



An
Bord
Pleanála

Inspector's Report ABP-307276-20

Development	Balcony to rear of public house
Location	Cellar Bar, The Square, Abbeyfeale, County Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	19/1069
Applicant(s)	Padraig Fitzgerald
Type of Application	Retention Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Donal Harnett
Date of Site Inspection	15 th July, 2020
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The Cellar Bar is a protected structure located on the south side of The Square in the town centre of Abbeyfeale in County Limerick. It is a two-storey over basement public house. The balcony the subject of the appeal is located at the south-eastern end of the building and is at the ground floor level of the public house. The area is defined by a mix of uses typical of a town centre location.

2.0 Proposed Development

2.1. The proposed development would comprise the retention of a balcony to the rear of the public house. The balcony has a stated floor area of 33.11 square metres, is supported on steel columns, and is a roofed timber structure that is used as part of the public house floor area for patrons.

2.2. By way of unsolicited information, the applicant submitted that the balcony is not used as an open stage for music or entertainment and that it is used as a smoking area.

3.0 Planning Authority Decision

3.1. Decision

On 8th May 2020, Limerick City & County Council decided to grant permission to retain the proposed development subject to five conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the site's planning history, the reports received and the objection made. The principle of an outdoor seating area ancillary to the pub was considered to be largely acceptable but the fixed outdoor seating area was seen to have the potential to cause disturbance and nuisance as part of the balcony is open. It was considered that details would be required in relation to hours of operation and noise reduction. A request for further information was recommended.

3.2.2. Other Technical Reports

The Air, Noise, Water & Public Health Team recommended that a condition be attached prohibiting the use of the balcony after 23.00 to minimise the risk of noise. Further information was requested to be sought on how the adjacent stream would be protected from pollutants.

The Mid West National Road Design Office stated it had no observations to make.

The Fire Officer had no objection to the proposal subject to conditions.

The Conservation Officer requested further information relating to justification for the proposal, methodologies for external finishes, historical and photographic studies, and clarification on compliance with a previous planning permission.

The Archaeologist submitted that there are no archaeological issues in regard to the application.

3.3. Prescribed Bodies

Transport Infrastructure Ireland stated it had no observations to make.

Irish Water had no objection to the proposal.

3.4. Third Party Observations

An objection was received from Donal Harnett. The grounds of appeal reflect the concerns raised.

3.5 On 18th December 2019, a request for further information was issued and a response was received on 29th April 2020. It was submitted that there has been some form of balcony serving the public house over the last 30 years and that the opening hours for the outdoor seating area are similar to the bar. Acoustic mitigation measures were submitted as was a photographic record.

Following the receipt of the information the Planner submitted that the proposal could be considered acceptable and recommended that permission is granted subject to a schedule of conditions.

4.0 Planning History

P.A. Ref. 06/3020

Permission was granted for changes consisting of a commercial kitchen.

5.0 Policy Context

5.1. **Abbeyfeale Local Area Plan 2014-2020** (Extended to 2024)

Zoning

The site is zoned 'Town Centre'. The Plan states that the purpose of this zoning is to protect and enhance the character of Abbeyfeale town centre and to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the town centre while guiding the development of an expanded and consolidated town centre area.

Protected Structures

The Cellar Bar is a protected structure that lies within an Architectural Conservation Area.

Objectives include:

Objective EH 1: Architectural Conservation Area (ACA)

It is the objective of the Council to protect, conserve and where appropriate, enhance the ACA as identified in Map 3.

Objective EH 2: Protected Structures

It is the objective of the Council to protect structures entered onto the Record of protected structures, or listed to be entered onto the Record and to encourage their appropriate re-use and restoration. The Council shall resist;

- a) Demolition of protected structures, in whole or in part;
- b) Removal or modification of features of architectural importance;
- c) Development that would adversely affect the setting of the protected structure.

5.2. **Appropriate Assessment**

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

5.3. **EIA Screening**

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of the appeal may be synthesised as follows:

- The open balcony has caused the appellant a lot of annoyance by music and people assembled.
- Condition 4 of the Council's decision is irrelevant. Music is based in the central area of the bar and is relayed throughout the general area of the building or is just so loud it can be heard in the appellant's home.
- Condition 3 references mitigation. The appellant requires the sound to be completely eliminated in order to stop sleep disturbance and suggests structural measures.
- The appellant refers to the enclosure of part of the balcony previously.

6.2. **Applicant Response**

The applicant's response to the appeal included a description of the public house use and the occurrence of musical entertainment. The following is also noted:

- The balcony is predominantly used as a smoking area. There is no stage, no live music or no speakers amplifying sound. There is a set of double doors dividing the bar area from the balcony.
- There has always been a balcony to the rear of the Cellar Bar for over thirty years.
- There are two other public houses in the vicinity of the appellant's property and both have external areas that would be contributing to possible noise. There is also the N21 between the appellant's property and the Cellar Bar.
- There is a number of other residential properties closer than the appellant's property and there have been no issues with these residents in relation to noise.
- The appellant is committed to undertaking works in compliance with Condition 4 of the planning authority's decision to further mitigate noise impacts.

6.3. Planning Authority Response

I have no record of any response to the appeal by the planning authority.

7.0 Assessment

- 7.1. I note the focus of the appeal relates to the impact of the proposed development on the residential amenities of the appellant. Having regard to the details contained in the appeal file and having inspected the site, I do not consider that the proposed development has any significant adverse impact on the protected structure or on the architectural conservation area in which it is set. It is reasonable that this assessment solely addresses the issues raised by the appellant.
- 7.2. It is first noted that the development on this site comprises a public house and this public house is located within the town centre of Abbeyfeale. It is located in an area that is zoned 'Town Centre' and this zoning provision acknowledges the wide range of uses that require protecting and enhancing, including retail, residential and cultural uses, which make for a vibrant town centre area during the day and at night time. It is evident that the nature of the proposed use is accepted in principle in this location.

- 7.3. The balcony area is stated by the applicant to be used as a smoking area associated with the public house. It has been expressly stated that the balcony is not used as an open stage for music or entertainment. It is reasonable, therefore, in recognition of this use that the prohibition of this area as a stage for music or entertainment be excluded by way of a condition with any grant of permission which would restrict the use effectively to the purpose for which the applicant states that it is used.
- 7.4. With regard to noise impacts, I note the submission made by the appellant. He refers to music being based in the central area of the bar and being relayed throughout the general area of the building. He also refers to Condition 4 of the planning authority's decision being irrelevant, i.e. the prohibition of any speaker, live music, etc. being permitted within the balcony area, and he requests the sound to be completely eliminated. It is my submission to the Board that the appellant is raising noise concerns relating to the general functioning of the public house. Whilst it is acknowledged that the balcony is likely to be part of the annoyance caused by music emanating via the access to the bar from the balcony and people assembled on the balcony, one must also acknowledge that music in the bar is most likely going to be heard beyond the bar in the immediate vicinity given its location within the Market Square, open on all sides and with doors and/or windows open at different times. Furthermore, if there is no smoking area within the confines of the site it is most likely that people would congregate outside of the public house on the nearby streets, potentially being a greater nuisance.
- 7.5. In conclusion, I understand that the nature of the use on this site can cause nuisance beyond the boundaries of the site if one lives in the immediate vicinity. However, this is a long-established public house located within the town centre of Abbeyfeale. There must be a realisation that when living within the town centre one cannot have the same experiences or expectations relating to noise, traffic, odours, pedestrian movement, etc. that one would expect beyond a town centre. Restricting the use of the balcony is a responsible approach to limit potential nuisance. In my opinion, this is adequate to address the functioning of the balcony. Noise and other issues relating to the functioning of the established public house are matters beyond consideration of this appeal.

8.0 Recommendation

- 8.1. I recommend that permission is granted in accordance with the following reasons, considerations and conditions.

9.0 Reasons and Considerations

It is considered that, subject to the conditions set out below, the proposed development would not seriously injure the residential amenities of the area, would be in keeping with the established public house use on the site and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The balcony shall be used solely as a smoking area associated with the public house, shall not be used as an open stage for music or entertainment or any similar use, and shall not accommodate provisions for amplified music externally.

Reason: In the interest of residential amenity.

2. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

3. 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.

Kevin Moore
Senior Planning Inspector

10th August 2020