



An  
Bord  
Pleanála

## Inspector's Report ABP-302789-18

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<b>Development</b>	Change of use of part of the rear service yard to a beer garden including a steel shipping container converted to a bar/servery and steel canopy structure over, along with all associated site development works.
<b>Location</b>	The Brewery Bar, Market Square, Letterkenny, Co. Donegal.
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	1851229
<b>Applicant(s)</b>	Boden Projects Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	First party against conditions
<b>Appellant(s)</b>	Boden Projects Ltd.
<b>Observer(s)</b>	Jerry McCool
<b>Date of Site Inspection</b>	17 <sup>th</sup> December 2018
<b>Inspector</b>	Donal Donnelly

## 1.0 Site Location and Description

- 1.1. The appeal site is located at The Brewery Bar, Market Square in Letterkenny town centre. Market Square is situated on the western side of Upper Main Street and is also accessed from Castle Street to the north-west. There is a bandstand on higher ground on the western side of the square and the lower part comprises a paved area around a sculpture with seating and planting.
- 1.2. The Brewery Bar is on the northern side of the square at the western end of the lower terrace along this side. The premises has a frontage of approximately 24m and there is an uncovered vehicular access to the side. The adjoining vehicular access to the west leads to a furniture workshop and the upper terrace on this side of the square comprises a constituency office and 3 no. dwellings.
- 1.3. The subject development is located in the rear service yard of the Brewery Bar. The yard is adjoined to the north by the gable of a property on Upper Main Street. The yard is enclosed by the rear and side of the bar building and is open to the west and south to the vehicular access.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the retention of change of use of part of the rear service yard to a beer garden including a steel shipping container converted to a bar/servery and steel canopy structure over, along with all associated site development works.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Donegal County Council issued notification of decision to grant permission subject to six conditions. Condition 1 & 2 the subject of this appeal state as follows:
  1. *(a) Development shall be retained strictly in accordance with lodged plans and details, received on 10/08/2018 save as hereunder otherwise required.*
  - (b) Use of beer garden shall be restricted to the hours of 12:00 hrs to 22:00 hrs at all times and without exception.*

*(c) All external speakers shall be removed and there shall be no playing of amplified music at any time.*

*(d) Noise levels shall be restricted to 55 dB(A) during use at the western site boundary .*

**Reason:** *To define the permission.*

2. *The development shall be operated and managed in accordance with an Environmental Management System (EMS) to ensure compliance with Condition No. 1(a)-(d) (inclusive), which shall be submitted by the developer to, and agreed in writing with, the Planning Authority within three (3) months of the date of Final Grant of Planning Permission. The EMS shall include: (i) proposals for the ongoing monitoring of sound emissions at the western site boundary to ensure noise levels do not exceed 55dB(A) from 12:00 hrs – 22:00 hrs and 45dB(A) at any other time and (ii) proposals to remove speakers/ ensure no amplified sound/ music is played in the beer garden.*

**Reason:** *In the interests of environmental and residential amenity.*

## **3.2. Planning Authority Reports**

- 3.2.1. The recommendation to grant permission in the Planner's Report reflects the decision of the Planning Authority. The main points raised in the assessment of the proposal relevant to the appeal are summarised as follows:

- Principle of development is considered acceptable.
- Allegation that loud music was being played until after 1:30am should have been adequately addressed and managed through the noise monitoring conditions of the parent permission.
- Condition 10 of parent permission is considered reasonable and shall be restated as a condition of permission.
- No amplified sound/ music shall be played externally and development shall be operated and managed in accordance with an Environmental Management System to provide for ongoing monitoring of sound emissions at the western boundary (in the vicinity of 3<sup>rd</sup> party dwellings).

- No visual amenity issues.
- No objection in principle from EHO.
- Chief Fire Officer – applicant to ensure that the proposed beer garden/ structure does not impede escape routes from the existing building.

## 4.0 Planning History

Donegal County Council Reg. Ref: 06/80192 (PL66.224573)

4.1. Permission granted for demolition of various existing outbuildings to side and rear of property and construction of new extensions to side and rear to provide access, storage, ancillary facilities and to allow general revisions to existing layout of building to include:

- (a) extension and revisions to the layout of existing basement to provide new bar/function space,
- (b) extension and refurbishment to existing ground floor bar area,
- (c) extension and refurbishment to existing first floor area to provide improved bar/restaurant and kitchen facilities, with new covered external terrace and new ancillary accommodation,
- (d) provision of 4 no. new apartments to second floor with common roof terrace,
- (e) alterations to elevation fronting onto Market Square and provision of all associated ancillary services and works

4.2. Condition 10 of this permission related to noise limitations and measurements.

4.3. An extension of duration of this permission was granted under Reg. Ref: 12/80053 on 20<sup>th</sup> August 2012 (expired December 2017).

## 5.0 Policy Context

### 5.1. County Donegal Development Plan, 2018-2024

5.1.1. The appeal site is zoned “*town centre*” where the objective is “*to sustain and strengthen the core of Letterkenny as a centre of commercial, retail, cultural and community life.*”

5.1.2. The town centre strategy for Letterkenny is set out in Section 12.3 of Part C of the Development Plan. Policy LK-TC-P-3 states that changes of use shall not detract from the objective of creating a vibrant and mixed use town centre, including residential accommodation. Policy LK-TC-P-18 relates to the provision of quality residential accommodation within the town centre.

## 5.2. Natural Heritage Designations

5.2.1. The site is approximately 1.5km west of the Lough Swilly SAC (site code: 002287).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A first party appeal against Conditions 1 & 2 only of the Council's notification of decision was submitted on behalf of the applicant. The grounds of appeal and main points raised in the appeal are summarised as follows:

- Area in the vicinity of the Brewery Bar is dominated by commercial outlets – there are a number of residential units in the area but they are not designated “Long Established Residential Areas”.
- Activities refused and/ or restricted by the Planning Authority are vital to the success of the business and, subject to noise level controls, are normally associated with premises in the centre of the business district of any town in Ireland.
- Retention of the beer garden development consolidates the established activity by patrons in the rear yard of the bar used as a smoking area.
- Beer garden is used predominantly in good weather – it is unreasonable to apply different operational hours to the main bar premises.
- Restriction in noise levels is considered to be a much better solution to regulating any potential adverse impacts on the amenities of adjoining properties.

- Amplified music is prevalent in almost every public house premises throughout the country – a condition regulating the level of noise is considered a more suitable solution.
- Noise level restrictions had been imposed by the Board under PL66.224573 – applicant would welcome the imposition of a similar condition on the beer garden.
- The issue is whether the noise levels from the enclosed beer garden add significantly to ambient noise levels, particularly at night, experienced in the vicinity.
- Board is requested to remove Conditions 1 & 2 and to replace them with a single condition stating that *“the development shall be operated and managed in accordance with an Environmental Management System (EMS), which shall be submitted by the developer, and agreed in writing with the Planning Authority within three (3) months of the date of this order. The EMS shall include proposals for the on-going monitoring of sound emissions at the western site boundary to ensure noise levels do not exceed 55dB(A) from 12:00 hrs to 22:00 hrs and 45 dB(A) at any other time, as measured at the boundary of the nearest residential receptor.”*

## 6.2. Planning Authority Response

- 6.2.1. In response to the first party appeal, the Planning Authority states that (i) its conditions in terms of operational hours of use are consistent with a feature intended for good weather use, and (ii) its noise control conditions are reasonable having regard to nature of the proposed use, i.e. good weather outdoor amenity, and otherwise it is considered that an appropriate balance has been struck with the amenities of neighbouring properties.

## 6.3. Observation

- 6.3.1. An observation on the appeal was submitted on behalf of the resident of No. 16 Market Square. The main points raised in this submission are as follows:

- Observer and family find it impossible to sleep at weekends owing to excessive noise from the beer garden and bar, which is less than 16m distant.
- Noise levels and flashing lights emanating from the beer garden are extremely excessive and intrusive.
- Beer garden building/ structure is of flimsy construction and is virtually open on southern and western boundaries.
- Observer does not object to the principle of the development but requests that Conditions 1 & 2 are upheld.
- Owners should consider erecting an acoustic wall/ fence including acoustic treatment to a section of the roof as shown on western boundary

#### 6.4. Further Response

6.4.1. The applicant's agent responded to the observation with the following comments:

- There are no flashing lights at the premises.
- Beer garden structure is constructed from a steel frame and the container is solid steel – it is inaccurate to say that the structure is flimsy and this implies that the construction method contributes to noise levels.
- Practical solution is the imposition of a condition controlling noise emissions to a level consistent with town centre activities. Applicant is willing to monitor actual noise levels to ensure compliance with such a condition.

#### 7.0 Assessment

7.1. This is a first party appeal against Conditions 1 and 2 only attached to Donegal County Council's decision to grant permission for development described in planning notices as the *“the change of use of part of the rear service yard to a beer garden including a steel shipping container converted to bar/ servery and steel canopy structure over, along with all associated site development works.”*

7.2. Under Condition 1, the use of the beer garden shall be restricted to 12:00 to 22:00 hours, all external speakers shall be removed and there shall be no playing of amplified music at any time. Noise levels shall be restricted to 55 dB(A) during use

at the western site boundary and an Environmental Management System is required under Condition 2 to ensure noise levels do not exceed limits.

- 7.3. I concur with the Planning Authority's evaluation of the proposal in respect of development principle, access, visual amenity and public health. I also note that the observer on the appeal has no objection to the principle of the development and requests that the conditions in question be retained. I am therefore satisfied that an assessment of the case *de novo* would not be warranted, and that the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act, 2000 (as amended).
- 7.4. The first party appellant requests that the Board consider the replacement of Conditions 1 and 2 with a single condition that requires ongoing monitoring to ensure that noise levels do not exceed 55dB(A) from 12:00 hrs to 22:00 hrs and 45 dB(A) at any other time, as measured at the boundary of the nearest residential receptor. Essentially, the appellant is seeking the removal of the restricted hours of operation of the beer garden and retention of speakers/ amplified sound. It should be noted that the Board attached a similar condition to a permission for extension and refurbishment of the bar and provision of 4 no. apartments at this location under PL66.224573. However, this permission related mainly to internal works at the premises.
- 7.5. An observation on the appeal was received from the resident of No. 16 Market Square expressing concern regarding the level of disturbance and adverse impact on residential amenity from the beer garden. It is submitted that the structure is virtually open on southern and western boundaries and the observer and his family experience sleep disturbance, particularly at weekends, from the development.
- 7.6. It should be noted that the observer's property is located as close as 16m and at a higher level than the beer garden. There are other dwellings in the immediate vicinity and as noted above, Reg. Ref: PL66.224573 permitted 4 no. apartments above ground level within the appeal site. The beer garden development is designed to provide entertainment and is partially open so that smoking can be permitted outdoors. There is a large TV screen, speakers on walls, seating and a bar serving area. This area can essentially act as a self-contained bar rather than an ancillary smoking shelter.



- 7.6.1. In my opinion, the playing of amplified sound and the use by of this area by patrons has the potential to cause adverse noise nuisance, particularly during busy times late in the evening. I consider that the beer garden is unsuitable as a location for late night bar entertainment having regard to the type of roof structure, the open nature and the confines of this area and the close proximity of nearby residential properties.
- 7.6.2. I accept that ambient noise levels may be higher in town centre locations; however, it is a stated aim of the Development Plan to provide a mix of uses within the traditional town centre, including residential development. This requires compatibility with surrounding land uses including the reasonable protection of residential amenity from undue noise nuisance.
- 7.6.3. I do not consider that a single condition requiring continued monitoring to control noise is appropriate in this instance. The most effective way to protect residential amenity is to ensure that no form of entertainment or bar usage takes place in this area during times when the worst effects of noise disturbance would be experienced.

*Appropriate Assessment*

- 7.6.4. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise.

## **8.0 Recommendation**

- 8.1. Having regard to the nature of Conditions 1 and 2 the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 (as amended) to ATTACH Conditions 1 and 2 for the reasons and considerations hereunder.

## **9.0 Reasons and Considerations**

Having regard to the location of the site in a mixed use town centre location, it is considered that the proposal for the retention of the beer garden including a bar servery and canopy structure at an established public house is acceptable subject to

the attachment of Conditions 1 and 2 which seek to protect the residential amenities of property in the vicinity. The Board therefore directs the Planning Authority to ATTACH said conditions in the interests of the proper planning and sustainable development of the area.

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Donal Donnelly  
Planning Inspector

16<sup>th</sup> January 2019