



An
Bord
Pleanála

Inspector's Report ABP-303067-18

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| Development | Change of Use at 1 st Floor from Office Accommodation to previously approved Restaurant Use, and minor internal revisions |
| Location | 1-3 The Green, Malahide, Co. Dublin |
| Planning Authority | Fingal County Council |
| Planning Authority Reg. Ref. | F18A/0047 |
| Applicant(s) | Siam Thai Restaurant Ltd. |
| Type of Application | Planning Permission |
| Planning Authority Decision | Granted Permission, with Conditions |
| Type of Appeal | Third Party |
| Appellant(s) | The Townyard House Management Company Limited |
| Observer(s) | None |
| Date of Site Inspection | 24 th January 2019. |
| Inspector | L.W. Howard |

1.0 Site Location and Description

- 1.1. The application site is located at Units 1-3 The Green Malahide, Co. Dublin. The existing building on site comprises a 3-storey over basement car park, with an existing access from 'The Green'.
- 1.2. At present, the ground floor is occupied by 'Siam' Restaurant, the 1st floor by 'office' use, although currently unoccupied, and the 2nd floor in 'office' use.
- 1.3. Off-street car parking spaces are provided at basement and ground floor level (understood a total of 34no. spaces, as stated).
- 1.4. Architecturally, the building may be described as 'contemporary' in design, set back from the road (the Green), and with a combination of vertical and horizontal emphasis.
- 1.5. Adjacent contextual development and landuses comprise –
to the east – residential apartments, surrounded by commercial development including a shopping centre, several restaurants and take-away food outlets, clothes shops, a medical centre and 'professional' offices (ie. architect).
to the west – recently developed 'Donnybrook Fair', several 'public houses', off-licence, a shopping mall, several 'cafes', restaurants and 'shop units'.
to the north – the 'Malahide Marina' and 'The Green' public open space
(see regional location map, and copies of 'google-earth' satellite imagery attached).

2.0 Proposed Development

- 2.1. The applicant has made application for 'planning permission' and 'retention permission' for –
 - The change of use of 140m² at 1st floor level, from 'office' accommodation to previously approved 'restaurant' use, and minor internal revisions

- The development will also consist of the removal of internal stud partitions, and reinstatement of the connecting staircase from ground to 1st floor
- The 'retention' of occasional and seasonal placing of tables and chairs ancillary to the restaurant on the front forecourt of the premises.

2.2. A breakdown of works seeking permission is clarified as follows –

- Change of use of 1st floor level from 'office accommodation' to 'restaurant' use. Area c.140m².
- Internal amendments, including removal of internal stud partitions, and reinstatement of connecting staircase from ground to 1st floor level.
- Retention for the occasional and seasonal placing of tables and chairs ancillary to the restaurant on the front forecourt of the premises. Floor area of the outdoor seated area – c.37m². The area is cordoned off with low level pillars and moveable planting, c.1.2m high. External heaters positioned within the seated area. No part of external seating area is permanent.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Planning permission granted, subject to 10no. Conditions.

3.1.2. In the context of the 3rd Party Appeal lodged, the following Conditions are considered noteworthy –

C2 clarification that 'retention permission for "the seasonal front seating area" is a "temporary permission only, and shall expire 3-years from the ..."

Reason : to allow for further assessment of impact on residential amenity.

C3 specification of hours of operation of the permitted use.

Reason : to ensure protection of residential amenity within a mixed use area

C4 requirement that at the end of each night, and outside of the permitted months of operation, the chairs, screens and other equipment to be removed from the front parking area and stored internally

Reason : to avoid clutter within an ACA.

C5 “that the permitted areas shall be used as part of the permitted restaurant use and shall not be sold, sublet or otherwise operated as separate restaurant, or bar uses”

Reason : to prevent unauthorised development

C6 screens used within the temporary outdoor area “shall be canvas and shall not contain any advertisements, and shall not be fixed to the ground”. Similarly other features (eg. chairs etc.) shall not be fixed to the ground. “No external amplification of music shall be provided to the outdoor area”.

Reason : to ensure development does not impact on the ACA, or the residential amenity within a mixed use uses

C7 compliance with the requirements of the ‘Environmental Health Office’, with respect to mitigation of ‘noise’ impact.

Reason : to protect the residential amenity within a mixed use area.

C10 specification of ‘financial contribution’ in respect of ‘public infrastructure and facilities’ benefiting development in the area

Reason : Considered as reasonable that a payment be required in respect of the public infrastructure and facilities benefitting development in the area of the Planning Authority and which is provided, or intended to be provided by, or on behalf of the Local Authority.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

Compliance with Zoning Objective :

- the works for which ‘planning permission’ and ‘retention planning permission’ sought are considered as acceptable within the relevant ‘TC - Zoning Objective’ area, subject to
 - Satisfactory assessment of the development proposed, and
 - Compliance with relevant provisions of the County Development Plan 2017-2023.

Integration and Visual Impact within the ACA :

- Works proposed at 1st floor level considered as consistent with the ‘TC Zoning Objective’.
- The area of concern relates to external seating area, proposed for ‘retention’ and to be used for occasional purposes.
- Note that under **F05A/1784 / PL06F.216463**, permission was refused for ‘retention’ of 2no. canopy structures to the front of the existing bar and restaurant. The planning report under **PL06F.216463** set out the main issues for assessment as “visual impact, residential impact and intensification of use”:
 - ‘*Visual Impact*’ : Considered that the canopies proposed were purely functional, without any aesthetic merit. The report stated that these structures would dominate and devalue the streetscape.
 - ‘*Residential Impact*’ : Concerns regarding the creation of an outdoor bar area, proposed to be fitted with lighting and a sound system. This considered as “seriously injurious to the adjacent residential amenities”.
 - ‘*Intensification of Use*’ : The nature of the canopy area considered as an intensification of the ‘public house’.
- Whilst this development remains in place, it does not comprise part of the current planning application. Further, given its unauthorised status, it cannot be relied upon as a planning precedent.
- Having regard to the planning history, “this planning assessment must consider how the development seeking retention planning permission can now be considered”.

- Reference ‘Donnybrook Fair’ (to west of application site), where note that permission was granted for the provision of an external seated area under **F14A/0375**. In the assessment, it was contended that the ‘outdoor seating area’, to be contained within a partially enclosed courtyard type area, would add interest and vibrancy to the area

Subsequently, the more recent development refused retention permission at Donnybrook Fair, had a stated area of 60m², and was enclosed with a fixed canopy structure and balustrades.
- The applicants motivate that the use of this area would be ancillary to the existing restaurant for use during ‘summer months (ie. May-September), with a maximum 100-days per year.

Reference the ‘Statement of Character for the ACA for Malahide Historic Core such that *“the south side of The Strand and The Green have undergone much recent development which has detracted from its character”*.

Note that the ACA and supporting objective require commercial uses to ensure avoidance of clutter.

Note that the proposed development includes planters and large upright space heaters, right up to the edge of the pavement, creating a sense of clutter and encroachment.

In addition, the existing screens noted at that time (ie. the site inspection), are considered as representing a proliferation of advertising within the ACA.
- The existing, unauthorised ‘Candlelight bar’ appears to operate as a separate ‘service bar’ from the main restaurant. The operating hours – unclear. Use of the outdoor area – unclear.

Serious concern by the Planning Authority regarding the intensification of use on this site, as a consequence of the proposed development.

Specifically, the Planning Authority note an additional 140m² of 1st floor restaurant, with an outdoor area would result, with reduced car parking.

Further, the ‘undefined use’ and ‘hours of operation’ of any outdoor area, are also of concern.

Reference that the outdoor area associated with ‘Donnybrook Fair’ has limited opening hours as it is associated with a ‘café’.

Other ‘outdoor areas’ locally, associated with restaurants are also limited in terms of both ‘space’ and ‘hours of operation’.

- The proposed ‘outdoor seating area’ is large in size, and appears to serve a ‘bar’, which does not benefit from planning permission, which has late opening hours.

Furthermore, the period May – September contains 153no. days.

Consider that it would not be possible to restrict use to 100 days within this period, in a manner enforceable by the Fingal County Council.

- Having regard to the very significant concerns expressed, including the potential for noise from a use which could in effect operate as an ‘outdoor extension’ for a ‘licenced premises’, ‘Further Information’ requested from the applicant which would enable for more effective assessment of the proposed development.

Residential Amenity Impact :

- Acknowledge as valid 3rd party concerns regarding negative impact on residential amenities enjoyed by adjacent apartments.
- In this regard, consideration given to the temporary nature of the seating area together with its open nature, which significantly limits usage to weather appropriate days.
- Note that the original permission (**F99A/0300**), restricted operational hours. Comment that it is unclear if the “unauthorised extended bar” operates to these hours.
- Reference a nearby comparable development (ie. roof garden associated with Gibney’s Public House), with respect to which the Board’s planning assessment concluded against a temporary permission, and rather that a restriction be placed on the use of the roof garden to between 11am-22.30pm, 7-days a week, and that the applicant annually monitor noise levels arising from the development.
- Comment that “Again, the operation of the facility should be clarified”.

Transportation :

- Confirm assessment by the County Transportation Planning Section
- With respect to car parking space provision :
 - Existing 1st floor use –

An existing parking demand of 5no. parking spaces (ie. 140m² gross floor area of 'office' use, at a rate of 1no. space per 25m² - Previous Development Plan Standards)

◦ Proposed Development –

A demand of 5no. parking spaces (ie. c.82m² seated floor area, at a rate of 1no. space per 15m² gross floor area)

Ground level seated area has a car parking space demand of 2no. spaces (ie. a seated 'floor area' of c.30m², at a rate of 1no. space per 15m² gross floor area)

- The use of this area has also resulted in the loss of 2-4no. car parking spaces.
- Consequently, there is a deficiency of 5no. car parking spaces for the proposed development.
- Consider that this deficiency be addressed by way of financial contribution, as the proposed development is located in a 'town centre', with a good public transportation system, and on-street 'pay-and-display' car parking.

Water Services :

- Reference 'no objection' from the County Water Services Planning Section
- Reference 'no objection' from Irish water, subject to all drains from the food preparation area / kitchen area discharging via an appropriate grease interceptor device into the foul sewer.

Appropriate Assessment :

- Reference contextual location of application site with respect to -
 - The pNHA for Malahide estuary (00025) and
 - SPA for Broadmeadow / Swords Estuary (004025), c.135m to the northeast.
- Note that "there is no source-pathway-receptor link".

- Clarify that proposed works relate to a change of use to an existing retail premises in an established town centre, which utilises an existing connection to the foul surface water network.
- Do not anticipate that the proposed development “would give rise to undue impacts to the Protected Sites.
- Consider that the proposed development would not be likely to have a significant effect individually, or in combination with other plans or projects on a European site.

Procedural Issues :

- Reference 3rd party ‘Objection’ submission, expressing concerns regarding –
 - the description of development, and
 - the location of the ‘site notice’.
- Description of the proposed development –
 - Concern that the description does not include the unauthorised change of use of the open area to the front of the restaurant, to seated restaurant use.
 - Comment that this element of the works does not form part of this application.
- Location of ‘site notice’ –
 - Considered to be acceptable at the time of site inspection.

Conclusion :

- Conclude the applicant has submitted insufficient information to allow for full and adequate assessment of the proposed development.
 - Therefore, additional information requested.

Notation of applicant’s response to the Planning Authority’s ‘Further Information (F.I.)’ request, as follows :

st 1(a): Clarify the hours of operation of the existing ‘Candlelight Bar’, including late licences or other opening hours, along with the hours of operation of the restaurant.

'F.I.' Response : The 1st floor previously had permission to be used as a restaurant.

The front external area would –

- be restricted to a light menu, and
- have proposed a reduced 3-month timeframe for use – June to August, annually

The restaurant and associated bar operates within the time frame permitted under **F99A/0300**.

The outdoor seated area would not operate past 10.00pm.

Request **1(b)**: Clarify if the 'candlelight bar' operates separately to the restaurant.

'F.I.' Response : The 'candlelight bar' is a part of the restaurant.

Request **1(c)**: Clarify if the outdoor seating area would serve the bar use

'F.I.' Response : The outdoor seating area would serve the restaurant and by association the bar

Request **1(d)**: Operational hours of the outdoor seating area

'F.I.' Response : Use would be 'unlikely' to be past 10.00pm.

Request **1(e)**: Details regarding nightly storage of seats and tables associated with the outdoor seated area.

'F.I.' Response : The external furniture, screens etc associated with the outdoor area would be in storage outside of the seasonal use. No details submitted regarding storage at the end of each night.

Planning Authority Assessment of applicants 'F.I.' response submission :

- Note the 1st floor was previously in use as a restaurant.
- Planning Authority have no concerns in this regard.

- However, significant concern associated with the ‘external area’, and the potential for noise consequent of use associated with a *de-facto* ‘beer garden’ or an ‘external drinking area’.
 - Reference the applicants F.I. clarification that the external area –
 - would operate no longer than 3-months per annum,
 - would close at 10.00pm, and
 - would be associated with the restaurant / bar.
- Having regard to the ‘town centre’ location, consider it as reasonable to have an external, uncovered daytime and evening area for an existing restaurant. Such use to be restricted to hours of operation up to 10.00pm, with the ‘outdoor area’ to be closed and the screens and chairs packed away by 11.00pm.
- Restriction on external clutter and solid screens, in order to avoid the unsightly proliferation of signage and other features within the ‘Architectural Conservation Area (ACA)’ can be achieved by way of Condition.
- The ‘development management guidelines’ do not generally recommend use of ‘temporary permissions’. However, such a permission type is considered appropriate for the external dining area in this instance. In order to allow for demonstration of compliance with Conditions to avoid noise generation, and to assess continued suitability of the proposal at a later stage.

Having regard to the limited investment required to undertake the proposed development, this is not considered as unreasonable.

- Consider that as the proposed ‘external development’, which would occupy car parking spaces for a period of the year, is to be permitted for a temporary period of time, it would not be reasonable to apply a ‘Development Contribution’, as requested by the County Transportation Section.

Conclusion :

- Having regard to the applicants F.I. submission, it is considered that –
 - the 1st floor change of use is acceptable,
 - It will not negatively impact adjoining residential amenity,
 - It will not negatively impact the character of the area,
 Subject to Conditions regarding operation.

- A ‘temporary planning permission’, is appropriate in this instance for the front seating area.
- Accordingly, the proposed development is in accordance with the proper planning and sustainable development of the area.
- Permission recommended, subject to Conditions.

3.2.2. Other Technical Reports

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| Water Services Dept. | No Objection |
| Environmental Health | No Objection, subject to Conditions |
| Transportation Planning Section | No Objection, subject to Conditions |
| Conservation Officer | No Report |

3.3. Prescribed Bodies

Irish Water No Objection, subject to Conditions

3.4. Third Party Observations

- negative impacts on the adjacent residential amenities locally
- procedural issues with respect to – site notice, no contiguous elevations or basement plans provided
- the operators of the restaurant have no permission for any outside activity
- use of existing car parking spaces is contrary to the relevant planning history
- planning history in the area, for similar outdoor seating areas, refused permission

4.0 Planning History

4.1. The Application Site

F99A/0300 Planning permission ‘granted’ for –

- Demolition of 3no. dwellings and 3no. sheds
- Erection of

- ground floor – 2-storey restaurant and 1-story return at rear
- 2nd floor – 4no. office spaces
- Attic / roof level – 2no. 2-bed single storey penthouse apartments

and, construction of

- 27no. space underground car-park with entry from Strand St.
- Ground level – 14no. space car-park at rear, with entry from rear laneway (day time use only), and
- 4no. space car-park at front of site with entry from Strand St. and bounded to the rear by laneway,

all subject to Conditions, including –

tion No.11 restaurant business hours restricted to 08h00 to 11h00 Sunday to Thursday, and 08h00 to 24h00 midnight, Friday and Saturday only.

F01A/0224 Planning permission ‘granted’ for alterations to previously approved ‘restaurant / office / residential’ development – **F99A/0300**, as follows –

- Realignment of external kitchen wall resulting in minor addition to floor area,
 - ESB substation and switch-room,
 - Change of use of ground floor from restaurant to public house.

Planning Authority decision to ‘grant’ planning permission upheld on appeal to An Bord Pleanala, subject to Conditions.

F02A/0101 Proposed development as follows –

- Proposed licenced ‘public house’, to include change of use of 1st floor to ‘public house’, including retention of extended area, retaining existing restaurant/ drinking facilities previously granted under **F99A/0300**,
- Lounge bar and kitchen facilities at ground floor level, previously granted by An Bord Pleanala – **PL06F.124926**,

- Car parking previously granted under **F99A/0300**, and retention of staff and storage facilities including keg store at basement level, and
- Retention of omission of 1st floor balcony at rear of premises.

Planning Authority decision to ‘grant’ and ‘refuse’ planning and ‘retention’ permission upheld on appeal to An Bord Pleanála – **PL06F.129534**, as follows –

Grant permission for portion of proposed development comprising –

- ‘retention’ of the existing restaurant / dining facilities at 1st floor level previously granted under **F99A.0300**)
- Lounge bar and kitchen facilities at ground floor level (previously granted by the Board under **PL06F.124926**)
- Car parking previously granted under **F99A/0300**
- ‘Retention’ of omission of 1st floor balcony at rear, and
- ‘retention’ of the 18m² extended area at 1st floor level,

all subject to Conditions including –

Condition No.1 the 18m² of extended area located on the 1st floor shall be used as part of the existing restaurant / dining facility.

Reason : In the interest of the proper planning and development of the area.

Refuse permission for portion of proposed development comprising –

- Change of use of the entire 1st floor to public house
- Change of use of the 18m² extended area (mezzanine area) to public house, and
- ‘retention’ of staff and storage facilities, including ‘keg store’ at basement level,

for the following reasons –

- the proposed change of use, together with existing, would result in the establishment of a public house on both the ground floor and 1st floors of the building. The relevant “MVC” zoning objective seeks to “protect and enhance the special physical and social character of major village centres, and provide and / or

improve village facilities”. Having regard to the scale and capacity of the public house, which adjoins existing residential properties, the proposed change of use would give rise to inappropriate intensification of development in the area, which would be seriously detrimental to the special social character of Malahide Village, and therefore contravene materially the “MVC” zoning objective. The change of use would also set an undesirable precedent for similar future developments in the area, would seriously injure the amenities of adjoining residential properties, contrary to the proper planning and development of the area.

- The resultant deficiency of on-site car parking spaces (consequent of proposed ‘retention’ of staff and storage facilities at basement level, which would reduce the number of spaces granted under **F99A/0300**), would generate additional on-street parking demand, thereby reducing availability in the area therefore creating traffic congestion and obstruction of road users.

F03A/0731 ‘Retention’ permission ‘refused’ for staff and storage facilities, including keg-storage at basement level (Beanos Restaurant).

Planning Authority decision to ‘refuse’ upheld on appeal to An Bord Pleanála – **PL06F.204019**, for the following reasons –

- The resultant deficiency of car parking spaces, would generate additional on-street parking demand, thus creating traffic congestion and obstruction of road users

F03A/0882 ‘Retention’ permission granted for change of use at 1st floor level from restaurant to office use, and minor alterations to the front and rear elevations, subject to Conditions.

F04A/0484 Planning permission granted for staff and storage facilities and amended car parking arrangement.

Planning Authority decision to 'grant' overturned on appeal to An Bord Pleanala – **PL06F.207734**, for the following reasons –

- The resultant deficiency of on-site car parking spaces, would generate additional on-street parking demand, therefore creating traffic congestion and obstruction of road users

F05A/1462 'Retention' permission 'granted' for staff and storage facilities, including keg-storage at basement level, and planning permission for an additional 5no. parking spaces to the rear, through the provision of 7no. car lifts, giving a total of 19no. spaces to the rear of the property.

Planning Authority decision to 'grant' overturned on appeal to An Bord Pleanala – **PL06F.215813**, for the following reasons –

- Development proposed to be retained, would lead to a deficiency of car spaces to serve the development in the overall building on the site, and would generate additional on-street parking demand, therefore creating traffic congestion and obstruction of road users, and furthermore would result in overdevelopment of the site.

F05A/1784 'Retention' permission 'refused' for '2no. canopy structures to front of Danielli Bar & Restaurant'.

Decision to refuse 'retention' permission upheld on appeal to An Board Pleanala, for the following reasons –

- Consequent of proximity to existing dwellings, "retention of this development would seriously injure the amenities, and depreciate the value of property in the vicinity".
- The resultant intensification of use, does not provide for the additional parking requirements generated. Consequently, haphazard car parking would arise, seriously injuring the amenities of the area, and endangering public safety by reason of obstruction of road users.
- Due to size, location and design, the consequent 'visual clutter', would be detrimental to the visual amenity of the Village Centre, a designated Architectural Conservation Area.

4.2. In the Vicinity – Planning History to the West

F14A/0375 Site at junction of New Street and The Green, Malahide.

Planning permission 'granted' for –

- infill single storey extension to the yard between the existing hardware store and existing rear retail buildings, associated plant and entrance gates to the external area at north facade,
- demolition of existing enclosed shed structure and construction of a 2-storey unit in place, with retail on ground floor, and staff facilities with storage located on the 1st floor,
- change of use of existing hardware store and the rear buildings, from retail to retail with the sale of hot food and hot drinks for consumption on and off the premises,
- removal of the existing wall, entrance piers and metal fencing to path edge for the provision of external seated area for consumption of food purchased in the store / café, covered by a retractable fabric canopy with glass balustrades to 'The Green',
- reconstituted concrete cladding to existing hardware store on New Street, with metal clad window display boxes and illuminated signage and lighting,
- redecoration of the 1st floor façade above shop-front, including timber window-boxes to existing openings,
- construction of refrigerated 'bin-stores' and timber pergola structure with retractable fabric covering to existing external area, and
- all associated site and drainage works required for the construction and usage of the proposed building,

subject to Conditions, including –

Condition No.14 No music or other amplified sound shall be broadcast externally. Noise generated "shall be

such as to not cause nuisance to the occupants of adjacent properties and users of the public road”.

Reason : To protect the amenities of the area.

Condition No.15 Specification of business hours being – “only from 07h00-23h00, Monday to Sunday, including Bank / Public Holidays”

Reason : To protect the amenities of the area.

F17A/0504 Donnybrook Fair – junction of New Street and The Green, Malahide. Site location within an ‘Architectural Conservation Area’ (ACA) and adjacent a ‘Natura 2000 site’.

‘Retention’ permission ‘refused’ for the enclosure and canopy constructed at the ‘outdoor seating area.

Development for ‘retention’ comprised “removable glazed side and front panels and frames, fabric roof structure and frame enclosing the outdoor seating area facing ‘The Green’.

Purpose – the enclosure and canopy provide protection for the outdoor seating area off the café at Donnybrook Fair, Malahide.

Planning Authority decision to refuse ‘retention’ permission upheld on appeal to An Board Pleanala – **ABP-300166-17**, for the following reasons –

“... by reason of its siting forward of the established building line, would form an obtrusive, dominant and discordant feature in the streetscape and would not respect or complement the character of the shopfront on site. Furthermore, the development for which retention is sought fails to enhance the character of the ‘Architectural conservational Area’ (ACA) and Malahide Village Centre, would seriously injure the visual amenities of the area and would set an undesirable precedent for similar development. The development for which ‘retention’ is sought would, therefore, be contrary to the proper planning and sustainable development of the area”.

4.3. In the Vicinity – Planning History to the South-West

F15A/0140 Gibney's Public House – No's. 5,6 & 7 New Street, Malahide.

Development – change of use of existing 1st floor level 'flat roof' to 'landscaped roof garden & sun terrace', with dispense bar & servery' for customer use.

Works to include –

- perimeter screening along northern & southern elevations
- raised seating area at southern boundary with fixed awning frame,
- retractable awning along eastern boundary,
- 1m wide access stairs from existing side entrance,
- 8-person lift from ground floor courtyard to 1st floor level,
- increase in eaves height of existing store building at north-east corner of courtyard, and
- change of use of 1st floor level room from general storage to dispense bar and disabled / staff toilets,
- alterations to rear elevation of No.5/6 New Street to form servery with access door from existing kitchen,
- lean-to canopy roof with slate finish along northern boundary wall of ground floor courtyard, and
- all associated ancillary works.

Planning Authority decision to 'grant' planning permission upheld on appeal to An Bord Pleanala – **PL06F.246483**, subject to Conditions including –

Condition No.3 No public-address system, amplified music, TV's or Bands permitted within the 1st floor landscaped roof garden and sun terrace. No sound amplification to be installed or projected into the

1st floor from other areas of the premises, nor shall any TV screens, or similar, be installed.

Reason : To protect the amenities of adjoining properties.

Condition No.4 A noise monitoring programme to be submitted to and agreed with the Planning Authority, prior to commencement of development (to include an annual 'review' undertaken by qualified acoustic engineer at the nearest noise sensitive location). Any amendments to the development requested by the Planning Authority subject to the 'review', to be completed by the developer.

Reason : To protect the amenities of the nearby residential properties.

Condition No.7 the landscaped roof garden and sun-terrace shall not be occupied by the public outside of the following hours : 11h00 – 22h30 seven days per week.

Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the Planning Authority.

Reason : To protect the residential amenities of property in the vicinity.

4.4. **Enforcement**

18/119A County 'Enforcement Section' advised that a 'Warning Letter' issued on the 11/06/2018, in relation to the external seating area. Confirm no response received to date.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

Objective DMS157 Ensure that new development, or alteration of a building within or adjoining an ACA positively enhances the character of the area and is appropriate in terms of the proposed design, including : scale, mass, height, proportions, density, layout, materials, plot ratio and building lines.

Objective DMS157 All planning applications for works in an ‘Architectural Conservation Area’ (ACA) shall have regard to the information outlined in Table 12.11.

12.11 Direction for proposed development within ACA’s, with particular reference to the following :

“Signage in an ACA should be minimal, discrete and sensitively designed so as not to negatively impact on the special character of the area. All other external commercial elements or fittings such as canopies, lighting and menu boards should be kept to an absolute minimum”.

Objective DMS161 All planning applications for signage on a Protected Structure, or within an ACA shall have regard to the Guidelines outlined in Table 12.12.

Table 12.12 Guidance for Signage on Protected Structures , or within ACA’s.

‘Malahide Public Realm Strategy’ – Design Guide for Shopfronts specifically :

Street Furniture :

- Provision of street furniture of tables and chairs on public footpaths must be licenced by the Planning Authority under Section 254 of the Planning and Development regulations 2001 (as amended).

- Such seating areas should not obstruct ease of movement by pedestrians, specifically the disabled, and those using prams.
- Barriers around such seating areas should be lightweight and easily demountable and should not exceed 1.00m in height. Canvas is considered a suitable material, while plastic or glass is considered inappropriate.
- Use of fixed enclosed barriers with canopies can result in an overly enclosed feeling within a streetscape, and should be avoided.

Malahide Historic Core ACA Statement of Character :

- The application site is located within the 'Architectural Conservation Area' (ACA) for Malahide Historic Core.
- "The south side of 'The Strand' and 'The Green' have undergone much recent development which has detracted from its character" pg.37

Sect.8.1.6 'Commercial Frontages'

Other 'External Elements to Commercial Premises'

- Canopies, awnings, enclosing ropes, canvas windbreaks, newspaper receptacles, vending machines, vending machines, etc. can incrementally damage the special character of an ACA, and can only be accepted to a limited degree.
- Where canopies or awnings are deemed acceptable in the ACA, they should not be made of plastic, but of heavy-duty cotton material with painted metal or timber hardware. Planning permission is required for external vending machines, ATM's, newspaper receptacles, storage bays, seating etc.
- Commercial premises should limit the clutter of temporary external retail furniture, such as external heaters, bins, menu-boards, etc. Such fittings are only acceptable where their design complements or enhances the character of the area.

'External Seating'

- External seating should be of wood, painted metal or other material which enhances the visual appearance of the ACA. Plastic seating is not acceptable.

- Nor is plastic an acceptable material for the screen to enclose external seating areas. These screens may be made of heavy-duty cotton, glazed or metal panels, and should not be used for advertising purposes.

Sect.8.1.12 ‘Views’

- The key views out of the ACA’s such as those of the sea at the end of laneways on The Mall and towards other significant structures outside the ACA such as the ‘Grand Hotel’, or ‘railway bridges’ must be preserved and any works within the ACA should not adversely impact on or block these views.

Zoning Objective “TC” – Town and District Centre

Objective – “Protect and enhance the special physical and social character of town and district centres and provide and / or improve urban facilities”.

Classes – ‘Office’ (All), ‘Residential’, ‘Restaurant / Café’, ‘Carpark’ (non-ancillary) and ‘Public House’ – all “***Permitted in Principle***”.

5.2. Natural Heritage Designations

Note contextual proximity of the application site to :

- the pNHA for ‘Malahide Estuary’ (#000205)
- the SPA for Broadmeadow / Swords Estuary (#004025), c.135m to the north-east.

6.0 The Appeal

6.1. Grounds of Appeal

The 3rd Party (ie. residents residing in the adjoining building) grounds of appeal are set out fully in the documentation dated 20th November 2018. These may be summarised as follows :

6.1.1. The adjacent 3rd party appellants / residents' concerns primarily due to constant disturbance by late night noise in the form of customers and noise, emanating from the unauthorised parts of the premises to the front of the authorised restaurant.

6.1.2. **Procedural Issues :**

- Contrary to the Planning and Development Regulations 2001 (as amended), and in particular Article 18(1)(c) thereof, the public notices submitted as part of the planning application “are inaccurate and misleading”. In particular, the following mandatory requirements to be noted :
 - Contrary to Articles 18 and 19, the notices fail to reference the unauthorised change of use of the open area to the front of the restaurant to seated restaurant use. Reference photographs attached and drawings submitted with the planning application, as indicating that the area was never an approved part of the restaurant.
 - No contiguous elevations submitted as required under the ‘Regulations’.
 - No plans submitted for the basement area of the building, which is an integral part of the development.
- Further reference to the Planning and Development (Amendment) Act 2018, and the amendment of Section 34 of the Principal Act, ie. Section 23 (1) Section 34 of the Principal Act is amended in Subsection (2)(a) by deleting “and” in subparagraph (v) and by inserting the following after subparagraph (v) :

“(vii) previous developments by the applicant which have not been satisfactorily completed”,
- Emphasise as noteworthy that the operators of the restaurant have no planning permission for the area of the Candlelight Bar. Assert that to allow an application for other developments on site, without addressing the unauthorised development on site, is both contrary –
 - to the legislation, and
 - to the proper planning and sustainable development of the area.

- 3rd party appellants place on record the conviction that the applicant has continually abused the planning code by creation of ongoing unauthorised developments on site. Residents residing in adjoining properties are constantly disturbed by late night noise (ie. music, loud noisy patrons), emanating from the unauthorised parts of the premises to the front of the authorised restaurant.
- In this light assert the duty, as per Section 23 of the Act 2018, to ‘refuse’ planning applications where previous offences have taken place.

6.1.3. **Grounds of Appeal :**

The unauthorised extension of the restaurant into the street requires assessment under two headings

- The consolidation of a new covered restaurant and bar area, with a canopied area to the front :
 - The creation of a new covered restaurant and bar area, by gradual extension and development of a canopied area to the front, which was refused planning permission by the Board in 2002
 - The gradual development and intensification of use is clearly illustrated by way of the dated photographs attached in the annex to the current 3rd party appeal submission.
 - Emphasise as clearly evident that the change of use cannot be divorced from the further intensification of use, taking place up to this year.
 - Initially a smoking area with no seats or screening, it evolved to a seating area with outdoor heaters, but still a smoking area.
 - In the last 5-years the area has been fully screened with glass and a canvass canopy, replaced with a solid roof.
 - Subsequently, tables and chairs added and the area has become “an integral part of the restaurant with table service, music and drinks served during the day and night”.

- This intensification is a clear change of use, and has all taken place within the last 5-years.
- The 4no. car parking spaces to the front of the restaurant :
 - These 4no. car parking spaces – Conditioned as part of the planning permissions dated 2001, 2002 and 2003, and to serve the overall development.
 - Clarify the sequence of photographs included in the appeal submission, illustrate these spaces have been gradually taken up by tables and chairs, and now have become “an integral part of the restaurant and bar”.
 - Distinguish that the raised covered-in area is now described as the Candlelight Bar, notwithstanding the Boards ‘Orders’ over the years, which :
 - specifically refused planning permission for a bar, or a bar area in this premises, and
 - only allowed for a service bar as part of the overall restaurant
 - Assert that this was done in order to protect the residential amenities of residents in the area.

6.1.4. **Noise Impact :**

- Whilst the above ‘two’ issues are clear breaches of the planning code, the 3rd party appellants, residents next door, have also to tolerate noise late into the night of –
 - patrons frequenting the unauthorised extensions
 - the loud speakers carrying music into the surrounding area, often late into the night,
thereby compounding unnecessary disturbance and noise to residents in the area.

- Emphasise that again, the operators of the restaurant have no planning permission, or permits for any outside activity in the form of seating, tables, music, or other forms of entertainment.
- Emphasise that while breaches of the planning code are obvious, and should be immediately enforced, the removal of the surface car parking spaces from the front of the restaurant, creates further problems for patrons, and for other visitors to Malahide, where car parking space is at a premium.
- Reference that a review of the planning history of the application site clearly outlines the careful and empathetic approach taken by the Board, in particular, to the protection of the residential amenities enjoyed by residents in the area.
- Having regard to the significant presence of residential properties locally, to allow such an intensification on site, of what are termed “bad neighbour” land uses, must be deemed as contrary to the County Development Plan 2017-2023, and to the proper planning and sustainable development of the area.
- Request for immediate enforcement action to be taken, to stop all unauthorised activities on site.

6.1.5. **Planning History :**

F01A/0224 , PL06F.124926 :

Consider that whilst a small bar was permitted by the Board, this was only after the Boards Planning Inspector had recommended refusal. Noteworthy relevant conclusions by the Planning Inspector included :

- that the proposed change of use of the ground floor (item C) would not protect nor enhance the social character of this part of Malahide contrary to the objectives of the Development Plan.
- the change from restaurant to public house would represent an intensification of use that would have an unacceptable adverse impact on the residential amenities of nearby properties.
- In deriving the above conclusions, the need for additional town centre facilities was balanced against the need to protect established residential amenity. On

balance, this site was not considered an appropriate location for a public house.

F05A/1784 – Nos.1-3 ‘The Green’ :

Retention permission ‘refused’ for 2no. canopies to the front of a bar and restaurant. ‘Refusal reasons’ related to concerns regarding noise impact, parking demand and the visual impact on the Architectural Conservation Area (ACA).

F16A/0344 – No.14 ‘Townyard Lane’ :

Permission ‘refused’ for a single storey ice-cream kiosk fronting the building. ‘Refusal Reasons’ related to the visual impact of the development, forward of the established building line, and the negative impact this would have on the character of the ‘Architectural Conservation Area’.

F17A/0504 , ABP-300166-17 – Junction of ‘New Street’ with ‘The Green’ :

Reference the Boards decision regarding the proximate site housing the ‘Donnybrook Fair’ development. In making the decision to ‘refuse’ retention permission of the “seated dome to the front of the premises, which is in line with the unauthorised indoor and outdoor seating on the application site, the Board stated :

Having regard to the planning history of the site, the existing character and the prevailing pattern of development locally, the visually prominent site location within an Architectural Conservation Area, and the relevant provisions of the County Development plan 2017-2023, “by reason of its siting forward of the established building-line, would form an obtrusive, dominant and discordant feature in the streetscape and would not respect or complement the character of the shopfront on site”. Furthermore, the development for ‘retention’ “fails to enhance the character of the Architectural Conservation Area and Malahide Village centre, would seriously injure the visual amenities of the area and would set an undesirable precedent for similar development”. Accordingly, the development for ‘retention’ would be contrary to the proper planning and sustainable development of the area.

6.1.6. **The Statutory Development Plan for the Area**

- Application site is designated with the Zoning Objective “TC” – “To protect and enhance the special physical and social character of town ... centres and provide and / or improve urban facilities”.
 - Application site located within an ‘Architectural Conservation Area’, where –
 - the streetscape and facades of buildings are protected from inappropriate interference, and (in parallel)
 - acceptable uses are examined to ensure compliance with the ambiance and land use the Planning Authority is attempting to achieve.
 - The ‘Malahide Public Realm Strategy’
 Purpose : to guide the future development of the area

 Supplemented with a ‘Design Guide for Shopfronts’.

 County Development Plan 2017-2023 states, the MPRS will seek to strengthen and enhance the attributes of the village, which contribute to the distinctive physical and social character of the area.
- Application site location within an ACA inclusive of the historic core of Malahide Village.

 Objective DMS157 requires any alteration of a building within or adjoining an ACA to positively enhance the character of the ACA. Another Objective is to preserve the view onto the park to the front of the site. A route for the Greater Dublin Area cycle network is located along the road directly to the front of the application site.
- Other relevant Objectives include :
 - Objective Malahide 3 – retain the existing centre, with its mixed use and varied architectural character as the heart and focal point of Malahide.
 - Objective Malahide 5 – implement and progress the ‘Public Realm Strategy’ for Malahide, including measures relating to car-parking, in order to facilitate a vibrant retail, commercial and residential core.
 - Objective Malahide 8 – develop a car-parking strategy for the town, including both underground and surface parking.

Objective ED58 – promote & facilitate tourism as one of the key economic pillars of the County's economy, including cafes and restaurants

Objective DMS07 – new shop fronts to respect the character and architectural heritage of the streetscape

- Table 12.8 – 'Car Parking Standards'
 - 1no. car parking space per 15m² of 'restaurant' and 'café' space.
 - Having regard to the 'existing', 'unauthorised' and 'proposed' development, there would be a requirement for 35no. car parking spaces onsite, for the 'restaurant' use alone. Assert that only 10no. car parking spaces have been provided. However, use of these spaces by restaurant patrons must be questioned.
- County Development Plan 2017-2023 sets out that Malahide is to develop as a self-sustaining centre through the provision of a range of facilities to support the existing and new populations. To achieve this, it is vital that the urban role of Malahide be strengthened, and development consolidated within the town. Emphasise accordingly, that the need to upgrade and support the development of the core as a Town Centre is to be balanced with the need to conserve its appearance as an attractive, historic village settlement and to retain the existing amenities of the area.
- The proposed development represents a gross over intensification of quasi-public house uses – increasing floor space by one third – proximate to residential properties which have little protection from late night noise, anti-social behaviour, and unnecessary late-night activity. The negative amenity impact will be maximised by the unauthorised outside activity, which fails in design terms to provide any level of protection to existing residences contiguous to the site, thereby ensuring significant negative impact on the residential amenity of the area, particularly immediate neighbours.
- Emphasise the clear intent of the Planning Authority, as set out in the Statutory Development Plan for the area, that all commercial properties are to have regard to the amenities of adjoining residential properties.

The Zoning Objective highlights the need to balance the demand for additional 'town centre' facilities, against the requirement set out in the County Development Plan 2017-2023, to protect established residential amenity.

Further, unauthorised uses on the site, all outdoor, maximise the negative residential amenity impact on the adjacent residents, and therefore "should be refused planning permission".

- The second-floor extension, while acceptable in principle, "cannot be allowed to go ahead, when the unauthorised uses have not been checked or enforced. For this reason, the overall development must be refused planning permission".

6.1.7. **Conclusions**

- The 3rd party appellants have no objection to a well-run restaurant at the current location. However, they are opposed to the continuation of the present operation, especially the unauthorised extension to the premises, and the use of the car parking spaces as outdoor seating for the restaurant. Reference the Boards decision to 'refuse' planning permission for the extension to the adjacent Donnybrook Fair development, on the grounds of a breach of the building line (amongst others).
- Whilst the 1st floor extension to the restaurant is acceptable, "that can only be tempered by refusing planning permission for all of the unauthorised extensions to the front of the building". The unauthorised extension and outdoor seating are a gross intensification of the proposed use, and creates serious problems for the 3rd party appellants, due to noise, nuisance, disturbance and increased site activity, particularly at night.

Continuance of the outdoor uses adjacent to adjoining residences "seriously injures the residential amenity, and depreciates the value of property in the vicinity, contrary to the proper planning and sustainable development of the area".

A temporary planning permission for the use of the car parking spaces is not considered appropriate, particularly when no reference has been made "to the unauthorised 'Candlelight Bar' structure.

- The proposed development does not include adequate provision for off-street car parking to service the development. Therefore, the proposed development represents “an inappropriate intensification of development that would create a significant increase in traffic generated, and car parking demand within and adjacent to the adjoining residential area”.

Accordingly, the proposed development “would be seriously injurious to the amenities of the area and contravene materially the off street car parking Standards of the Fingal County Development plan 2017-2023”.

- Emphasise the underground car parking spaces were specifically Conditioned to be for the restaurant development. Clarify that to date, these car parking spaces have not been open to the public. Similarly, the car parking spaces to the front have been removed, and redeveloped for seating for the restaurant (as shown in the photographs included).
- It is not the role of the Planning Authority or the Board –
 - to ignore the legislation
 - to ignore unauthorised development within an application for extensions to it
 - to prop up unauthorised and / or illegal developments here, while taking action elsewhere

Acknowledge that the Board could invalidate the planning application on the grounds stated above. However, the better approach, highlighting the inadequacies of the application is to ‘refuse’ planning permission for the proposed development on the grounds that “the planning application is incomplete, and would create an undesirable precedent for similar developments in the area”.

6.2. Applicant Response

The applicant's response to the 3rd Party 'grounds of appeal' submission, are set out fully in the documentation dated 20th November 2018. These may be summarised as follows :

6.2.1. Procedural

- Notwithstanding 3rd party appellants arguments to the contrary, the applicant is satisfied that the scale and quantum of development sought in the current planning application –
 - is fully described, clear and unambiguous, and
 - is sufficient to allow 3rd parties to understand the nature of the proposed development in accordance with Article 18(1) (d) of the 'Planning and Development Regulations', which require a brief description of the proposed development.
- The Board cannot invalidate a planning application under Section 34 of the Planning and Development Acts, as requested by the 3rd party appellant.

6.2.2. Noise - Music

- Dispute the 3rd party appellant argument that "loud music or noise" emanates from the restaurant "late into the night".
- Since opening in 2006, no record exists of "unruly behaviour" from the restaurant. This can be verified at the local Garda Station in Malahide
- As per the F.I. response made to the Planning Authority, the applicant submits the following clarifications for the Board :
 - Siam Thai is fully licenced, with internal dispensing bar serving customers only. Operations are entirely within the prescribed "time limits", Conditioned under **F99A/0300**, as follows :
8h00 – 23h00 Sunday to Thursday
8h00 – 24h00 Friday and Saturday only
 - The applicant has neither sought, or been granted any late-night licences or opening hours, in addition to the normal operating hours of the restaurant.

- 3rd party appellant appears to misunderstand the “canopy area”, referred to as “a bar”. “Candlelight Bar” is the name of the internal approved bar area within the restaurant, located at ground floor level.

Confirm to the Board that “no other bar exists on the property”.

Clarify and confirm regarding the “canopy to the front”, that :

- it does not form part of this planning application,
 - it has existed longer than 11-years,
 - is a seated area only,
 - does not contain any counter area or separate dispensing facilities, and
 - is serviced by floor staff only.
- Emphasise in confirmation to the Board that there is no public-address system, music, or amplified sound, broadcast externally or emanating from the licenced premises.

Should the Board deem it necessary, confirm that the applicant would accept a Condition similar to :

- **Condition No.14** attached to the ‘Donnybrook Fair’ permission under **F14A/0375**, or
- **Condition No.3** attached to the ‘Gibney’ permission under **F15A/0140**, **PL06F.246483**,

in relation to this proposal.

- Applicant again confirms the occasional and seasonal placing of tables and chairs on a portion of the forecourt, enabling “al fresco outdoor light refreshments when permitted weather-wise, as does every other café, restaurant pub in the village”.
- Reference Malahide as one of the most popular and thriving seaside villages, in the northeast – 35no. restaurants and eating places, catering for all tastes.

In this regard, and in support of the applicant’s proposal, a sample of 18 of these food outlets are identified and submitted for the Boards attention, “to show proof of precedent”.

Outdoor dining areas are part and parcel of seaside towns, contributing to and enhancing the villages. Enabling a sense of place in Malahide, they are an

opportunity in the public realm, which should not be denied for the sake of the temporary removal of 4no. car parking spaces on private land at this location.

- Reference recent An Bord Pleanála decisions re. the granting of external beer gardens and outdoor seating, deemed as “synonymous with the heart of a vibrant town centre”, as further precedent in support the proposed development, as follows :
 - ‘Speakeasy Bar’, Killarney – **RL12, RL2978**
 - ‘Old Grant Hotel’, Ennis – **241, R241439**
 - ‘Horse Show Bar’, Ballsbridge – **PL295.241439**
 - ‘Gibneys’, Malahide – **PL06F.246483**

6.2.3. Off Street Car Parking

- The existing ‘restaurant development’ is located within the 50km/hr speed limit zone.
 - Located within the ‘town centre’ the development –
 - is one of two only, with off-street private car parking.
 - has the benefit of on-street ‘pay and display’ parking, and
 - is proximate to the DART rail station and the ‘quality bus service’.
- At present, ‘Siam Thai restaurant’ provides for 33no. off-street car parking spaces. Allowing for the use of 4no. seasonal occasional spaces, 29no. spaces are still available, several times the Development Plan requirement.
- Accordingly, the 3rd party appellants statements regarding off street car parking for the development, “are both misleading and incorrect”.

6.2.4. Conclusion :

- The permission sought for
 - the change of use and reinstatement of the 1st floor to previously approved restaurant use granted under **F99A/0300**, and
 - the seasonal occasional placing of tables and chairs to the front of the property,are acceptable, having regard to –
 - the zoning objectives for the area,

- the special views objective over ‘The Green’
 - the pattern of development in the immediate vicinity of the site
 - the creation of additional full-time employment positions
 - the development proposed would not seriously injure the amenities of the area, or properties in the vicinity, and
 - would be acceptable in terms of traffic safety, public health and convenience.
- Accordingly, the proposed development would be in accordance with the proper planning and sustainable development of the area.
 - Request that the Board uphold the decision of the Planning Authority, and decide to grant planning permission.

6.3. Planning Authority Response

- The grant of planning permission does not de-facto grant planning permission for unauthorised elements of the development, which were not applied for as part of the public notices.
- Assessment of the proposed development related to the 1st floor restaurant extension, and the change of use of the car parking spaces for seasonal use for external dining.
- Request that the Board uphold the decision of the Planning Authority.
- Should the Planning Authority decision be upheld, request that Condition No.10 be included in the Boards determination.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

7.1. I have examined the file and available planning history, considered the prevailing local and national policies, inspected the site and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal submissions, and also encapsulates my de novo consideration of the application. The relevant planning issues relate to :

- Planning history of the Site & the Environs
- Principle and Location of the proposed development
- Visual Amenity Impact / Streetscape
- Residential Amenity Impact
- Car Parking & Traffic Safety
- Procedural Issues
- Appropriate Assessment.

7.2. Planning history of the Site & the Environs

7.2.1. I have taken careful note of the extensive planning history both on the application site and on proximate properties along 'the Green'. Planning history documentation has been provided by all parties (including 'An Bord Pleanála'), and may be found referenced in this report, and included with the appeal file bundle. I note that each of the component uses comprising the proposed development are "permitted in principle" on the application site, within the "TC" zone (see paragraph 7.3 below). I am of the opinion however, notwithstanding this historical planning background, that each case must be considered on its own merits, and that the current application be deemed a new application.

7.2.2. However, as acknowledged by all of the applicant, the Planning Authority and the 3rd party appellant, this 'The Green' neighbourhood of Malahide Town Centre, located within the designated historic core of the 'Architectural Conservation Area (A.C.A.)', has a distinctive built character, pattern of development and associated amenity, which requires careful maintenance. The current proposed development itself,

notwithstanding its modest scale, challenges the existing pattern of development and associated character, as well as the residential amenity enjoyed by the adjacent established residential community (3rd party appellants). Notwithstanding the need to consider each application on its individual merits I believe that the permissions historically both ‘granted’ and ‘refused’ on the application site, and the surrounds, provide a benchmark or reference against which the merits of the current application may be measured for its compliance with prevailing statutory planning and development frameworks, which facilitate the proper planning and sustainable development of the area.

7.3. Principle and Location of the proposed development

- 7.3.1. Public policy advocates that mixed-use development driven by urban areas should take place, as a general principle, within the built-up urban areas and on lands identified through the Development Plan process, for integrated, serviced and sustainable development. In the case of the current application, this context is provided for by the Fingal County Development Plan 2017-2023, which sets out the way forward for the urban growth and development of the Malahide Town Centre.
- 7.3.2. The application site is zoned “TC – Town and District Centre”, with the objective to “Protect and enhance the special physical and social character of town and district centres and provide and / or improve urban facilities”. The applicable zoning matrix designates – ‘Office’ (All), ‘Residential’, ‘Restaurant / Café’, ‘Carpark’ (non-ancillary) and ‘Public House’ uses as being “*Permitted in Principle*”, within the “TC” zone.
- 7.3.3. Notably, the ‘vision’ for the Malahide Town Centre advocated in the County Development Plan 2017-2023, is to ‘maintain and build on the accessibility, vitality and viability of the existing Town Centre, by way of development and consolidation with an appropriate mix of commercial, recreational, cultural, leisure and residential uses, whilst enhancing the ‘urban fabric’ in accordance with the principles of urban design, conservation and sustainable development.

- 7.3.4. If the Fingal County Development Plan 2017-2023 is intended as enabling the way forward for the proper planning and sustainable development of the Malahide Town Centre, then the application site must be regarded as being appropriately located within urban mixed-use zoned (ie: "TC") and serviced lands within Malahide.
- 7.3.5. The challenge to the applicant, having regard to relevant planning history on the application site, and the immediate surrounds, to the architectural and site layout planning design, and the relevant requirements of the Fingal County Development Plan 2017-2023, is to ensure the proposed modest development, has no disproportionate adverse impact on the scale and character of existing development at 'The Green' itself (ie. including the 3rd party appellants), and no unacceptable impact on the amenities generally enjoyed by the surrounding neighbours, and the residential amenities specifically, enjoyed by the neighbouring residents (3rd party appellants).

7.4. **Visual Amenity Impact**

- 7.4.1. I have taken note of the established land use type, scale and pattern of urban development locally, contextual to the application site. The 'sense of place' of this contextual 'the Green' neighbourhood is influenced by the mix of architectural style, design, height, set back from the road and general finishing of the existing buildings, all set within a local topographical and environmental context located within the designated 'Architectural Conservation Area'. This is illustrated in the photographs attached, taken at the time of physical inspection.
- 7.4.2. In this regard, whilst acknowledging that no specific 'preservation' or 'protection' status is apparent in terms of the Development Plan 2017-2023, and that the 'Malahide Historic Core ACA – Statement of Character' itself directly confirms that – "the south side of 'The Strand' and 'The Green' have undergone much recent development which has detracted from its character (pg.37)", I note and share the approach advocated by the Planning Authority, and by the Board having regard to relevant planning history cases, regarding the need for maintenance and preservation of this northern edge of the Malahide 'town centre' townscape. I note

that the threat of negative visual impact on this townscape, informed historical decisions both on the application site, as well as adjacent development to the west along 'the Green'.

7.4.3. As discussed at paragraph 7.2 above, the permissions historically both 'granted' and 'refused' on the application site, and the surrounds, enable a benchmark or reference against which the merits of the current application may be measured for its compliance with prevailing statutory planning and development frameworks, which facilitate the proper planning and sustainable development of the area.

7.4.4. Clearly then, having regard to that element of the proposed development concerning the proposed change of use and reinstatement of the 1st floor to previously approved restaurant use granted under **F99A/0300**, not only does such in my view comply with the 'TC' Zoning Objective, but any works required must reasonably be expected to be contained internally within the existing building. Any change expected at best, when views from the outside, must be expected as minor.

Certainly in my view, no obvious consequent threat of disproportional negative visual externality is apparent, to the existing urban streetscape.

7.4.5. However, whereas no threat of disproportionate negative visual impact is apparent from the proposed use change to restaurant at 1st floor level, a clear threat of potential for negative visual impact on the 'the Green' streetscape is apparent consequent of the 'outdoor seating area' proposed for 'retention' and to be used for occasional purposes.

The fact that this element of the proposed development is to be facilitated essentially 'outdoors', enables such threat potential.

7.4.6. In itself I believe that the 'outdoor seated area' proposed for 'retention' is satisfactorily in accordance with the relevant provisions of the County Development Plan 2017-2023, in as much as it contributes to amongst other facilities and venues locally, the strengthening of the 'urban role' of Malahide, the consolidation of vibrant core to Malahide (Objective Malahide 5) in fulfilment of the County Development

Plan 2017-2023 provisions generally, and the 'Public Realm Strategy' for Malahide specifically.

- 7.4.7. The 'TC' Zoning Objective clearly advocates for the enhancement of the special physical and social character of the 'town centre', and for the provision and improvement of urban facilities, best located centrally with maximum accessibility, such as at the application site.
- 7.4.8. Having inspected the application site within its 'the Green' surrounds, I believe that no serious and disproportionate negative visual impact will result on to the established 'streetscape', the northern edge of the designated 'Architectural Conservation Area', consequent of the 'retention' of the 'outdoor seating area'. In part this is informed by the fact that when seasonally operational, the 'outdoor seating area' already comprises part of the existing, active and vibrant streetscape along 'the Green'. Together with that at the 'Donnybrook Fair' site to the west, the application site enables the only opportunity for outdoor leisure and dining locally. Whereas, 'Donnybrook Fair' is operationally constrained by the opening hours of the principal 'café' / 'deli' type business, that proposed on the application site is more flexibly enabled by the coverage across all of the 'lunchtime', 'early-bird' and 'dinnertime' sectors.
- 7.4.9. As notable as the successful operations of the seasonal 'outdoor seating area' may be, I note the emphasised consideration by the applicant to have regard to threats consequent of the operations of the restaurant on site generally, and the 'outdoor seating area' specifically, on the residential amenity of the adjacent 3rd party appellants (to the east). This threat potential on the residential amenity enjoyed by the residents occupying the adjacent apartments, has clearly comprised the primary element of the 3rd party appeal arguments against the proposed development. The capacity, or not to adequately mitigate impact on the adjacent residential amenity was also the major consideration by the Planning Authority, in deciding to grant 'permissions' and 'retention permission' for the proposed development. Residential amenity impact considerations will be discussed further at 7(5) below.

7.4.10. Further, reverting to 'visual impact' considerations, I note that when approaching the application site from the west along 'the Green', both by vehicle and on foot, the front half of the application site fronting onto 'The Green', is effectively screened from view by the 'Donnybrook Fair' development extending out towards 'The Green' and the two retail shops on the corner, with their footprint right onto the 'The Green' sidewalk. In my view these existing developments effectively screen visibility of the 'outdoor seating area', when approaching from the west.

7.4.11. When having regard to visual impact considerations when viewed from the easterly approach, as well as from the northern, front of the application site, I believe the following to be noteworthy :-

- the Malahide Historic Core ACA Statement of Character, itself acknowledges that 'the Green' north facing row of properties "have undergone much recent development, which has detracted from its character". Whilst this by no means obfuscates the expectation of due diligence by the applicant, I believe that the disturbance already done to 'the Green' streetscape, allow for a more discretionary enabling context within which the 'outdoor seated area' is located, to be considered.
- when seasonally operational, the 'outdoor seating area' already comprises part of the existing, active and vibrant streetscape along 'the Green', which in my view is what is envisaged for this local fringe area under the suite of relevant Development Plan provisions. Together with that at the 'Donnybrook Fair' site to the west, the application site enables the only opportunity for outdoor leisure and dining locally.
- in my understanding, having regard to historical references made, whilst clearly unauthorised to date, the 'outdoor seating area' onto 'the Green' has over several seasons comprised a de facto, active component of the 'the Green' streetscape.
- 'the Green' is an active, busy, vibrant part of the Malahide northern fringe. Through the summer months, during which the 'outdoor seated area' has been, and is intended to be operational, 'the Green' is characterised by :

- a well trafficked vehicular, cycle and pedestrian east -west route around the Malahide northern fringe, bypassing the central route and congested main intersection.
- sustained year-round on-street car parking along both its northern and southern sides.
- pedestrian tourists and visitors to Malahide browsing and visiting shops, restaurants and bars locally
- boundary treatments and planting of properties to the east of the application site, inclusive of the 3rd party appellant's property, adjacent to the east
- surface on-site car-parking to the front of the 3rd party appellant's apartment block, accessed off 'the Green' and adjacent, to the east of the 'outdoor seating area' footprint on the application site, proposed for 'retention'.

Accordingly, in my view, when viewed from the easterly approach, as well as from the north, both on foot and via motor-vehicle, no serious or disproportionate visual impact will result on the existing 'the Green' streetscape, consequent of 'retention' of the seasonal 'outdoor seated area', as proposed.

7.4.12. With respect to 'tourism' and associated economic development, I note reference to Malahide as "one of the most popular and thriving seaside villages in the northeast". I note and accept 'outdoor dining / leisure spaces' as an integral part and parcel of seaside towns and villages, contributing to and enabling a 'sense of place' and associated identity and character in seaside urban centres such as Malahide.

7.4.13. In my view, from a visual impact perspective, no serious or disproportionate visual impact will result on the local 'the Green' streetscape, and consequently on the established identity and character of the area. Rather, and subject to the reasonable mitigation determined by the Planning Authority by way of the Conditions attached to its decision to grant 'permission' and 'retention permission', I believe the proposed development generally, and the 'outdoor seating area' particularly, will positively impact on and enhance the established identity and character of Malahide, as a seaside tourism / visitor destination.

7.4.14. Accordingly, I believe the 3rd party appellants arguments against the proposed development in this regard, cannot be sustained.

7.5. Residential Amenity Impact :

7.5.1. In as much as I understand amenity values as referring to those natural or physical qualities and characteristics of the Malahide Town Centre generally, and locally at 'the Green' specifically, that contribute to resident's appreciation of its pleasantness, mixed use vitality, liveability, aesthetic and functional coherence, and easy accessibility, I am of the view that the proposed modest development comprising the change of use of 140m² at 1st floor level from 'office' to previously approved 'restaurant' use, and 'retention' of occasional and seasonal 'outdoor seating area' (ancillary to the restaurant) located to the front of the site, will have no serious, or disproportionate negative impact on this prevailing residential amenity.

7.5.2. The proximity of the 3rd party appellant apartment units, adjacent to and above the existing operational restaurant, and ancillary bar and presently unauthorised 'outdoor seating area' elements, has been a sustained primary concern of the 3rd party appellants in their responses to date regarding planning applications for development of the application site. Indeed, the County Development Plan 2017-2023 emphasises that all commercial properties are to have due regard to the amenities of adjoining residential properties. Specifically, the 'TC – Town & District Centre' zoning objective highlights the need to balance the demand for additional 'town centre' facilities, against the requirement set out in the County Development Plan 2017-2023, to protect established residential amenity.

7.5.3. I note that in the compilation of the current planning application documentation, including the F.I. response submission to the Planning Authority, that the applicant paid attention to the potential for threat to the residential amenity of the 3rd party appellants, and both clarified its current business practice in this regard (ie. 3-month operational window, 22h00 closure), and included mitigation measures addressing such threat, in their F.I. response. I note that the Planning Authority had due regard

to such clarification, and included specification of such mitigation practice in the Conditions attached to their decision to grant 'retention permission' for the 'outdoor seating area' particularly.

7.5.4. Whilst some impact on residential amenity must reasonably be expected due to the proximity, I do not share the conviction argued by the 3rd party appellants that this impact is so substantive and serious as to deserve a refusal of 'retention' permission, primarily on these grounds alone. I express this view having regard to the following :

- no provision within the Fingal County Development Plan 2017-2023 is clearly apparent, either prohibiting or substantively qualifying the location of residential units of any form, proximate to commercial / retail units at any location within the Malahide town centre. Within the designated 'TC – Town & District Centre' zoning objective, all of the 'office', 'residential', 'restaurant / café' and 'public house' land use classes are "permitted in principle".
- in my view, the central locational advantage of the 3rd party appellants apartment block complex has enabled opportunity for residential development, at comparative higher density, precisely because of good accessibility to the range and mix of complementary urban facilities, services and amenities normally found within town centres, and inclusive of late night uses. This includes the adjacent application site. Such diversification of use and consolidation of function of this northern fringe of the Malahide Town Centre, would in my view be in accordance with the 'TC' Zoning Objective and relevant Objectives 3, 5, 8 and ED58 of the 'Malahide Public Realm Strategy'.
- consequent of the onsite amenity improvements and upgrade to be anticipated consequent of the proposed development, an improved dining and leisure amenity place would be easily accessible, immediately proximate to the 3rd party appellants apartment complex. In this way reliance on private motor vehicle movements would be significantly reduced, with corresponding improved pedestrian movement and alternate modes, reasonably to be expected.
- contrary to the 3rd party appellant's sustained concerns, town centres are defined by their diversity and proximity of uses, inclusive of residential use, and local residents more often than not, must reasonably expect a certain

level of activity with associated amenity impact, when living in town centres. The Malahide Town Centre is no exception in this regard generally, and with respect to the juxtaposition of the application site next door to the 3rd party appellant apartment complex specifically.

- 7.5.5. However, whereas the 3rd party appellants conviction in this regard, appears to be of such a direct, disproportionate and fundamental impact, so as to warrant a refusal of planning permission, I rather believe in a more balanced, pragmatic approach.

Firstly, the enhanced diversification consequent of existing residential land use proximate to the consolidation of restaurant / commercial land use on the adjacent application site, as well as other similar development along the 'the Green' frontage, would consolidate an existing 24-hour residential presence along the northern fringe of the Malahide town centre, with the added benefit of continual passive surveillance of the area. In my view this complementarity of land use would have the potential to enhance a sense of security locally, as well as consolidate an overall sense of community along the 'the Green'. Further, in my view, the series of Conditions attached by the Planning Authority to their decision to grant 'retention' permission for the 'outdoor seating area' element, has the potential to consolidate such a sense of community locally.

Secondly, I believe the centrally located 3rd party appellant apartment units by way of house type and location, contribute to a mix of residential accommodation available locally within Malahide.

This choice of house type and associated urban lifestyle characteristic of town centre living, is not suited to everybody. The presence of the 3rd party appellant apartment complex enables and sustains choice in Malahide town centre living.

In my view, having regard to my own observations at the time of physical inspection, the apparent 'full' occupancy of the apartment block, substantiates the merit and viability of residential land use as a key element of the Malahide Town Centre, where good accessibility is possible to the range and mix of complementary urban facilities, services and amenities normally found within town centres, and inclusive of late night uses such as next door on the application site and for which 'retention' permission is now being applied for.

7.5.6. Access to reasonably sized, laid out and located living space, is a reasonable expectation enabling domestic unity of everyday life experiences such as by the 3rd party appellants. Consistent with modern living, this is often motivated having regard to stage in the life-cycle liveability needs of people, both as individuals and as family units. Whilst not suitable to some, centrally located apartment units may be entirely suitable for others, and in some cases even, precisely due to proximity and accessibility to the late-night uses considered by the 3rd party appellants as serious negative externalities. These choices in my view are characterised by an element of trade-off. For example, improved accessibility by the 3rd party appellants to centrally located facilities, services and amenities, must reasonably come with an expectation of exposure to activity and noise associated with town centres. In this regard, I share the view apparent by the Planning Authority and by the applicant that immediate proximity to late night uses is not an automatic indicator of residential amenity loss.

7.5.7. Having regard to all of the above, whilst I am of the view that no serious, or disproportionate negative impact on the prevailing residential amenity enjoyed by the 3rd party appellants will result, I note and accept as reasonable, the precautionary approach adopted by the Planning Authority to decide to grant a 'temporary' permission for the 'retention' of the 'outdoor seating area'. Supplementary to this decision, which itself would be subject to review in three (3no.) years, the Planning Authority attached restrictive Conditions specifying –

- hours of operation (**C3**)
- requirements for storage of tables, chairs etc, away from the front car parking area, outside of time periods of permitted use (**C4**)
- assurance of use as part of the permitted restaurant use on site, and not to be sold, sublet or otherwise as a separate use (**C5**)
- specifications regarding materials and signage for screens, prohibition on furniture fixed to ground, and prohibition of 'amplified music' to the outdoor seating area' (**C6**), and
- required compliance with the 'Environmental Health Office' regarding mitigation of 'noise impact' (**C7**).

In my view, each and all of these referenced restrictive Conditions mitigate threat of impact on the residential amenity enjoyed by the adjacent 3rd party appellants. I accept these as reasonable. I also distinguish that the Planning Authority's decision to grant 'temporary' permission for the 'retention' of the 'outdoor seating area', together with the supplementary 'restrictive' Conditions enable an incentive on the applicant to ensure that every effort is made to ensure no serious impact on the adjacent residential amenity occurs.

7.5.8. Having regard to the above, I conclude that the 3rd party appellants arguments against the proposed development on the grounds of serious, disproportionate residential amenity impact cannot be sustained. Rather, I believe that the proposed modest development comprising the change of use of 140m² at 1st floor level from 'office' to previously approved 'restaurant' use, and 'retention' of occasional and seasonal 'outdoor seating area' (ancillary to the restaurant) located to the front of the site, would, subject to the Conditions attached by the Planning Authority to their decision to grant 'permission' and 'retention permission', be in accordance with the proper planning and sustainable development of the Malahide Town Centre. I recommend to the Board accordingly.

7.6. Car Parking & Traffic Safety

7.6.1. I have had regard to the opinions argued by each of the parties with respect to the provision of off-street surface car parking spaces to serve the proposed development.

7.6.2. Consequent of particularly the extension of the proposed 'outdoor seating area', to the front of the application site and onto 'the Green', there would appear to be a deficiency of approximately 5no. car parking spaces to serve the proposed development. This direct impact of the 'outdoor seating area', proposed for 'retention', is consequent of the coverage of the modest c.37m² footprint of the 'outdoor seating area' over the existing row of 4no. parking spaces (see photographs attached taken at the time of physical inspection).

7.6.3. Whereas the 3rd party appellants argue that this loss of car parking space capacity is a serious flaw in the proposed development, I am rather inclined to an alternate, more pragmatic view on this matter.

Whilst a loss of car parking space provision is certainly unfortunate, I clarify that the loss of 5no. spaces maximum is a minor percentage of the total spaces provided. In this regard I note the 3rd party appellants observation regarding the underutilisation of the onsite car parking spaces, particularly at basement level.

Contextually, I point out that the proposed development, as part of the parent restaurant development of the application site, is located on the 'Northern Fringe' of the Malahide Town Centre, which is served by a good public transportation system (ie. train station, trains and buses), and on-street 'pay-and-display' car parking.

I also note that the loss of the 4no. spaces along the 'the Green' frontage would only be temporary (ie. for a maximum of 3-months of the year). At the end of the seasonal window for which 'retention' permission would be granted, it must be expected that the 4no. car parking spaces would be restored. Having regard to this restoration of the 4no. car parking spaces for 9-months of the year, I share the conviction apparent by the Planning Authority, that it would not be reasonable to apply a 'Development Contribution' as requested by the County Transportation Section.

7.6.4. Accordingly, I believe the 3rd party appellants arguments against the proposed development in this regard, cannot be sustained.

7.7. Procedural Issues :

7.7.1. In brief, the 3rd party appellants argue against the proposed development on the grounds that several deficiencies in 'procedural issues' exist. These include that :

- contrary to the Planning and Development Regulations 2001 (as amended), and Article 18(1)(c) in particular, the public notices and associated documentation "are inaccurate and misleading"
- the existing unauthorised change of use of the open area to the front of the restaurant, to seated restaurant use is not referenced

- no drawings and plans illustrating contiguous elevations, and the basement area of the building respectively, have been submitted
- the operators of the restaurant have no planning permission for the area of the 'Candle Bar'. Therefore to allow an application for other developments on site, without addressing the existing unauthorised development on site is contrary to the legislation.

7.7.2. The 3rd party appellants assert conviction that the applicant has continually abused the planning code by creation of ongoing unauthorised developments on site. Argue that nuisance and negative externality consequent of these unauthorised elements of development on site particularly, have had a direct, significant negative impact on the residential amenity of the adjacent 3rd party appellants.

7.7.3. In response to these appeal arguments, I note that the Planning Authority did express concern regarding the sufficiency of information and associated documentation submitted as part of the initial application for planning permission. These concerns directly informed the substance of the Planning Authority's 'Further Information' (F.I.) request to the applicant and directly addressed the status and operations of both of the 'Candlelight Bar' and the 'Outdoor Seated Area'. Each argued as 'unauthorised' by the 3rd party appellants.

7.7.4. Subsequently, I have had regard to the applicant's F.I. response submission, and note the clarification made that the 'Candlelight Bar' operates as a part of the restaurant, both of which operate in compliance with the original planning permission granted under **F99A/0300**.

7.7.5. Specifically regarding the element of the planning application for 'retention' of the occasional and seasonal placing of tables and chairs, to the front of the premises, I note the clarification that these are ancillary to the restaurant, are not to be permanent, would have a modest area of c.37m² and would be clearly and functionally cordoned off. Further, operations would be restricted to a light menu, would indeed be seasonal, with a restricted 3-month operational window proposed for use (ie. June to August), with service operations stopped at 22h00. Specifically,

the applicant clarifies that the 'outdoor seating area' proposed for 'retention', would serve the restaurant and by association the bar, being the 'Candlelight Bar'.

- 7.7.6. On the information available, I believe the issues argued in concern by the 3rd party appellants have been reasonably and satisfactorily addressed. The 'Candlelight Bar', regarded as 'unauthorised, indeed operates as a part of the restaurant, and in compliance with the original permission granted under **F99A/0300**. On the information available, submitted in clarification by the applicant, accepted and confirmed by the Planning Authority, I understand that the arguments made by the 3rd party appellants against the 'Candlelight Bar', as 'unauthorised', cannot be sustained.
- 7.7.7. Further, I accept and understand that the applicant himself, concedes that at present, the existence and operations of the 'outdoor seating area' is 'unauthorised'. Consequently, the 'outdoor seating area' is clearly identified in the application lodged, as an element for permission and 'retention' permission, and clearly described by the applicant as the "occasional and seasonal placing of tables and chairs, ancillary to the existing restaurant on portion of the private forecourt parking area to the front of the restaurant premises".
- 7.7.8. Accordingly in my view the applicant has clearly identified the 'outdoor seating area' as an element for attention and decision by the Planning Authority as part of the current application, now on appeal to the Board. Given its existence and operation, I note that the applicant has correctly applied for 'retention' permission thereof.
- 7.7.9. I note further, the 3rd party appellant's arguments that with regard to the 'public notice' and associated documentation, the applicant did not comply with the requirements of the Planning and Development Regulations 2001 (as amended). To the contrary, and in addition to the above, I have had regard to the Planning Authority's processing of the application, and validation of 'public notice', as being satisfied that satisfactory compliance has been achieved. I also point out that notwithstanding their arguments, the 3rd party appellants rights have not been

compromised. Clearly, they were able to lodge 3rd party objections with the Planning Authority, and subsequently their 3rd party planning appeal with An Bord Pleanála.

7.7.10. Having regard to all of the above, and particularly to the clarity enabled by way of the applicants F.I. submission, I accordingly do not share the 3rd party appellants concerns argued regarding the potential for the Planning Authority or the Board –

- to ignore the legislation,
- to ignore unauthorised development within an application for extensions to it, and / or
- to enable “unauthorised and /or illegal developments here, while taking action elsewhere”.

In my view, the ‘Recommendation’ and ‘Reasons and Considerations’ set out below (see paragraphs 8 and 9 below) are properly in compliance with the Planning and Development Act 2000 (as amended), together with the Planning Regulations 2001 (as amended), as well as the Fingal County Development Plan 2017-2023, and the ancillary relevant statutory planning frameworks and guidelines for the Malahide ‘town centre’ specifically. Accordingly, I believe the proposed development to be in accordance with the proper planning and sustainable development of the area.

7.7.11. Accordingly, I believe the 3rd party appellants arguments against the proposed development in this regard, cannot be sustained.

7.8. **Appropriate Assessment**

7.8.1. Having regard to the nature, and modest scale and intensity of the proposed revised development and ‘retention’ of use of the existing structures on site, to the location of the site within an established historical and well serviced ‘town centre’ urban environment, with existing connections to services infrastructure, and to the separation distance to any European site, without identified pathways, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that 'planning permission' and 'retention' permission be **granted** for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the zoning Objective "TC – Town and District Centre" for the area as set out in the Fingal County Development Plan 2017-2023 and the pattern and mix of development in the area, it is considered that, subject to compliance with the Conditions set out below, the proposed development would be in accordance with the provisions of the Development Plan, would not seriously injure the amenities of the neighbourhood or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, 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 20th day of June 2018, 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 'retention' permission for the 'seasonal, outdoor front seating area' is a 'temporary permission' only, and shall expire 3-years from the date of the final

grant of permission, unless by that time, permission for its retention has been granted by the Planning Authority, or by An Bord Pleanala on appeal.

Reason : To allow for further assessment of impact on residential amenity.

3. The hours of operation of the permitted use is as follows :

(a) the 1st floor section of the restaurant shall be from

- 08h00 to 23h00 Sunday to Thursday, and
- 8h00 to 24h00 midnight Friday and Saturday, only

(b) the 'outdoor seasonal dining area'

- shall be available for dining from 08h00 to 22h00 Monday to Sunday,
- shall be fully closed and equipment removed by 11h00 each night, and
- shall only be operational from the start of June to the end of August of each year.

Reason : To ensure protection of residential amenity within a mixed-use area.

4. At the end of each night, and outside of the permitted months of operation, the chairs, screens and other equipment shall be removed from the front parking area, and stored internally.

Reason : To avoid clutter within an 'Architectural Conservation Area' (ACA)

5. That the permitted areas shall be used as part of the permitted restaurant use, and shall not be sold, sublet or otherwise operated as separate restaurant or bar uses.

Reason : To prevent unauthorised development.

6. Any screens to be used within the temporary outdoor area shall be canvas, and shall not contain any advertisements, and shall not be fixed to the ground. Similarly, other features, such as chairs etc shall not be fixed to the ground. No external amplification of music shall be provided to the outdoor area.

Reason : To prevent unauthorised development.

7. The following requirements of the 'Environmental Health Office' shall be met in full :
- (a) No external amplification of music shall be provided to the outdoor area
 - (b) Noise due to the normal operation of the proposed outdoor area shall not exceed the background level by 10Db(A) or more or exceed NG4 limits, whichever is the greater
- Reason :** In the interest of protecting residential amenity within a mixed-use area.
8. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.
- Reason :** To protect the amenities of the area.
9. The hours of construction shall be restricted to –
- | | |
|----------------|-----------------------|
| 08h00 to 19h00 | Monday to Friday, and |
| 08h00 to 14h00 | Saturdays. |
- No construction activities shall take place on site on Sundays or Bank Holidays.
- Reason :** To protect the amenities of the area.
10. 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.

L. W. Howard
Planning Inspector

11th April 2019