



An
Bord
Pleanála

Inspector's Report

ABP-311844-21

Development

Retention for cantilevered extension to external licenced terrace, raised decking over terrace to permit wheelchair access, resurfacing of external grassed terraced to an area of concrete terracing. Construction of a new lower level external licenced terrace, bar servery on terrace to be retained, replacement steps from terrace to beach, outdoor shower strand, kitchen extractors, associated site development works.

Location

One the Waterfront, Gallweys Hill,
Tramore Co Waterford, X91 XE64

Planning Authority

Waterford City and County Council

Planning Authority Reg. Ref.

21786

Applicant(s)

Wfhtp Limited.

Type of Application

Permission.

Planning Authority Decision

Split decision

Type of Appeal	First Party against conditions and Third Party.
Appellant(s)	Wfhtp Limited, Fergal and Jai Bonner.
Observer(s)	Donncha and Deirdre O'Maidin, Joe Conway, and Breda Clarke
Date of Site Inspection	23 rd June 2022.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.24ha and is located in the centre of Tramore. The building, known as One the Waterfront, encompasses the land at the junction of Gallwey's Hill and Strand Street and which extends southward to the coast.
- 1.2. One The Waterfront operates as a seaside venue that provides a restaurant, café, bar and guest accommodation. The premises contains internal and external floorspace, with the external area encompassing an extensive at grade terrace (described as the upper terrace) and a lower terrace that is located on the cliff face that overlooks the coast. Access to the lower terrace is provided from a concrete stair along the cliff face, which also provides access to the beach, known as Ladies Slip.
- 1.3. The site is in the town centre and is in an area of mixed uses, which includes residential uses at both adjoining sites, and other commercial uses.

2.0 Proposed Development

- 2.1. The subject development entailed within the public notices comprises: -
 - Permission for retention of:
 - 1) Cantilevered extension to existing external licensed terrace to provide an additional 31.7sqm floor area and associated guardrails/glassed balustrades,
 - 2) Construction of an area of raised decking over a section of the existing licensed terrace to permit wheelchair access,
 - 3) Resurfacing of external grassed terrace to an area of concrete terracing,
 - 4) Construction of a new 114sqm lower-level external licensed terrace and associated guardrails,
 - 5) 1 no. bar servery on existing bar terrace to be retained,
 - 6) Upgrade and improvements to existing external public side entrance including handrails,
 - 7) Replacement steps from the original external licensed terrace and their realignment in places leading to the beach, including new section at lower

external terrace and associated handrails, guard rails, security gate and an access gate to the lower external licensed terrace,

8) Outdoor shower stand,

9) 2 no. wall-mounted kitchen extractors, and

10) Associated site works

- Permission for: -

1) Realignment of the lower section of steps as constructed, leading to the beach.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority issued a split decision on 7th October 2021, as follows: -

Permission was **granted** for retention of (1) cantilevered extension to existing external licensed terrace to provide an additional 31.7sqm floor area and associated guardrails/glassed balustrades, (2) construction of an area of raised decking over a section of the existing licensed terrace to permit wheelchair access, (3) resurfacing of external grassed terrace to an area of concrete terracing, (4) construction of a new 114sqm lower level external licensed terrace and associated guardrails, (5) 1 no. bar servery on existing bar terrace to be retained, (6) upgrade and improvements to existing external public side entrance including handrails, (7) replacement steps from the original external licensed terrace and their realignment in places leading to the beach, including new section at lower external terrace and associated handrails, guard rails, security gate and an access gate to the lower external licensed terrace, (8) outdoor shower stand, (9) 2 no. wall-mounted kitchen extractors and (10) associated site works.

Condition 1(b) required as follows: -

‘The lower deck, associated servery and concrete steps, steel railings, steel gate and guard rails and outdoor shower stand are expressly omitted from this grant of

retention permission. Within three months of the date of grant of this retention permission a demolition management plan detailing the removal of these structures including a report from a suitably qualified structural engineer confirming the necessary works to remove same will not undermine the structural integrity of the cliff, a timetable for the works to be carried out and completed and for the rehabilitation of this area shall be submitted for the written agreement of the Planning Authority.'

Permission was **refused** for realignment of the lower section of steps as constructed, leading to the beach, for 1 reason as follows: -

1. Having regard to the location of the proposed wastewater treatment system upgradient of a neighbouring private well where minimum separation distances are not achieved in accordance with the recommended standards contained in Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. <10) Environmental Protection Agency, 2009, the proposed development would create a risk of contamination of a private water supply and would therefore be prejudicial to public health

3.2. Planning Authority Reports

- 3.2.1. A Planning Report dated 29th September 2021 has been provided, which reflects the Planning Authority's decision to refuse permission. The report references the report on previous application Reg. Ref. 21/70, which related to proposed retention of the same elements for which retention is now sought, and it is stated that there has been no substantive change in circumstances that would warrant deviation from the previous decision to refuse permission. The report then goes on to state that, notwithstanding this, pre-planning discussions took place with the Planning Authority's Senior Planner and consideration can now be given to the upper deck element and the associated cantilever, subject to appropriate cladding. The report recommends that the lower deck, servery, concrete steps and outdoor shower stand, together with associated steel railings, gate and guard rails should be omitted by condition and that permission should be refused for the realignment of the lower section of steps onto the beach. The recommended refusal reason is consistent with the Planning Authority's refusal reason.

3.2.2. Other Technical Reports

The planning report indicates that the Chief Fire Officer, Heritage Officer and Roads Department were consulted on the application, but did not make a responding submission.

3.3. Prescribed Bodies

- 3.3.1. The planning report indicates that the Health Service Executive was consulted on the application but did not make a submission.

3.4. Third Party Observations

- 3.4.1. A number of submissions were received on the application, the issues raised within which can be summarised as follows: -

- Visual impact,
- Overshadowing and overlooking,
- Noise and disturbance for neighbouring residents,
- Impact on beach users,
- Risk of collapse,
- Development is identical to previously refused development,
- Parking capacity,
- Impacts on heritage sites,
- Impact on wildlife,
- Pattern of unauthorised development on the site,
- Site is unsuited to high intensity use,
- An environmental impact assessment should have been provided,
- Appropriate assessment is required,
- Development is partly located on third party lands,
- Development is proposed on public property,

- Inadequate public notices.

4.0 Planning History

4.1. Recent planning records pertaining to the site include: -

21/70 - Permission refused on 25th March 2021 for retention of:

1. Cantilevered extension to existing external licenced terrace to provide an additional 31.7m² floor area and associated guardrails/glazed balustrades,
2. Construction of an area of raised decking over a section of the existing licenced terrace to permit wheelchair access.
3. Construction of a new 114m² lower-level external licenced terrace and associated guardrails,
4. 1 no. bar server on existing bar terrace and 1 no server on the lower terrace to be retained
5. Upgrade and improvements to existing external public side entrance including handrails.
6. Replacement steps from the original external licenced terrace to the beach and leading to Lady's Slip and associated handrails, guard rails, security gate and an access gate to the lower external licenced terrace
7. Outdoor shower stand
8. 2 no. wall mounted kitchen extractors
9. All associated works

Permission was refused for 4 No. reasons, related to (1) visual impact, (2) contravention of open space zoning objective, (3) impact on the structural stability of the affected area of cliff face and (4) use of third-party lands, which precludes the Planning Authority from granting permission.

5.0 Policy Context

5.1. Waterford City and County Development Plan 2022-2028

- 5.1.1. The new City and County Development Plan was adopted on 7th June 2022 and will take effect on 19th July 2022. It identifies that a new local area plan for Tramore will be prepared within its lifetime.

5.2. Waterford County Development Plan 2011-2017

- 5.2.1. Waterford City and County Council was established on 1st June 2014, following amalgamation of Waterford City Council and Waterford County Council. Existing development plans within the combined functional area, including County Development Plan 2011-2017, have had their lifetimes extended and remain in effect until such time as the new City and County Development Plan takes effect.
- 5.2.2. Tramore is identified as a Secondary Service Centre, which supports Waterford City in its role as the primary urban centre in the county. The plan states that land uses are guided by the Tramore local area plan.

5.3. Tramore Local Area Plan 2014-2020

- 5.3.1. The majority of the site is zoned '*Town Centre*' under the local area plan, with an objective '*To provide for an integrated mix of residential, commercial, community and social uses within the town or village centre*', but encompasses an area zoned '*Open Space*' in the southern-most part, with objective an '*To preserve and enhance Open Space areas and Amenity Areas for passive and active recreational uses, including the preservation of grass verges, hedgerows and tree stands*'.
- 5.3.2. 'Hotel' and 'Public House' uses are permissible under the Town Centre zonings but are not permitted under the Open Space zoning.
- 5.3.3. Relevant policies and objectives include: -
- **Policy ETD 8** Require a high standard of design for all new Town Centre development and the refurbishment of existing properties, taking account of the natural and built heritage of the Town to ensure developments enhance and respect the character and setting of Tramore.

- **Policy ETD 11** To support the diversification of a range of a tourist facilities and attractions through the area, while protecting the surrounding natural environment of Tramore
- **Policy CZM 3** To protect the scenic value of the Coastal Zone in Tramore including landward and seaward views and continuous views along the coastline and manage development so it will not materially detract from the visual amenity of the coast.
- **Policy CC 1** To incorporate climate change adaptation planning in accordance with DoECLG guidelines in the future management and sustainable development of the Tramore coastal zone.

5.4. **Natural Heritage Designations**

- 5.4.1. The subject site is not located within or adjacent to any designated European site, the closest such sites being Tramore Back Strand SPA (Site Code 004027) and Tramore Dunes and Backstrand SAC (Site Code 000671), which are located approx. 1.25km east.
- 5.4.2. Tramore Dunes and Backstrand is also a proposed Natural Heritage Area (Site Code 000671).

5.5. **EIA Screening**

- 5.5.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.5.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
 - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.
- 5.5.3. The subject development comprises elements proposed for retention associated with the established use of the site (including a c.32sqm cantilevered extension, 114sqm terrace and replacement steps leading to the beach) and proposed realignment of

steps leading to the beach, on a site of 0.24ha. It falls well below both of the applicable threshold for mandatory EIA, as set out above.

- 5.5.4. In respect of sub-threshold EIA, having regard to the limited nature and scale of the development, it is considered that there is no real likelihood of significant effects on the environment. 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

- 6.1.1. First party and third-party (Fergal and Jai Bonner) appeals have been received and the issues raised in both are summarised separately below: -

First party appeal

- The appeal submission identifies that the appeal relates to condition 1(b) of the Planning Authority's decision only.
- Planning Authority's assessment of the application
 - The planning report incorrectly states that permission was previously refused for the development. This application was withdrawn and the Planning Authority's approach to assessment is fundamentally flawed.
 - The planning authority did not provide minutes from a pre-planning meeting in respect of the development, which creates a difficulty for the Board in assessing the appeal.
 - The planning report does not acknowledge or consider supporting information provided with the application.
 - The split decision presentation is confusing.
- Condition 1(b)
 - The decision is ultra vires and is inconsistent with the provisions of Section 34(4) of the Act, which outlines the types of condition that can be attached. It should be omitted.

- It would not be unreasonable to require removal of the lower deck, given its timber construction, and the applicant would not object to this.
- The deck itself is below the top of a palisade fence that is owned by the Council and elements on the deck can only be seen behind the metal handrail surround, when viewed from the beach.
- The open space zoning objective seeks to preserve and enhance open space areas and amenity areas for passive and active recreational uses and there is no conflict between the development and this zoning objective. A refreshments servery will be removed from the area but patrons will be able to bring a coffee or soft drink onto the terrace. The applicant was advised at pre-planning that removal of the servery would address potential conflict with the zoning objective and there is no reference within the planning report to any such conflict.
- No account was taken of submissions that there were steps between the beach and the former hotel and no appraisal was undertaken. They provide access to both the beach and the lower deck and provide access to the applicant's property on and below the cliff face.
- The steps and handrail and security gate tie in with the recent sea defence walls and slipway reinstatement undertaken by the Council.
- There was no appraisal of the outdoor shower, which is an insignificant and inoffensive structure.
- The Board is requested to omit condition 1(b) from the decision.

Appeal by Fergal and Jai Bonner

- Planning Authority's assessment of the application
 - There is no clear policy justification for granting the proposed development, with reference to the planning report on the one hand identifying that no substantive change in the planning facts underlying the development, but then on the other, referring to discussion with the Senior Planner, where it was agreed that a compromise should be sought.

- The planning authority's decision is fundamentally flawed and is inconsistent with its previous decision for the same proposal.
- Impact on residential amenity
 - Noise associated with plant at the site and late-night activity at the site has an unacceptable impact on the residential amenity of adjacent residential property. The unauthorised terrace is used for live music.
 - Statements regarding use of the terrace by the previous owner for music are moot, in the context of the increase in size of the terrace. It should be noted that there are 11 observations on the planning file that reference concern regarding noise.
 - The planning authority did not comment on noise in its assessment and did not attach an enforceable noise condition to its decision.
 - A full noise impact assessment should be undertaken, but if the Board decides to grant permission, enforceable noise conditions should be attached.
- Contrary to development plan policies
 - The development conflicts with Sections 8.15 and 8.1, policies CZM3 and CC1 and objective CP4 of the development plan. The development alters the appearance of the cliff and clearly opposed to its natural appearance and has a profound impact on the visual amenity of the area.
- Lower terrace
 - Claims that the lower terrace provides a public amenity are disingenuous and are an attempt to justify a land-grab, to turn open space lands into commercial floorspace.
 - The use of the lower terrace for commercial purposes is a material contravention of the development plan.
 - The terrace has a domineering impact on the cliff face.
 - The planning authority refused this aspect of the development and the Board is requested to uphold this decision.

6.2. Applicant Response

6.2.1. The applicant made a submission on the third-party appeal on 29th November 2021, the contents of which can be summarised as follows: -

- Pre-planning
 - The applicant should not be penalised for the planning authority's decision not to publish minutes of the pre-planning meeting undertaken in respect of the development.
- Impact on residential amenity
 - The licensed premises on the subject site pre-dates the appellants' home and there have historically been internal and external elements of the use. The only new terracing is the cantilevered extension of 31.7sqm and the lower terrace, which is not visible from the appellants' home. Other terraces are longstanding and were refurbished in 2019.
 - The appellants have only lived in their home for 5 years and would not have experienced previous operation of the premises.
 - The original terrace had collapsed for the most of its length, along the seaward edge, as is evidenced by the remnants of the original terrace that are under the new deck and which the proposed development addresses by the incorporation of a facing on the underside of the deck.
 - Regarding the side access, there has always been a side access to the premises and this is the only means of wheelchair access. It is the only fully wheelchair accessible hotel/restaurant on the seafront and a longstanding requirement of its fire certificate is that that the side entrance and gates should be open when the premises is operating. Since covid the applicant has encouraged greater use of the side access, to reduce internal movements. The access lane is below the appellants' house and the applicant has erected screen fences to provide a visual barrier.
 - The appellants' home is in the town centre and the presence of a number of sometimes noisy uses in the area means that there can be some noise above what might be expected in a residential area.

- The kitchen extractor fans that are the cause of noise concerns are replacements and now expel fumes above eaves level.
- Noise
 - Claims regarding a focus on alcohol consumption within the premises are refuted.
 - The applicant is agreeable to entering into an agreement with the planning authority regarding music volumes but applying limits as suggested is impractical in this town centre location. Reference is made to the EPA Act 1992.
- Contrary to development plan policies
 - The development does not significantly alter the appearance of the cliff, coastline or landward views and will enhance the view from the coastline.
 - The development also does not interfere with seaward views and instead promotes the view of the sea, as few premises in Tramore can.
 - The development has cleaned the area, which was previously dilapidated, and, in the area of the lower deck, the area was screened by a palisade fence that had been erected by the County Council to prevent access, dumping and anti-social behaviour.
 - It is accepted that the underside of the cantilevered section of the terrace looks out of place. This is to be clad in Cedar and the Planning Authority does not object to this.
 - The replacement steps to the beach are prominent currently but will weather and tone down over time. They are the only practical means of access the lower part of the property.
 - Regarding coastal erosion concerns, the entire site is located behind rock armour and will not be subject to erosion or contribute to it. Any erosion took place prior to the rock armour protection being put in place.
- Lower terrace
 - This area is not located on public land, as is claimed.

- There is no conflict with the applicable zoning and the planning authority has accepted this.
- There is national and local policy support for the hospitality industry, in developing outdoor facilities and the County Council is developing a town centre enhancement scheme that reduces traffic within the town and encourages businesses to extend into the public realm.
- Planning Authority's assessment of the application
 - It is not disputed that the decision-making process was flawed, with issues arising from the use of conditions to refuse aspects of the development, failure to include pre-planning meeting minutes, failure to consider the application in its entirety and not considering all of the information provided with the application.
 - It is also noted that the refusal reason includes reference to a wastewater treatment plant, which formed no part of the subject development. This is seen as a lack of care and attention in assessing and determining the application.
- The development should be granted, save for the lower section of the concrete steps which the applicant has not appealed.

6.3. Planning Authority Response

6.3.1. A submission was received on 18th November 2021, the contents of which can be summarised as follows: -

- The Planning Authority is within its rights to use a split decision and regulate development by way of condition.
- The application was fully and properly assessed.
- Matters discussed at the pre-planning stage shall not prejudice the Planning Authority in carrying out its function and cannot be relied upon in the formal planning process.
- The Board is requested to uphold the decision to refuse permission for the lower deck and associated elements.

6.4. Observations

- 6.4.1. Submissions have been received from Donncha and Deirdre O'Maidin, Joe Conway and Breda Clarke. The issues raised within each submission can be summarised as follows: -

Submission by Donncha and Deirdre O'Maidin

- The development is visually obtrusive and is seriously injurious to the amenities of the area.
- The steps leading down to the beach and cantilevered structure are contrary to the open space zoning.
- The cliff face will continue to erode and the development may compromise its structural stability, contrary to the Waterford Climate Action Plan 2019.
- There were no steps leading down to the beach from this site previously, so the development will establish a precedent.
- Public notices advertising the planning application were inadequate.
- Both of the terraces invade the privacy of the adjacent homeowner and beachgoers.
- It is unimplementable of the applicant to propose that the lower deck will not be used for alcohol consumption.
- The use of the outdoor area for music does not consider the impact on neighbouring homes. References made by the applicant to the Hydro site are not comparable.
- Expansion of the subject site will worsen parking problems in the town.

Submission by Joe Conway

- Stability of the cliff face
 - Development on the cliffs between the Strand and the Pier should not be countenanced. The Waterford coast has been identified by EU Reports on coastal erosion as one of the most prone to erosion. Reference is made to examples in Norway, where cliffs underlain by clay/gravel/scree collapsed.

- The cliff is continuing to erode and more common extreme weather events will contribute to destabilization of the cliff.
- The provision within the legislation for parties to seek permission for retention was intended to cover bona fide errors or omissions, not unauthorised development of this scale.
- There are contradictions within the Planning Authority report, which identifies a number of issues with the development but then recommends a grant of permission.

Submission by Breda Clarke

- The observer owns a holiday home on Strand Street.
 - The cantilevered terrace overshadows and blocks light from a room overlooking that area
 - Noise and disturbance from the bar serverly on the terrace are overwhelming during summer and when there is music playing.
 - The outdoor shower stand overlooks the observer's bedroom window.

6.5. Further Responses

6.5.1. None.

6.6. Prescribed Bodies

6.6.1. The appeal was circulated to An Taisce, the Minister for Culture, Heritage and the Gaeltacht, The Heritage. No responding submissions were received.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal in detail, I consider the main planning issues to be considered are:

- Principle of development,
- Material Contravention,
- Visual impact

- Impact on cliff face,
- Residential amenity,
- Other issues
- Appropriate assessment

7.2. Principle of Development

- 7.2.1. The Board will note that the new county development plan 2022-2028 will take effect on 19th July 2022, but it does not amend the land use zonings pertaining to this site, as the plan states that a new local area plan for Tramore will be prepared within its lifetime.
- 7.2.2. The majority of the site is zoned Town Centre under the Tramore Local Area Plan 2014-2020, under which 'Hotel' and 'Public House' uses are permissible. Of the subject development, the following retention elements are subject to the Town Centre zoning: -
- Construction of an area of raised decking over a section of the existing licensed terrace to permit wheelchair access,
 - Resurfacing of external grassed terrace to an area of concrete terracing,
 - 1 no. bar servery on existing bar terrace to be retained,
 - Upgrade and improvements to existing external public side entrance including handrails,
 - Outdoor shower stand, and
 - 2 no. wall-mounted kitchen extractors,
- 7.2.3. I am satisfied that these elements are consistent with the established use of the site and are acceptable under the zoning, subject to consideration of other factors below.
- 7.2.4. The Open Space zoning applies to the part of the site beyond the original terrace and encompasses the remaining elements of the development.
- 7.2.5. Regarding the 31.7sqm cantilevered terrace extension, the terrace itself overhangs the cliff face and its supporting structure is anchored in it and there is associated pipework running across the surface of the cliff. The terrace forms part of the commercial use of the site and in view of the foregoing, I consider it encroaches onto

the open space zoning, extending the commercial premises onto open space-zoned lands.

- 7.2.6. Regarding the 114sqm lower deck, this is located on the lower part of the cliff face and is within the open space zoning. I don't accept the applicant's argument that there is no conflict between the development and the zoning objective, as it is functionally connected to the commercial business operating from the site and is only accessible from the subject site. Similar to the cantilevered terrace extension, it extends the commercial premises onto open space-zoned lands.
- 7.2.7. Regarding the steps that connect the upper and lower terraces and which also lead down to the beach, I note that there is disagreement between the applicant and third parties about whether they are replacement steps or new steps, where there were none previously. I have considered the information available to me, including historic aerial photography of the area, and I do not consider the applicant has adequately demonstrated the historical presence of steps leading down the cliff face from the site. Historical aerial photograph records do not identify any such access down the cliff (or certainly no formal stairs arrangement of a similar fashion to the existing development). They are clearly functionally connected to the commercial business on the site, providing access to commercial floorspace, and are thus intrinsically linked to the commercial business. I consider they also represent extension of the commercial premises onto open space-zoned lands.
- 7.2.8. Hotel and public house uses are not permitted under the open space zoning and in my view, for each of the affected elements, the issue of material contravention of the zoning objective arises.
- 7.2.9. The Board will note that the Planning Authority did not identify in its refusal reason any grounds of material contravention of the development plan. The Board is therefore not encumbered by the provisions of Section 37(2)(b) of the Planning and Development Act, 2000, as amended (the Act) and is instead subject to Section 37(2)(a) of the Act, which states that the Board may, in determining an appeal, decide to grant a permission even if the proposed development contravenes materially the development plan for the area. The Board therefore has discretion over whether to grant permission for the affected elements, notwithstanding any issue of material contravention.

- 7.2.10. In my view, the cantilevered terrace extension has a minimal impact on the cliff and represents a small scale extension of the commercial floorspace. In view of this, I am of the view that it is acceptable. The lower terrace and connecting steps are both substantial additions to the cliff face and give rise to concerns as are discussed further below.
- 7.2.11. Regarding the proposed lower section of steps leading down to the beach, this aspect of the development was refused by the Planning Authority and has not been appealed by the applicant. As the applicant identifies, there is an issue with the Planning Authority's refusal reason as stated, which erroneously refers to a proposed wastewater treatment system. Notwithstanding this reference, I note that the location of the proposed steps is outside the red line and in such circumstances the Board is precluded from granting permission. A refusal for this aspect of the development is thus recommended.

7.3. Visual Impact

- 7.3.1. The subject site is a seafront property and the available views are primarily from the seaward side and along the adjacent beach. There are glimpsed views from the east and west.
- 7.3.2. There are a number of elements to the development, the majority of which are physically and visually connected to the established commercial operation and do not give rise to visual impact concerns or concerns over potential impacts on the cliff face.
- 7.3.3. The cantilevered terrace extension, lower terrace and steps leading down the cliff are each highly noticeable additions to the cliff face.
- 7.3.4. Regarding the cantilevered terrace extension, the applicant acknowledges that the underside of the cantilevered section of the terrace looks out of place and proposes that it will be clad in cedar as a finishing material, to improve its appearance. There was an established terrace in this area and the proposed extension is of a modest scale, enclosed by a glazed balustrade. In my view, subject to incorporating of the cedar panelling on the underside as proposed, it would not have any undue visual impact.

- 7.3.5. There are some exposed pipes in the area under the extension, which run down the cliff face from the upper terrace to the lower terrace. I am unclear what the purpose or need for the pipework is, but I note that the report from Frank Fox & Associates Civil and Structural Engineers provided as part of the application recommends that it should be relocated underneath the mesh and landscaping on the cliff face, to improve the overall appearance of the development. I concur with this recommendation and am satisfied that this can be controlled by condition.
- 7.3.6. The lower terrace and steps are a new and, in my view, incongruous addition to the cliff face, which otherwise has a natural, weathered character. Policy CZM 3 of the local area plan seeks to protect landward and seaward views along the coastline and to manage development so it will not materially detract from the visual amenity of the coast. Whilst the extent of public visibility of these elements is likely to be low, given the seaside location of the site, this does not in my view justify the encroachment of built form of this scale onto the cliff face. I concur with the Planning Authority's determination that they should be omitted from the development, together with associated works such as servery, balustrade and handrails.

7.4. Impact on Cliff Face

- 7.4.1. Concerns have been expressed by observers that the cliff face is unstable and is subject to ongoing weathering and erosion and that there are public safety risks associated with development on it.
- 7.4.2. As part of the application a report from Frank Fox & Associates Civil and Structural Engineers was provided, which discusses the issue of erosion of the cliff face. It states that the development is situated above the foreshore level, behind rock armour and palisade fencing, and that the presence of deciduous plants and weeds in the area in front of the palisade fencing suggests that this area is not affected by the tide or storm surges. The report also states that works have been undertaken to stabilise the cliff face with mesh, which appear to have stabilised it locally, and which is recommended to be extended to remaining elements of the cliff face.
- 7.4.3. There are a number of built form elements located on the cliff face and the lower terrace is in the area immediately behind the rock armour that has been placed along the beach. The applicant asserts that all elements of the development are above the foreshore and are in areas not affected by the tide or storm surges and this has not

been undermined by the third-party submissions on the appeals. In these circumstances I consider it would be unjustified to refuse permission on this basis.

7.5. Residential Amenity

- 7.5.1. The appellants Fergal and Jai Bonner own the adjoining property to the west and the observer Breda Clarke owns the adjoining property to the east. Both parties, together with other observers, have expressed concerns regarding the ongoing operation of the commercial business at the subject site, with particular reference to noise, overlooking and overshadowing.
- 7.5.2. Regarding overlooking, I noted on my visit to the site that there is a glimpsed view of the appellants' garden for customers accessing the rear terrace via the side access. The sloping nature of the land in this area (land falls from north to south) means that glimpsed views from areas elevated above the height of the boundary wall are available. This is a minor issue and I am satisfied that it can be addressed by condition. Should the Board decide to grant permission, I recommend that a condition be attached requiring the provision of boundary treatments of minimum height 2m along the west site boundary.
- 7.5.3. The observer states that the shower stand overlooks her bedroom and whilst that may be the case, consideration must be given to the fact that the shared boundary between the observer's house and the subject site is effectively open and will continue to remain so, even if permission is refused for the development. There is likely to be a presence of customers in proximity to the observer's house, in view of the open external layout of the subject site and the effectively open boundary, so there is already a degree of overlooking taking place. However, in saying this I acknowledge that the provision of a shower stand in this location places users directly adjacent to the observer's house, so the sense of being overlooked may be intensified. There is no fundamental need for a shower stand to be provided on the site and I consider it should be omitted in order to minimise the level of overlooking of the observer's house.
- 7.5.4. I do not share the observer's concerns regarding overshadowing. As I have previously outlined, the shared boundary between the sites is effectively open and there are no proposed enclosing structures in proximity to her house, which might cast a shadow or impede access to natural light.

- 7.5.5. Regarding noise, the appellants' and observer's stated concerns relate to use of the terrace, including live music being played in this area, and the operation of extractor fans. The applicant acknowledges that the venue produces some noise but disagrees that there is a focus on 'revelry'. He further outlines a willingness to enter into a noise monitoring and control agreement with the Planning Authority.
- 7.5.6. Whilst it is not stated explicitly within the application that live music is played externally at the subject site, I would share the third-party concerns over noise, in the event that it is. Given the very close proximity of both adjoining houses to the terrace, and given its open nature, there is little or nothing that can be done to control or restrict external noise and the broadcasting/playing of music is likely to be discernible at the neighbouring properties, even at a low volume. In this context I consider it appropriate that a condition should be attached, should the Board decide to grant permission, requiring that no music shall be played or broadcast externally.
- 7.5.7. Regarding noise from the terrace more generally, consideration must be given to the fact that the majority of the terrace is existing, with alterations to same and only a smallscale extension proposed for retention. In a town centre location such as this some night-time noise is inevitable but, I accept that given the close proximity of both adjoining houses to the terrace, this may be disruptive to the residential occupiers. Therefore, should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to undertake a noise monitoring programme, with the scope of same to be agreed with the Planning Authority, and with recommendations from same to be implemented on request from the Planning Authority.
- 7.5.8. Regarding the extractor fans, they are located at the west end of the subject building and are adjacent to the shared boundary with the appellants. There are no east-facing windows in the appellants' home. I observed on my site visit that they produce some noise but this is consistent with a commercial premises in a town centre location and does not, in my view, lead to any significant or undue impact on the appellant's enjoyment of their home and garden. I would also point out to the board that the nature of the extractor fans, which vent above the eaves, is likely to be an improvement on the old extraction system, which vented along the side elevation of the building and would likely have had a greater impact on the appellants' home by expelling fumes towards the rear of the house.

7.6. Other Issues

- 7.6.1. Both the first and third-party appellants have expressed concerns regarding the Planning Authority's assessment of the application. As the competent authority for this appeal, the Board will consider the proposal *de novo*, as if the application had been made to it in the first place, and its decision will supersede that of the Planning Authority.

7.7. Appropriate Assessment

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.7.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Background on the Application

- 7.7.2. A screening report for Appropriate Assessment was not submitted with this appeal case. Therefore, this screening assessment has been carried de-novo.

Screening for Appropriate Assessment- Test of likely significant effects

- 7.7.3. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.7.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

- 7.7.5. The development is described at Section 2 of this Report. In summary, permission is sought for retention of various items of development, including a cantilevered terrace extension, proposed terrace and steps leading from the upper terrace down to the beach, together with proposed realignment of the lower section of steps as constructed, leading to the beach. The subject site has a stated area of 0.24ha and is located opposite an area of the coast known as Lady's Slip.

European Sites

- 7.7.6. The subject site is located within or adjacent to any designated European site, the closest such sites being Tramore Back Strand SPA (Site Code 004027) and Tramore Dunes and Backstrand SAC (Site Code 000671), which are located approx. 1.25km east.
- 7.7.7. There are a number of other sites within a 15km search zone, as follows: -
- Mid-Waterford Coast SPA (Site Code 004193), approx. 2.5km south-west,
 - River Barrow and River Nore SAC (Site Code 002162), approx 11.5km east,
 - Lower River Suir SAC (Site Code 002137), approx. 10km north.

These European sites are distant from the subject site and there is no direct hydrological connection between the sites. In view of this, I am satisfied that there is no possibility of significant effects on these sites and they can be excluded from the assessment at this stage.

Potential impacts on Tramore Back Strand SPA and Tramore Dunes and Backstrand SAC

- 7.7.8. The subject site and proposed development, whilst located adjacent to the coast and elevated above it, involves smallscale development works. The construction of a cantilevered terrace extension and other alterations to the commercial property in its immediate vicinity do not give rise to any real likelihood of potential significant effects on these nearest European sites, which are separated from the site by built form elements within the town and a section of the Irish Sea.
- 7.7.9. The construction of a timber deck and concrete steps leading down the club face may have given rise to smallscale discharges of surface water containing suspended solids or small spillages but, again, the subject site is separated from the nearest European sites by a section of the Irish Sea and any such pollutants entering the sea would have been subject to a dilution effect in the immediate area of the subject site. As such, I am satisfied that there is no real likelihood of potential significant effects on these nearest European sites.

Screening Determination

7.7.10. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European Site, in view of the sites' Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

7.7.11. This determination is based on the following:

- The smallscale nature of the proposed development and the separation distance between sites, which includes built form within the town and a section of the Irish Sea in the intervening area.

8.0 Recommendation

8.1. I recommend that permission is granted for the following elements of the proposal: -

- Retention of:
 - Cantilevered extension to existing external licensed terrace to provide an additional 31.7sqm floor area and associated guardrails/glassed balustrades,
 - Construction of an area of raised decking over a section of the existing licensed terrace to permit wheelchair access,
 - Resurfacing of external grassed terrace to an area of concrete terracing,
 - 1 no. bar servery on existing bar terrace to be retained,
 - Upgrade and improvements to existing external public side entrance including handrails,
 - 2 no. wall-mounted kitchen extractors, and
 - Associated site works

8.2. I recommend that permission is refused for the following elements of the proposal: -

- Retention of:
 - Construction of a new 114sqm lower-level external licensed terrace and associated guardrails,

- Replacement steps from the original external licensed terrace and their realignment in places leading to the beach, including new section at lower external terrace and associated handrails, guard rails, security gate and an access gate to the lower external licensed terrace,
- Outdoor shower stand,
- Permission for: -
 - Realignment of the lower section of steps as constructed, leading to the beach.

9.0 Reasons and Considerations

Reasons and Considerations (1)

Having regard to the site's town centre location and zoning under the Tramore Local Area Plan 2014-2020, the scale and design of the proposed development, the pattern of development on the site to date and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would, therefore, be in accordance with proper planning and sustainable development.

Reasons and Considerations (2)

1. The proposed development is located on lands subject to the Open Space zoning under the Tramore Local Area Plan 2014-2020 and, as they represent an extension of the commercial business operating on the subject site, constitute a material contravention of the zoning objective. Further, the proposed development which is located on the cliff face represents an incongruous addition to the cliff face, which otherwise has a natural, weathered character, contrary to policy CZM 3 of the local area plan, which seeks to protect landward and seaward views along the coastline and to manage development so it will not materially detract from the visual amenity of the coast. The development would therefore be injurious to the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.

2. The proposed development includes the provision of steps leading down to the beach which are outside of the red line application site boundary and which are shown to be outside of the applicant's landholding. In such circumstances, and in the absence of written consent to undertake the proposed works, the Board is precluded from granting permission.

10.0 Conditions

1.	<p>The development shall be carried out in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>No public address system, amplified music or bands shall be permitted within the proposed terrace. No sound amplification shall be installed in the terrace or projected from other areas of the licence premises, nor shall any television screen, or similar, be installed thereon.</p> <p>Reason: To protect the amenities of adjoining properties.</p>
3.	<p>A noise monitoring programme shall be agreed with the Planning Authority, to include an annual review undertaken by a qualified acoustic engineer at the nearest noise sensitive location, which shall be submitted to the Planning Authority. The developer shall carry out any amendments to the subject development requested by the Planning Authority subject to the review.</p> <p>Reason: In the interest of protecting the amenity of the nearby residential properties.</p>
4.	<p>Boundary treatments 2m high shall be put in place along the west site boundary, in accordance with proposals which shall be agreed with the Planning Authority within 3 months of the date of this order.</p> <p>Reason: In the interests of residential amenity and privacy.</p>
5.	<p>Landscaping proposals contained on drawing No. 21649-2-101 shall be implemented within 12 months of the date of this order.</p>

	<p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 1 year from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In the interest of visual amenity.</p>
6.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p>Reason: In the interest of public health.</p>
7.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
8.	<p>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 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.</p>

	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.
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Barry O'Donnell
Planning Inspector

1st July 2022.