 2 was a development contribution of €3,810 in accordance with the Development Contribution scheme. During the course of the application and in a request for additional information the Planning Authority identified the outdoor seating area as unauthorised development requiring permission and noted that the seating area inhibited universal access to the pavilion.

**07/189** Permission granted March 2007 for single storey extension to rear of Lahinch SeaWorld and Leisure Centre to accommodate a fitness centre.

**94/116** Permission granted 25/5/1994 to Convert and alter existing hall cinema pool complex to sea world swimming complex.

**P16/8011. Part 8 Development** in respect of construction of beach toilets and amenity services.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The Clare County Development Plan 2017-2023 refers. Volume 3 - West Clare Municipal District Written Statement and maps notes that Ennistymon / Lahinch is identified in the Mid-West Regional Planning Guidelines 2010-2022 as Service Town in north Clare, due to their role as important service centres and drivers of growth for their respective hinterlands.

5.1.2 The objective for Ennistymon Lahinch, as a service town, is to promote the development of the towns as a driver of social and economic growth for the hinterlands and as an important link between the Hubs and Gateways of the region and the dispersed rural area. Clare County Council will support development that will strengthen the role and function of service towns as residential, economic, commercial, educational and amenity centres.

5.1.3 The appeal site is Zoned Commercial. The use of land zoned for commercial purposes shall be taken to include the use of the lands for commercial and business

uses including offices, service industry and the facilitation of enterprise retail park office type uses as appropriate. Retailing is open for consideration on this zoning provided that a sequential test is carried out and the lands are demonstrably the optimum location for the nature and quantum of retail development proposed.

## 5.2. Natural Heritage Designations

The designated area of the Inagh River Estuary SAC is within c200m of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 The Appeal is submitted by P Coleman and Associates Consulting Engineers and Planners on behalf of the Appellant who lives a short distance to the south of the SeaWorld Complex. Grounds of appeal are summarised as follows:

- Concern that the Planning Authority did not take concerns into account.
- The appellant was not afforded the opportunity to respond to two sets of unsolicited additional information submitted after the 5-week observation period.
- Floor area of the premises has extended significantly since the café was originally granted permission. Part of this extended floor area involved change of use from other permitted uses (i.e. shop and exhibition area) to café / restaurant.
- Original café granted permission under P94/116 permission to convert and alter the existing hall-cinema pool complex to SeaWorld-swimming complex. Permission did not refer to the café use in the public notices or development description. Layout approved showed a designated café and shop as part of the overall complex.
- SeaWorld complex was developed as a community based non-profit operation as stated in planning file P94/116. This stated that any commercial outlets were incidental and envisaged as being necessary to ensure the viability of the project. Shop and café originally granted permission to be ancillary to and

subsidiary to use of the SeaWorld complex yet independent planning units located within the same building. Not intended to be in competition with other businesses located in the town centre.

- Floor plan inaccurate and change of use from shop and exhibition area to use restaurant is material change of use. Extension of the café into the areas originally approved as the shop, toilets and exhibition area constitutes development which is not exempt development.
- Intensification of use through the scope of the service now being provided, with extensive restaurant menu, alcoholic beverages and a takeaway service and hours of operation beyond those of SeaWorld, the functioning of the restaurant as a standalone entity indicate that a material change of use has occurred which gives rise to fresh planning considerations which have not been considered through any formal planning process.
- Precedent cases including RL2221 RL2419 and RL2093 illuminate this issue.
- P17/545 only granted permission for an extension to the floor area of the café which was the area which was outside the original café under the external canopy area. And not regularise area identified as existing premises on the submitted plans.
- Extension of the outdoor seating area was refused based on the fact that another area of outdoor seating which was currently in use by Randaddys was deemed unauthorised.
- Request that the Board refuse permission on the grounds that the permission for outdoor seating area would consolidate the unauthorised use of the café.
- Outdoor seating area gives rise to implications for late night noise and disturbance which impact negatively on residential amenity.
- Provision of the outdoor seating area has blocked off access for pedestrians from the Plaza area of the complex to the rest of the complex to the west and to the public toilets and compromises means of escape and endangers public safety.
- Drawings submitted did not adequately represent the extent of the windbreakers to the outdoor seating area. Wording of the application should

have included the retention of the windbreakers and screening / fencing to outdoor seating area.

- Windbreakers are unsightly due to their bulky and cluttered appearance.
- Contribution should be required in respect of shortfall in car-parking spaces as no additional car parking spaces are being provided.

## 6.2. Applicant Response

6.2.1 The response, submitted by McCarthy Keville O Sullivan Ltd., on behalf of the first party is summarised as follows:

- Development consists of the retention of a number of features associated with Randaddy's Restaurant, a long established and popular fixture on Lahinch Promenade.
- Use of the site as a café / restaurant was established in the original permission to change the use of the building in 1994.
- Unsolicited further information was provided, during the course of the application to clarify details already submitted and did not alter the proposed development in any way.
- Permission 94/116 "To convert and alter existing hall-cinema-pool complex to sea world swimming complex at Laginch". Drawings associated with that permitted development indicate a number of uses within the overall umbrella of the parent permission of the proposed sea world swimming complex. Ancillary uses included a shop and a café.
- Neither the development description or the planning conditions associated with the parent planning permission restricted or limited the internal layouts of the various subsidiary uses.
- Minor alterations and /or extension to the floor area of the subsidiary uses within the SeaWorld building are non-material and would not require the benefit of planning permission given that these are permitted uses.
- The alleged unauthorised use has been included in 2 no separate planning applications (17/545 and 18/129) to Clare County Council, the enforcing



authority, and on neither occasion, has the planning authority identified unauthorised development in the context of the footprint of the Randaddy's premises.

- The appeal and proposed development relates to retention of relatively minor ancillary works to Randaddy's. It is not the appropriate forum to challenge the principle of the Randaddy's Restaurant use at this location or the internal layout of the footprint of the restaurant which enjoys the benefit of planning permission.
- Plaza from which Randaddy's is accessed is an integral part of the Sea World Complex and clearly still ancillary and subsidiary use forming part of the wider SeaWorld complex.
- Type of service offered by a restaurant and those offered by a café at this location is not considered materially different in a planning sense as to suggest that this represents an intensification of use
- Precedent cases cited are not relevant.
- Appellants residence is located approximately 125 metres southwest of the restaurant and behind the SeaWorld complex. Given the distance there is little potential for residential amenity impact.
- Public safety concerns arising from outdoor seating area are exaggerated. Area to the front of the complex is an informal parking area 15m from the public roadway.
- Principle of a restaurant is long established at this location and accords with the provisions of the parent planning permission and is consistent with the zoning provisions for this location.
- Application is for the retention of relatively minor enhancements to the existing premises. Development is in accordance with the proper planning and sustainable development of the area and the relevant planning policy context.
- An Bord Pleanála is urged to uphold the decision of Clare County Council to grant retention permission for this development.

- Letter submitted by Lahinch SeaWorld states that they give Randaddy's restaurant permission to utilise 16 parking spaces in their ownership between SeaWorld and Lahinch Playground.
- An Bord Pleanála is respectfully requested to uphold Council's decision to grant permission.

### **6.3. Planning Authority Response**

#### **6.3.1 The Planning Authority in response to the appeal notes:**

This is a coastal and beachside location with an established pattern of outdoor seating areas in restaurants, public houses etc in the surround area.

The boardwalk is not intended to function as a public footpath as evidenced by the fact that the seating area is subject of a planning application rather than an application under Section 71 of the Roads Act 1992 as amended.

### **6.4. Observations**

#### **6.4.1 Observations were submitted by P Coleman and Associates on behalf of Alan Logue and are summarised as follows:**

- Fully supportive of the third-party appeal.
- Concerns in relation to the haphazard development of a restaurant on this site. Permission would facilitate further development of an unauthorised use.
- A retention application is required for the full restaurant as currently operates.
- SeaWorld complex originally developed as community based non-profit operation and café and shop originally granted permission to be ancillary to and subsidiary to the use of the SeaWorld complex, yet independent planning units located within the same building. Café was never intended to be in competition with other business located in the town centre.
- Outdoor seating area interferes with pedestrian circulation.
- Windbreakers visually obtrusive.

- Applicants should be subject to contribution in respect of shortfall in car parking.

## 7.0 **Assessment**

7.1. I note that the third party has suggested that third party rights were infringed in that the first party submitted two items of additional information after the five-week observation period and third parties were consequently precluded from making observations in relation to same. I note that the first party in response has argued that this unsolicited additional information merely clarified details already submitted and did not amend the nature of the proposed development nor contain significant additional data and therefore did not trigger the requirement to submit further public notices. This is reasonable and in my view, there was no breach of third party rights. Having considered the application and grounds of appeal I consider that the development proposed for retention can be assessed under the following broad headings.

- Principle of development
- Visual Impact and impact on the amenities of the area.
- Other matters

### 7.2. **Principle of Development**

7.2.1 The third-party appellant questions the principle of the development proposed for retention on the basis of an assertion that the established use on the site is unauthorised. It is alleged that the restaurant as now exists is materially significantly altered in terms of the nature of the use from the ancillary café / shop type use originally authorised by P94/116. It is further alleged that the internal floor area of the restaurant use has extended and this has not been authorised by way of a permission. On this basis it is asserted that permission for retention of the proposed development which relates to the external outdoor seating area and alterations to external façade would facilitate the consolidation of an unauthorised use. I note that the Planning Authority referenced the governing permission on the site 94/116 and noted a flexibility in terms of the internal configuration of uses. I note also that the

nature of the established restaurant use was not questioned during the course of previous application 17/545 which was Permission *“to Alter and Extend existing premises along with associated site works which include the following a) to increase the indoor and outdoor floor areas of the existing premises, b) to install new windows and doors on the new external façade, c) to construct / extend the existing roof over the proposed new floor area.”* This permission was not subject to appeal to An Bord Pleanála. Having regard to the planning history on the site and in particular permission ref: P17/545 and having regard to the limited nature of the development proposed for retention under the current appeal, I consider that the current appeal is not the appropriate forum to address issues of enforcement. On this basis I propose to assess the development proposed for retention on its planning merit.

### **7.3 Visual impact and impact on the amenities of the area**

- 7.3.1 As regards the visual impact of the development, I am inclined to concur with the third party and the planning authority that the timber windbreaks, by reason of their design are visually obtrusive, give rise to maintenance issues and are out of character with the existing building. Indeed, I note an issue with regard to visual clutter arising from the extent of windbreak structures and signage. I therefore consider it appropriate that these be removed. As regards the question of impact of the external seating area on pedestrian movement and circulation, I consider that the issue does not give rise to public safety issues and I note that the relocation of the pedestrian ramp to the southern side of the plaza addresses the issue of universal access.
- 7.3.2 On the issue of impact on residential amenity, I consider that based on the distance to residential properties there is no likelihood of significant impact on residential amenity in terms of noise or other disturbance arising from the external seating area.
- 7.3.3 As regards car parking, I consider that it is appropriate that as the proposal does not provide additional car parking spaces a levy should apply in lieu. The car parking requirement for restaurant cafe/ takeaway as per Appendix 1 of the Clare County Development Plan is 1 space per 100m<sup>2</sup> (net). This appeal relates to the retention of

86m<sup>2</sup> seating area therefore the relevant requirement would be 10 spaces. I note that the Development Contribution scheme 2017-2023 Adopted 24<sup>th</sup> April 2017 applies a rate of €1,000 per space where car parking cannot be met by direct provision. Therefore, I consider that the relevant amount to be €10,000 in respect of car parking.

## **7.4 Other Matters**

- 7.4.1 On the issue of Appropriate assessment, having regard to the nature of the proposed development and the established connection to existing public services together with the separation from any designated European Site and having regard to the source pathway receptor model, it is not considered that the proposed development is likely to have significant effect either individually or in combination with other plans or projects on a European Site. It is considered that a stage 2 appropriate assessment and submission of an NIS under the Habitats Directive (92/43/EEC) is not therefore required.
- 7.4.2 On the issue of EIA Screening having regard to the limited nature and scale of the development for retention, nature of the receiving environment and remove from any sensitive locations or features there is no likelihood of significant effects on the environment arising from the development proposed for retention. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **8 Recommendation**

- 8.1 I have read the submissions on the file, visited the site and had due regard to the development plan and all other matters arising. I recommend that the Board uphold the decision of the planning authority to grant permission for retention subject to the following conditions.

## Reasons and Considerations

Having regard to planning history and established use of the site, and to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention would not seriously injure the visual and other amenities of the area and would thus accord with the proper planning and sustainable development of the area.

## Conditions

- 1 The development shall be retained in accordance with the plans and lodged with the application except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

- 2 The development for retention shall be amended as follows:

Within one month of the grant of permission, all timber windbreak structures and timber cladding to the outdoor seating area shall be removed.

Reason: In the interest of visual amenity.

3. Notwithstanding the provisions of the Planning and Development Regulations 2001 or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

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 within 6 months of the date of permission 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.

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Bríd Maxwell  
Planning Inspector

19<sup>th</sup> September 2018