



An
Bord
Pleanála

Inspector's Report

ABP-308199-20

Development	Permission to erect a marquee for seasonal use (May to September)
Location	Flanagan's Bar, Ballina Quay, Ballina, Co. Tipperary.
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	20403
Applicant(s)	Sixty Something Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	James Whelan
Observer(s)	Lantar Limited
Date of Site Inspection	22 nd February, 2021
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located approximately 100 metres to the north of the bridge in the village of Ballina. The site which has a stated area of 0.124 ha. is occupied by Flanagan's Bar and Restaurant, comprising a two storey building. Access to the premises is via the south facing side and vehicular access into the site is available from the eastern end where access is available to car parking to the south of the building. Beyond the parking spaces is a grassed area that runs down to a path adjoining the River Shannon. This grassed area and path are in the ownership of the local authority and open to public access. The layout is such that the parking spaces located to the south of the building are partially within the ownership of the local authority and partially within the ownership of the first party.
- 1.2. From the information on file and the presence of seating stored at the south western corner of the site, it is evident that the area between the building and the open space area to the south is used as an outdoor seating area during the summer period.
- 1.3. There are a number of large detached houses located to the west of the appeal site including that located immediately to the west which is accessed via an entrance that bounds the appeal site to the west. To the north, on the opposite side of the local road, there is a relatively recent development comprising retail / commercial units in the vicinity of the local road and residential development to the rear (north).
- 1.4. The stated area of the appeal site is 0.124 ha.

2.0 Proposed Development

- 2.1. The proposed development is advertised as the erection of a marquee '*for seasonal use annually (May to September)*' and all ancillary works. Information on file and submitted as part of the response to further information indicates that the structure is proposed to be used at times when there is predicted to be significant demand (e.g. events) and would be removed between such events. Information on the planning application form indicates that the marquee is proposed to '*provide shelter to existing seating and dining area*' and that no additional seating or capacity is proposed to be provided. The application form (Part 3) also indicates that it is not proposed to hold

any performances in the marquee structure and no service connections (water or drainage) are proposed to the structure.

- 2.2. The design of the structure indicated in the submitted drawings comprises a tubular metal frame with canvas sides and roof. The roof is a pitched profile and the structure has an overall height of 4.5 metres. The submitted floorplan shows a square shape measuring 9 metres by 9 metres. The floor area shown on the plans is 166.8 sq. metres, however this was clarified by way of further information to be an error and the correct floor area of the structure is 81 sq. metres. No advertising is indicated on the submitted plans.

3.0 Planning Authority Decision

3.1. Further Information

Prior to the issuing of a Notification of Decision, the Planning Authority requested further information on the following:

- Noted that the floor area cited on the application form does not correspond with that on the drawings and clarification is required,
- Noted that the proposed marquee extends across two parking spaces that are located outside of the ownership / control of the applicant and consent is required.
- That the applicant needs to demonstrate how the requirements of the Building Control Regulations can be complied with.

The following is a summary of the main information / alterations to layout submitted in response to the request for further information:

- That the marquee is proposed to be erected at peak times between May and September where large crowds are anticipated such as when events are being held. The marquee has been erected previously for such events.
- The statement that the car parking spaces (2 no.) are located on lands outside the applicants site is disputed. Stated that the car parking for the premises is partially located on lands that are in the ownership of the applicant and partially on unregistered lands. It is understood that this

unregistered site/ lands are controlled by Tipperary County Council. The proposed marquee would be located on lands that are in the ownership of the applicant.

- For the reasons above a lease or licence is not required for the structure.
- Extract from floorplan submitted showing that the proposed dimensions are 9 metres by 9 metres and that the floor area is 81 sq. metres.

3.2. **Decision**

The Planning Authority issued a Notification of Decision to Grant Permission subject to 3 no. conditions that can be summarised as follows:

Condition No. 1 – requires that the development shall be undertaken in accordance with the information submitted with the application and as modified by the further information submitted. Part (b) restricts permission to a period of five years.

Condition No.2 - requires that no surface water shall discharge to the public road or to neighbouring properties.

Condition No.3 - requires the payment of a financial contribution of €891.

3.3. **Planning Authority Reports**

3.3.1. Planning Reports

The initial report of the Planning Officer notes the submission received and internal reports. Stated that development is consistent with the zoning of the site and that the development is considered to be acceptable in terms of amenity. Further information regarding clarification of floor area, and legal interest recommended. Second report subsequent to the response to further information recommends a grant of permission consistent with the notification of decision which issued.

3.3.2. Other Technical Reports

Fire Officer – E mail on file stating that they have contacted the applicant directly.

Note on Planners Report stating that fire officer requirement is that compliance with Building Regulations and specifically fire safety elements of regs required if structure in place for greater than 28 days out of any 60 day period.

3.4. Prescribed Bodies

Development Applications Unit of the Dept. Culture Heritage and the Gaeltacht –

Requests that the council shall ensure during screening assessment that the proposed development will not have any negative impact on the Lower River Shannon SAC site.

Environmental Health Officer – Requirements regarding availability of water supply in proximity to marquee specified.

3.5. Third Party Observations

A single observation was received by the Planning Authority and the main issues raised can be summarised as:

- Discrepancy between the stated floor area and the submitted drawings,
- Negative impact on visual amenity,
- Impact on car parking.

4.0 Planning History

The following planning history is noted in the report of the Planning Officer on file:

North Tipperary County Council Ref. 03/510569 – Permission granted by the Planning Authority for the construction of a two storey extension to the existing premises comprising bar and restaurant areas and change of use of part of attic space to mezzanine bar area, alterations to kitchen area and new entrance to adjoining dwellings (Old Station House) and provision of ancillary car parking along the southern site boundary.

Condition No.1 attached to this permission required that there be no infringement of public rights of way and that a licence be obtained from the council providing for unhindered public access to the parking area.

5.0 Policy Context

5.1. Development Plan

The site is located within an area that is zoned Town Centre under the provisions of the *North Tipperary County Development Plan, 2010* (as varied and extended). The stated objective for a town centre zoning is *'to provide and enhance the service base of the town through the provision of mixed use development including retail, office, service and community facilities'*.

Policy LH1: Landscape Management and Protection states that

It is the policy of the Council to facilitate new development which integrates and respects the character, sensitivity, and value of the landscape in accordance with the designations of the County Landscape Character Assessments (or any review thereof).

The site is located in what is identified as a primary amenity area as per Figure 7.1.

Policy LH2: Protection of Visual Amenity and Character of Primary and Secondary Amenity Areas states that

It is the policy of the Council to ensure the protection of the visual amenity, landscape quality and character of designated Primary and Secondary Amenity Areas. Developments which would have an adverse material impact on the visual amenities of the area will not be permitted. New development shall have regard to the following:

a) Developments should avoid visually prominent locations and be designed to use existing topography to minimise adverse visual impact on the character of primary and secondary amenity areas.

b) Buildings and structures shall ensure that the development integrates with the landscape through careful use of scale, form, finishes and colour.

Listed views are contained in Appendix 4 of the Plan (as varied).

Policy LH3: Protection of Views of Scenic Value states that

It is the policy of the Council to protect and enhance views identified in Appendix 4 Listed Views in Tipperary, and views to and from lakelands and waterways. The Council will not permit development which would obstruct or have a significant adverse impact on these views.

As per Table 10.2, the parking standard for a Bar/Restaurant is 0.5 per staff member plus 1 per 15 sq.m public area.

The *Tipperary County Council Development Contribution Scheme, 2020* provides for the following:

9.2 Car Parking Facilities

Where the developer is unable to meet the requirements relating to car parking, a development contribution, commensurate with the shortfall in spaces, shall be paid to the Planning Authority to facilitate the provision of car parking spaces elsewhere.

The contribution in lieu of car parking spaces is charged at a rate of €3,000 per space. The charge is the estimated net expenditure for the provision, refurbishment, upgrading, enlargement or replacement of car parks and car parking places, the associated acquisition of land and ancillary matters.

5.2. Natural Heritage Designations

The site is not located within any European sites. The closest such site to the appeal site is the Lower River Shannon SAC (site code 002165) which is located c. 100 metres from the appeal site at the closest point. The SAC boundary corresponds with the line of the bridge to the south of the site that connects the towns of Ballina and Killaloe.

5.3. EIA Screening

Having regard to the nature and scale of the development, the limited potential for any emissions from the development and the separation from the closest noise sensitive receptors, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the third party appeal received:

- That the development would have a negative impact on the visual amenities of the area. The site is clearly visible from Killaloe and would be visually obtrusive.
- The site is located close to a natural heritage area.
- That the structure is proposed to be located in the existing car park. There is already a lack of car parking available.
- That the issue of colours / branding / advertising of the marquee has not been addressed in the decision issued.
- The marquee will not protect against noise from patrons.
- That no toilet facilities are proposed to be provided.

6.2. Applicant Response

The following is a summary of the main issues raised in the first party response to the grounds of appeal:

- That the Department of Arts Heritage and the Gaeltacht have stated that the proposed development will not impact negatively on the River Shannon SAC.
- That the marquee will be erected entirely within the applicant's property.
- That the structure will take up three parking spaces on a temporary basis. A number of these spaces are regularly taken up by commercial signage.
- That the marquee would be visible from Killaloe, but it would be a stretch to say that it would be visually intrusive from there.
- That the marquee was erected on 18th and 22nd September, 2020 as it was not thought that any appeal had been lodged. Once notified of the appeal the structure was removed. Photographs taken while the structure was erected shows that the structure would not have a significant visual impact, including when viewed from Killaloe on the southern side of the river, (see Photograph 4 of the four submitted).
- That the marquee '*would be branded but would not be illuminated and is a simple sign that informs the public of the business nature of the premises*'.
- That the marquee '*is not closed and is not intended to be*'. It is intended as a cover for diners who would be outside with or without the marquee. Not therefore considered that the marquee would add to noise.

6.3. Planning Authority Response

There is no record on file of a response being received from the Planning Authority.

6.4. Observations

One observation on the appeal has been received and the following is a summary of the main issues raised in this submission:

- That the application does not adequately address the issue of parking. Parking is required at a rate of 1 space per 15 sq. metres of floor space and at 81 sq. metres the proposed development would require 5 no. parking space. Instead of that the development would cover 5 no. existing spaces.

- That there was a requirement for the provision of additional parking spaces when the premises were refurbished in 2003 (ref. 03/51/0569).
- That in a case on the observers premises 500 metres away the council sought €3,000 for each parking space that was not provided.
- That there are benches located in the area of the proposed marquee that do not have planning permission.
- That the marquee was erected in September, 2020,
- That the proposed development would lead to significant noise from the marquee including live music and large numbers of persons congregating. The site is close to a residential area and could disturb these residents as well as the noise travelling across the water.

7.0 Assessment

7.1. The following are considered to be the main issues relevant to the assessment of this appeal:

- Principle of Development, Site Ownership and Accuracy of Submitted Drawings
- Impact on Amenity,
- Parking,
- Other Issues,
- Appropriate Assessment.

7.2. Principle of Development, Site Ownership and Accuracy of Submitted Drawings

7.2.1. The site is located within an area that is zoned Town Centre under the provisions of the North Tipperary County Development Plan, 2010 (as varied and extended). The stated objective for a town centre zoning is '*to provide and enhance the service base of the town through the provision of mixed use development including retail, office,*

service and community facilities'. Restaurant and public house are both listed as uses that are permitted in principle on lands that are zoned town centre. The exact nature of the use of the outdoor space to be covered by the proposed marquee is not explicitly stated in the application documentation, however it is assumed that it would comprise both outdoor drinking and eating area. The proposed development is therefore considered to be consistent with the zoning of the site.

- 7.2.2. I note the fact that the third party appeal makes reference to the fact that the use of the outside area in the vicinity of the proposed marquee for outdoor dining / drinking area is not permitted. The extent of any such outdoor seating is not clear from the information submitted although a significant number of benches and outdoor furniture was observed stored at the site at the time of the grant of permission. It is not clear to me that the use of the area where the marquee is proposed as an outdoor seating area would constitute unauthorised development and any such issue is a matter for the planning authority.
- 7.2.3. The attention of the Board is drawn to the fact that the Site Layout Map submitted with the application contains a number of inaccuracies relative to the situation observed at the time of inspection of the site. Specifically, the area to the west of the indicated location of the marquee was blocked off from the car park area and did not contain any car parking spaces. The parking area is not delineated as indicated on the Site Plan and the length of parking provided on site measured approximately 45-50 metres or sufficient to accommodate approximately 17-20 cars. The layout submitted indicates 17 no. car parking spaces on site. The dimensions of the marquee scale to approximately 10 metres by 8.5 metres as per the submitted plan whereas the stated dimensions as per the response to further information is 9 metres by 9 metres.
- 7.2.4. As highlighted in the request for further information and first party response, the layout of the site is such that part of the parking spaces provided along the southern side of the appeal site are located on lands that are outside the ownership of the applicant and which are in the control of the local authority. Condition No.1 attached to Ref. 03/510569, which was for an extension to the existing premises on the appeal site and provision of ancillary car parking along the southern site boundary, required that there be no infringement of public rights of way and that a licence be obtained from the council providing for unhindered public access to the parking

area. The parking spaces on site are not therefore clearly private spaces for the exclusive use of the commercial use of the appeal site. While the proposed marquee would block access to a number of parking spaces, on the basis of the information available, the entirety of the structure would be within lands in the ownership of the first party.

7.3. Impact on Amenity,

- 7.3.1. With regard to amenity, there is potential for the proposed development to generate additional noise arising from persons congregating outside of the premises and also that there would be a negative visual impact arising from the development.
- 7.3.2. In terms of visual amenity, the site of the proposed development is located in a visually prominent location in the vicinity of the bridge in Ballina where there are clear views of the site from the water, from the bridge and from the far side of the river in Killaloe. The site is located in a primary amenity area and, given that development on the site would impact on views to and from the waterway, has the potential to impact on views identified in the development plan.
- 7.3.3. At 4.5 metres in height and having a length of 9 metres, the marquee for which permission is sought should not in my opinion have a particularly significant **visual impact**. The scale of the structure is lower than the existing building against which it would be viewed from the vantage points to the south and south east. In the first party response to the appeal the first party makes reference to branding and advertising on the site. The response is not in my opinion clear with regard to what is proposed for the marquee sought. The response makes reference to structures on site being *'branded but would not be illuminated and is a simple sign that informs the public of the business nature of the premises'*. I'm not sure whether this refers to the proposed marquee structure and as noted by the observer to the appeal, no conditions were attached regarding the colour, design, or advertising to the proposed marquee. In order to be acceptable from a visual amenity perspective, I consider that the cover to the marquee structure has to be a neutral colour with no advertising and that this would be a condition of any permission granted. Subject to such a requirement being met, and having regard to the seasonal and temporary nature of the development for which permission is sought, I consider that the proposed

development would be consistent with Policies LH 2 and 3 of the plan which require the protection of the landscape quality and character of primary amenity areas such as the appeal site, and would not obstruct or have a significant adverse impact on views to or from lakes or waterways as specified in Policy LH3.

- 7.3.4. With regard to **residential amenity** and specifically **noise**, I note the fact that the site of the proposed marquee is located c.45 metres from the closest house which is to the west of the site and approximately the same distance from the closest residential properties to the north. The first party contends that the proposed development will not result in additional outside dining / drinking over and above that which would already occur from the outside tables located in this area. Given the additional protection afforded by the marquee which would likely facilitate more intensive / longer usage of these outside tables I do not see that this is clearly the case. Notwithstanding this, the separation distances between the marquee and the closest residential properties and the enclosure of the marquee structure are such that significant negative impacts on residential amenity are in my opinion unlikely to arise. The response to further information and other information on file indicates that the marquee would not be used for any outside events or performances and that there would not be any service connections to the structure which I take to also mean that there would not be any serving of alcohol in the marquee and that this would come from within the main building. Subject to these requirements being met I am satisfied that no significant adverse impacts on residential or other amenity due to noise or disturbance are likely to arise. In the event of a grant of permission however, it is considered appropriate that a condition specifically stating that there would be no performance or music in the marquee would be attached. Given the temporary nature of the structure and the remaining uncertainties regarding amenity, and as set out below parking and circulation within the site, it is also considered appropriate that any grant of permission would be for an initial temporary period. Part (b) of Condition No.1 attached to the Notification of decision issued by the Planning authority restricts the period of the permission to 5, and having regard to the nature of the structure for which permission is sought, in the event of a grant of permission it is considered appropriate that a temporary permission for a shorter period of three years would be considered.

7.4. Parking

- 7.4.1. The observer to the appeal notes the fact that the proposed development would act to restrict the number of parking spaces available on the site and that such a reduction is not desirable in a location where parking demand is high. It is also noted that the Planning Authority have opted to levy other commercial developments for a lack of parking and that this should be considered in this case.
- 7.4.2. Firstly, as noted in section 7.2 above, the layout as indicated on the submitted Site Plan does not match the existing situation on the ground. Parking is provided in the form of perpendicular parking spaces that are located partially on lands that are in the ownership of the first party and partially on lands that are controlled by the local authority. On the ground, sections of these parking spaces are separated from one another by build outs where trees have been retained or incorporated into the layout and the area of parking does not extend to the west of the location of the proposed marquee as indicated on the Site Plan. The number of parking spaces indicated on the Site Plan (16 no.) is approximately the same as the parking availability as observed on site.
- 7.4.3. The effect of the proposed development will be to remove 9 linear metres of space within which parking could be accommodated or between 3-4 no. spaces. The comments of the observer to the appeal that parking was an issue in the assessment of case Ref. 03/510569 is noted, however details of this application that are available on file (notably the reports of the Area Engineer and Planning Officer) do not indicate that the provision of parking was a particular issue. Rather, it is noted that the proposed development would result in the provision of additional public parking relative to the original layout.
- 7.4.4. Under the provisions of section 9.2 of the Tipperary County Council Development Contribution Scheme, 2020, provision is made for the payment of a development contribution of €3,000 in lieu of each space where a developer is unable to meet the requirements relating to car parking, and a strict interpretation of this provision of the scheme would be that there would be a requirement for payment of a contribution in lieu of the spaces lost and the additional floorspace provided. Given the temporary nature of the proposed development both in terms of the temporary nature of the permission proposed to be granted (3 years) and the temporary period when the

structure would be present, I do not consider that such a contribution requirement in lieu of parking is warranted. The development will result in a temporary loss of public car parking spaces and therefore some slight contribution to reflect the shortfall could be considered however on balance, at this stage and given the recommendation for a temporary permission, it is not recommended that such a condition would be attached.

7.5. Other Issues,

- 7.5.1. I note that the Fire Officer has indicated that the provisions of the Building Regulations, including those aspects relating to fire, would only apply to a temporary structure such as that proposed were it to be in use for 28 days out of any 60 day period. It is not clear from the information presented, and this is considered to be an issue between the first party and the local authority. I note that the information on file indicates that no service connections would be provided to the marquee and therefore that there would be no cooking or other such activity undertaken that would lead to a fire risk.
- 7.5.2. Related to the above, no water supply or drainage connections are proposed to serve the marquee and the structure is proposed to be installed on an existing hard surfaced area. No increase in the volume or rate of surface water runoff is therefore considered likely to arise.

7.6. Appropriate Assessment.

- 7.7. The appeal site is not located within any European sites. The closest such site to the appeal site is the Lower River Shannon SAC (site code 002165) which is located c. 100 metres from the appeal site at the closest point. The SAC boundary corresponds with the line of the bridge to the south of the site that connects the towns of Ballina and Killaloe.
- 7.8. As noted above, the proposed development will not have any permanent service connections and all existing cooking, water supply and toilet facilities will be within the existing building. While it could be said that the proposed development would facilitate some slight intensification of use of these facilities any such change would

be slight and would be to the existing public foul drainage system. Given the nature and location of the proposed development, there would not be any increase in the volume or intensity of surface water discharge from the site.

- 7.9. Therefore, having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission be granted based on the following reasons and considerations and subject to the attached conditions:

9.0 Reasons and Considerations

Having regard to the town centre zoning objective for the site and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the residential or visual amenities of the area 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 29th day of July 2020, 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. This permission shall be for a period of three years from the date of this order. The structure shall then be removed unless, prior to the end of the period, permission for its retention shall have been obtained.

Reason: To allow for a review of the development having regard to the circumstances then pertaining and in the interest of visual amenity.

3. The following shall be complied with in the development:
 - (a) No music, live performance or other entertainment noise shall be emitted from the permitted marquee,
 - (b) The marquee shall not be connected to the water supply or foul drainage systems and shall not be used for the preparation or serving of food.

Reason: In order to protect the amenities of property in the vicinity.

4. The external cover of the marquee shall be of neutral colour and shall not incorporate any form of advertising. Details shall be submitted for the written agreement of the Planning Authority prior to the first use of the structure.

Reason: In the interests of visual amenity having regard to the visual prominence of the site.

5. The developer shall pay to the planning authority a financial contribution of €891 (eight hundred and ninety one euro) 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. The application of any indexation required by this condition 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.

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.

Stephen Kay

Planning Inspector

23rd February 2021