



An
Bord
Pleanála

Inspector's Report ABP-312291-21

Development	Retain change of private living accommodation to public bar at ground floor level and modifications to previous grant under 16/998 – (Protected Structure). Retain paved seating area and open serving area.
Location	Strand Street, Dingle, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	21760
Applicants	EHD Ltd.
Type of Application	Permission to retain
Planning Authority Decision	Split decision Grant and Refusal of Permission
Type of Appeal	First Party
Appellants	EHD Ltd.
Observer(s)	1) Lucy Fenton and 2) Nuala Moore
Date of Site Inspection	8 th July 2022.
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. This appeal relates to a two-storey 3 bay mid-terraced property on the northern side of Strand Street in the centre of Dingle town. It is a Protected Structure.
- 1.2. The site rises from the street towards the rear and is deep with dimensions of approximately 10m – 11m in width and 62m in depth. It is flanked by commercial properties each side as presented at ground level onto the street and is otherwise surrounded by a mix of residential and commercial uses. A stable entrance (excluded from the site) provides side access from the street to the rear of the premises. It is adjoined to the rear by a gated residential development Farrankilla (marked as Fearann na Cille/Barra Na Coille on maps) accessed off Green Street. There is also a residential lane to the west accessed off the main Strand street thoroughfare. This is referred to as the Colony.
- 1.3. The façade of the premises includes a pair of tripartite windows - one of which is now incorporated with the entrance into a new traditional style shopfront. The sash windows at upper floor level are also new. Other elements include the painted façade, mounted streetlight and a traditional style painted fascia sign.
- 1.4. The premises are occupied by a licensed bar at ground floor level which extends deep into the site by virtue of an extension to the rear (subject of retention). The internal layout comprises a series of original rooms – the bar and lounge areas to the front and ancillary areas including toilets and cold store to the rear. The lounge area is the subject of retention. The upper floor area is marked as storage in the plans and was previously residential together with the ground floor room - the subject of retention.
- 1.5. The external area is terraced with a series of paved areas of over 200 sq.m. in addition to the stable entrance/passageway and these areas are furnished with tables with umbrellas and chairs and also include timber booths with roofs. There is a fenced off lawn to the rear of the site that is otherwise enclosed by high boundary walls. At time of inspection at around lunch time there were very few people on the premises and there was amplified music audible from the street which appeared to be emanating from the premises. There was a 'sandwich' board sign at the street entrance stating 'live music 7-9ish'.

2.0 Proposed Development

2.1. The application involves permission for the retention of:

- Change of use of living accommodation at ground level to use as a public bar and to retain modifications to development previously granted permission under PA Ref 16/998 (ABP ref.248140) including a single storey extension to the rear (consisting of toilets and cold room) to the existing public bar known as Bob Griffins Bar with associated signage and site works.
- Ground floor extension 59.6 sq.m
- Ground floor retention of change of use 19.4 sq.m.
- Paved seating area and open serving area to the rear of the premises
 - Level 1 - 84 sq.m. with customer seating including 3 seating booths and external serving area
 - Level 2 - 68 sq.m. with customer seating including 3 seating booths cooking unit and storage
 - Level 3 - 60 sq.m. with customer seating
- Garden area to the rear
- Layout shows entrance lobby from the paved area 1 via the original rear wall of the premises.

2.2. The plans and particulars were submitted on 07/07/21, 24/08/21, 13/10/21, 22/10/21 and 29/10/21. Drawings dated 24th September 2021 shows plans and elevation of seating and other structures to the rear and amended layout out plan shows various structures as grouped into units generally and marked as units A- G. These are described in the cover later submitted on 13th October. Other details relate to noise, fire safety and public notices.

2.3. Details also include a detailed Historic Architectural Assessment Report prepared by Laurence Dunne. This updates the previous report by a de facto account of the actual works. Impacts of works are summarised and described:

- Front replaced with twin-leaved door set – positive impact.
- Cast-iron downpipe retained but not yet prepared and modern one also retained not yet replaced – benign impact.
- Exterior render not yet replaced with lime render – benign impact.

- Ground floor display windows retained – positive impact.
- First floor windows replaced with matching copies – negative impact .
- ESB Wall light retained - benign impact.
- Introduction of shopfront – low to medium.
- Retention of porch at ground level – positive impact.
- Bar layout retained and internal layout reflecting the domestic scale – positive impact.
- Alteration to original stairs - low impact.
- Blocking up of window in stairs - reversible and low impact.
- Render not replaced as part of protection of building fabric – no removal of render -benign impact.
- Internal wainscotting has been substantially retained – positive impact.
- Concrete floor retained – positive impact
- Alteration to opening in north wall has not occurred – positive impact.
- Retention of 1940s fireplace and replacement of cast iron fireplace – benign impact.
- No works have been carried out to layout or roof light and is substantially positive although skylight works are urgent.
- No construction of any kind has occurred at second floor - internal light wood partitions have been removed creating an open attic space as was likely to have been the original layout. No external intervention as no extension – positive impact.
- Overall the original ground floor layout has been retained in line with original layout and the absence of the three-storey extension is positive in terms of protecting the character.
- Condition 9b was adhered to in terms of supervision and retaining the maximum amount of original fabric.
- No RIAI registered conservation architect was hired to oversee works.
- All five windows replaced with modern copies.
- Overall the ground floor extension and refurbishment has made a positive impact.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Kerry County Council by order dated 24th November 2021 decided to

- **GRANT** permission for the change of use and modifications to previous permission subject to 6 conditions.
 - In accordance with plans as amended.
 - Section 48 contribution
 - Restriction of exempted signage/advertising etc.
 - Submission of weathering details for external walls
 - Noise limits (levels and hours)
 - Waste storage
- **REFUSE** permission following retention of the paved seating area to the area for the stated reason:
 - The proposed development would seriously injure the residential amenities and depreciate the value of residential properties in the vicinity due to the noise and disturbance generated. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report: Objections are noted as are the contents of the technical reports. which includes a request for further information, the submission of further information as requested by order on in respect of:

- Outdoor seating
- Open hours particularly for outdoor area
- Noise – compliance with condition 8 of ABP decision
- Commencement notice and adherence to Building Control Regulations

A 2-month deadline is given to the applicant for response having regard to previous lack of responses in previous applications

3.2.2. On review of the further information the report acknowledges the response including the statements regarding, the adherence to alcohol licensing laws and 8.30pm limit on food serving only, non-compliance with noise levels set by the Board's previous permission and the proposed measures for noise mitigation.

3.2.3. The report also notes an extensive list of third-party comments on the further information and concludes that the application is for a development that bears no relation to that permitted and that the works are not compliant with conditions regarding the rear area, waste management, noise control, conservation and payment of financial contributions. While acknowledging the location of the site in the town centre of Dingle, the immediate area is also noted for comprising a high level of long-established residential development. It is concluded that 'the use of the paved area to the rear of the site as an outdoor customer area, particularly late at night, has severely impacted on local residents due to noise pollution and disturbance over a sustained period. A recommendation to refuse retention of this outdoor paved area is recommended in the interest of neighbouring residential amenities.'

3.2.4. Other Technical Reports

- Environment: Refusal recommended for retention of paved seating and serving area. The report states that in response to numerous complaints, the environment department commissioned a noise report and that the consultant's report concluded that significant noise nuisance is generated by the beer garden/outdoor serving area. Accordingly due to the unacceptable risk of noise nuisance and significant interference with use and enjoyment of residential properties, refusal is recommended.
Conditions for other elements attached.
- Conservation officer: (19/8/21). The report refers to the previous requirements as part of a permission for the previously permitted proposal . This included:
 - retention of windows, fireplaces, cast iron guttering, wainscoting, stairs and lath and plaster ceilings.
 - recording of porch, and
 - construction methodology to include reuse of slate, use of breathable membrane and specifically excludes, double glazing, artificial slate, sand

and cement render and requires a lime render using NHL 3.5 or similarly approved.

In this light, the loss of such fabric is regretted, particularly the windows and fireplaces. It is further highlighted that there is concern about the building due to further damage due to lack of maintenance and care. Notwithstanding the concerns, the submitted report is considered to be a reasonable attempt at addressing outstanding issues. The matter of weathering is accordingly recommended to be addressed in a condition –

The developer shall submit proposals for weathering work within 8 weeks from the date of decision. Works to be supervised by a conservation professional and report authorising that said work are carried out in accordance. Reason: to protect the fabric of the protected structure.

- County archaeologist: No mitigation required.
- CFO: Evidence of regularisation with building regulation required prior to planning permission.

3.3. Prescribed Bodies

Irish Water: no objections subject to conditions.

TII: 28/7/01: no observations to make.

3.4. Third Party Observations

- 3.4.1. A large number of objections were lodged by the neighbouring residents: Issues relate mainly to significant loss of amenity due to noise and disturbance associated with the late night use of the external area of the extended public premises. The disturbances - being generated by patrons - are anti-social and exacerbated by scale, acoustics, hours, late-night music and extensive outdoor seating and serving.

4.0 Planning History

4.1. ABP ref 248170

- 4.1.1. This case (file attached) refers to permission for renovation and extension of public bar (Protected Structure). This was not fully implemented. In this case the conservation officer accepted the two-storey extension primarily on the basis of retention of original roof structure and substantial retention of rear wall.
- 4.1.2. The FI plans show a ground floor extension of 194 sq.m with a total proposed area of 266 sq.m.

Area sq.m.	Existing	Proposed	Total
Ground	48	194	266
first	48	104	152
second	28	88	116

- 4.1.3. The layout provides for an open plan bar area at ground floor level of the original premises and includes seating and interconnection with an extended dining area. Kitchen and toilets are in the middle and staff and ancillary storage are to the rear. The footprint extends deeply into the site with a passage to the side and small area to the rear. The first floor provided tea rooms/public floor area in the original area and toilets and a staff area in the new extension. The second level has a small attic store and an apartment was part of the new build.
- 4.1.4. Condition 8 restricted noises levels to 55dB(A) at the nearest noise sensitive location and required procedures for the purposes of determining compliance with this limit which shall be submitted to and agreed in writing with the planning authority. No evidence of compliance with this condition prior to commencement notice.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. **Kerry County Development Plan 2022-2028** is the operative development plan. The Kerry County Development Plan 2015-2021 remained in place until 28th November 2022.
- 5.1.2. Urban regeneration and compact growth objectives:

- KCDP 4-1 Support and facilitate the objectives and actions in Housing for All (HfA) to regenerate towns and villages, to tackle dereliction, vacancy, to deliver site assembly opportunities and to promote the sustainable development of land to achieve compact growth and increased population in these centres and to engage with the Land Development Agency (LDA), where appropriate, in the identification, planning and co-ordination of strategic, publicly owned land banks to achieve compact growth, sustainable development, and urban regeneration.
- KCDP 4-2 Facilitate and support the sustainable development of towns and villages of sufficient scale and quality to be drivers of growth, investment, and prosperity.
- KCDP 4-3 Preserve the architectural heritage of towns and villages and promote conservation-led regeneration and the re-use of buildings where possible

5.1.3. Shopfront:

- KCDP 4-24 Ensure that traditional shopfronts and signage are retained and that works to existing shopfronts, new shopfronts and streetscape developments are in accordance with Kerry County Council's Shopfront Design Guide 2018 and are of a high-quality architectural design and finish

5.1.4. Chapter 8 sets out policy and objectives for built architectural heritage.

- KCDP 8-40 Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting including designed landscape features and views, is compatible with the special character of that structure.
- KCDP 8-44 Ensure developments in an ACA have a positive impact on the intrinsic character of the area, respect the existing streetscape and layout, and are compatible in terms of design, materials, traffic, views, and intensity of site use.

5.2. Corca Dhuibhne Electoral Area Local Area Plan 2021-2027

5.2.1. The site is zoned town centre in this plan and also abuts a residential zone. The following vision, policies and objectives are pertinent to the issues.

5.2.2. Central to this plan is a hierarchy of settlements of which Dingle is the principal town. A strategic aim in section 2.1.3 is the reinforcement of the social and economic

strength of the area by building critical mass of population and jobs in the designated towns and villages. It also seeks *inter alia*, the provision of opportunities for residential development to cater for all sectoral demands in the settlements through the development of healthy built environments and neighbourhoods.

5.2.3. Renewal and regeneration objective:

- RR01 Encourage the development and renewal of areas, identified in Local Area Plan, having regard to the Core Strategy, that are in need of regeneration, in order to prevent adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land ii. Urban blight and decay iii. Anti-social behaviour or iv. A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

5.2.4. Brownfield Development objectives:

- BD-01 Promote the development and employment potential of brownfield sites and their potential to contribute to a more sustainable pattern of development.
- BD-02 Require at least 30% of new housing development to be delivered within the existing built up areas of Dingle and Milltown on infill and or brownfield sites.

5.2.5. Dingle / Daingean Uí Chúis is itself an internationally renowned tourist destination offering attractions for domestic and international visitors and is well positioned to contribute to overall ambitions and targets for the tourism sector over the next ten years.

5.2.6. Town centre: (section 3.2.5.3) In order to maintain a vibrant town centre it is essential that the level of retail provision in the town centre is maintained and enhanced. The historic built fabric character of Dingle / Daingean Uí Chúis including its shopfronts also create a unique traditional streetscape and ambience. It is important therefore to ensure that new development enhances the existing streetscapes and that existing landmark buildings are maintained to the highest standards. It is essential that a balance is maintained between residential and commercial uses within the town centre. It is the policy of the Council to protect existing and encourage additional residential uses and areas within the town centre in order to maintain vibrant local neighbourhoods.

- 5.2.7. Objectives D-TC-1 to 8 inclusive seek to promote balanced development, protect the character and upper floor use and maintain the vitality and viability of the retail core. Objective D-TC-8 aims to ‘ Protect the residential uses/ neighbourhoods in the town centre’
- 5.2.8. Tourism objectives are set out in section 3.2.5.5 with an emphasis on diversification and year-round facilities. The plan encourages the sustainable improvement of existing and new recreational facilities at appropriate locations which would focus on particular strengths of the town, e.g. water activity, sailing, canoeing, sea angling/fishing etc, and as a base for walking/cycling and other similar activities.
- 5.2.9. The Plan refers to residential development trends and priorities . Obj D-Res-3 seeks to ‘Ensure that future residential development is only permitted on appropriately zoned land to ensure a sustainable and compact urban form.’
- 5.2.10. The Colony /laneway to the west is included in the Laneway Housing Protection Areas and Regeneration Areas (Map 1)

5.3. Architectural Heritage Protection – Guidelines for planning authorities, 2011

- 5.3.1. These guidelines are relevant to the context of a protected Structure on site and its retention and refurbishment.

5.4. National Planning Framework (February 2018),

- 5.4.1. This framework plan supports a strategy of carefully managing the sustainable growth of compact cities, towns and villages in a manner that will add value and create more attractive places in which people can live and work.

5.5. Natural Heritage Designations

- 5.6. The nearest sites are Mount Brandon SAC 000375 to the north of the town at a distance of 700m and Dingle Peninsula SPA 004153 to the south of the harbour at a distance of around 2.2km.

5.7. EIA Screening

- 5.7.1. The proposed development is a small-scale urban development. Having regard to the nature of the development, which is a single storey extension and refurbishment works, the absence of features of ecological importance within the site, I consider that the necessity for submission of an EIAR and carrying out of EIA can be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A first-party appeal has been lodged by Hughes Planning Consultants on behalf of the applicant against the decision to refuse permission. The grounds are based on a number grounds by reference to following background:

- Established public house use since 1937. Since that time the town has become a major tourist attraction and the beer garden is wholly consistent with the character of the town where there are food, bar and extensive on-street hospitality facilities. This supported by the pedestrianisation in the core area in parts during high season. The pub use contributes to tourism which plays a crucial role in the livelihoods of the residents in the area.
- The inspector's report (section 8.4.3) in the previous permission is cited, wherein it was recommended that the rear garden not be used as a beer garden and conditioned accordingly. This is similarly recommended with the added benefit of noise mitigation in the form of a barrier.
- It is a more efficient use of the site.
- The outdoor use is more prudent in line with government encouragement of outdoor gatherings over the past few years.
- The applicant was refused an on-street furniture licence on basis of outdoor dining facilities already provided within the site.

- 6.1.2. In summary:

- The proposal incorporates noise mitigation: The Appeal is accompanied by a Noise Monitoring report prepared by Dakton Acoustics Ltd. This includes

mitigation measures including a partial height acoustic barrier at the rear of the beer garden. This would also visually block views of noise sensitive properties

- The beer garden is appropriate to the tourist nature of Dingle.
- The use complies with the development plan in terms of town centre zoning and objectives for the town.
- There are precedents of other beer gardens in the area and in the country which are adjacent to established residential areas.

6.2. Third Party Observation

6.2.1. Nuala Moore of Strand Street, as one of and on behalf of residents in the oldest residential area in the town, requests that the decision to refuse permission is upheld. It is explained that the use of the premises incorporating a beer garden has made their lives a 'living hell' since 2019. It is emphasised that the residents in close proximity have always happily co-existed with public houses until the unauthorised activities at the subject site. There are a lot of residents in close proximity including family homes with children in nos. 24, 25 and 26 - close to the back wall. Since this time the peaceful and tranquil area has been under attack. The submission was prepared with Professor John Fenton and undersigned by seven other residents. Additional submissions are appended. The points made against the outdoor use centre on:

- Scale of a 400sq.m. beer garden: It is not appropriate for a residential area having regard to nature of parties (stag hen, etc) and potential 2am finish.
- Farrenkilla is not short terms lets – it has long-term family homes.
- The outdoor use is a new and alien situation foisted upon residents.
- Noise and impacts on Health and safety and amenity: The formal monitoring by Kerry County Council indicated severity of noise pollution (over 60db beyond midnight) which is aggravated by topography/walls (amphitheatre effect) , anti-social behaviour (drunken patrons climbing over wall e.g. when not permitted in front), and sustained use – 7 nights a week for months. The scale and associated crowds and congregation presents safety issues along the street not helped by lack of management. Residents have to patrol around 1a.m. (Photographs attached pages 5, 7 and 8)

- The disturbances (characterised as singing, screeching, shouting, amplified music and sports over prolonged periods with associated sleep deprivation) together with outdoor spot lighting and verbal abuse are traumatic and have necessitated garda assistance at times.
- Residents have been ridiculed when opening windows and have been restricted in the use and enjoyment of their homes.
- The premises is advertised as an event venue – e.g. for weddings, stags, hens and other party uses which is not compatible with the sustained protection of residential amenity.
- The toilet facilities are insufficient for the crowds accommodated by the beer garden.
- The grass area is/has been used.
- The refusal of street licence is not grounds to use this area as claimed by the applicant.
- The noise condition in the previous permission is made out by the applicant to not be directly applicable as that related to ‘breakout noise’ and this is a completely different business. This is disputed. The current proposed is for a large outdoor serving area with live music close to windows as compared to the previous enclosed premises with a residual external area including a smoking area of 55 sq.. to the side/front and a small herb garden to the rear.
- Absence of meaningful engagement with residents.
- There have been no meaningful noise mitigation measures.
- It is pointed out that the noise monitoring by the applicant was conducted in an environment not typical of operations. E.g. There was no live band and patrons were not allowed on grass. (Table tops removed but table legs remained). Other methodological/background information is questioned. E.g. hours of noise in Table 4 of CLV Consulting report recorded at 59-63DB was after a Kerry -Tyrone match over 3 hours before 6pm.
- The cladded wall to mitigate noise is not accepted as is it is the source of noise that needs to be addressed.
- Disputes dining need when they have no restaurant license.
- Amphitheatre effect due to height difference. Sound level not consistent with safe living standards majority of houses in the colony are within 20m.

- While the noise condition may be onerous on the applicant , the noise generation is more onerous on residents.
- The noise needs to be managed by controlling numbers of patrons and setting live music limits.
- Breach of conditions 2 and 8
- The noise management is only now being addressed by a noise management plan but this is while there continues to be disregard to impact on residents by way of continued noise from the outdoor entertainment venue.
- A table on Pages 17-19 summarises the sources of likely noise by area and actual use and its impact.
- The noise report fails in many respects to address many on going issues relating to nature and extent of use and its impact on residents. Information does not fully reflect capacity for patrons with numbers of up to 500 or even 900 depending if grass area used. The serving area is parallel to a residential area.
- The area is proximate to a protected housing area -populated laneway to west.
- Other health issues raised – hearing loss, stress and physiological responses.
- Elderly resident in one of 23 apartments cannot sleep a night due to disturbance with crowds of drink-filled patrons pouring out onto the street at all hours

6.2.2. Lucy Fenton of Farranakilla (north boundary) which shares its boundary with the subject site.

6.2.3. Further beer garden development is not a solution.

6.2.4. The premises originally had capacity for about 10 people in one room and the owner slept in the other grounds floor room . the back of the premises was never used for patrons and was a garden, vegetable patch and area with sheds for storing fishing equipment. Prior to this some animals were housed.

6.2.5. The property was vacant for around 20 years before being sold in 2015 to the current owner. It is necessarily established. The beer garden is a new addition and has contributed to real health risk in a part of the town known for peace and tranquillity. It is not consistent with character the town as suggested in the appeal.

6.3. **Planning Authority Response**

6.3.1. No specific comment on appeal grounds .

7.0 **Assessment**

7.1. **Issues**

7.1.1. In this case the planning authority issued a split decision and it is only the decision to refuse part of the development that is under appeal. Having read the contents of the file and inspected the site, the issue under dispute centres on the nature and extent of the external seating and serving which was refused permission. I consider the key issues relate to:

- Principle – having regard to town centre zoning and conservation issues
- Impact on residential amenity

Appropriate Assessment is also a mandatory consideration.

7.1.2. In consideration of these issues I consider the totality of the development warrants assessment.

7.3 **Principle**

7.1.3. The proposal seeks to regularise unauthorised development as a consequence of a significant and material departure from permitted plans for the extensive expansion of a modest public house. The site is located in the town centre zone of Dingle and the expansion of public house in principle is generally acceptable. The nature of the development has also been influenced by the character of the premises being a Protected Structure in need of refurbishment. While the grounds of appeal relate specifically to the refusal of the outdoor area – beer garden, I consider the wider context of the overall approach and conservation issues as well as zoning are considerations in the assessment of the issues relating to the outdoor area.

7.1.4. In this case the site bounds a residential zone in addition to being in close proximity to a protected housing area, (The Colony off Strand Street to the west,) in addition to the residential development integrated into an established mix of uses in this finely grained setting. Accordingly the principle of expansion and intensification of an entertainment facility is moderated by the need to protect residential uses in the area in line with the land use objective and settlement strategy for the town and

county. Accordingly, I do not accept that the town centre objectives supporting commercial development, whether as part of the tourism offer or as part of the general economic expansion of the town, automatically predisposes the site to provision of significant intensification of entertainment facilities and particularly that of a materially different nature than exists and its capacity for large crowds. I refer in particular to the externalising of the licensed activities of the public house premises (with the indoor area being effectively ancillary) and the associated activities such as live music, televised events and amplification of entertainment together with the use of the external area extended to over 200sq.m. This is a considerable expansion of the public serving /seating area and its use as compared to the original internal 25 sq.m. bar area. The impacts are considered in more detail in section 7.2.

- 7.1.5. In the previous case before the Board, the layout was such that provided for expansion and refurbishment of the premises in a manner that contained the public serving and congregation areas within an enclosed premises. The internal layout buffered the public indoor serving areas by way of positioning of ancillary and staff areas. The garden area - a herb garden, to the rear was specifically excluded as a public area in the conditions of permission . The residential amenities were further protected by the noise control condition. The external area was primarily a side passage with provision as per drawings for a single table and chairs near the street and is not what I would consider a 55 sq.m. public area for the congregation of patrons. The development also contained a residential element providing some passive supervision on site. As part of this scheme however, more intervention with the original fabric was proposed, e.g., loss of part of the original back wall, internal partitions and the scale of new build although impacts on architectural heritage were mitigated with a list of conditions set by the conservation officer.
- 7.1.6. In this case, it is argued that it is a smaller less intrusive extension, however it is quite different in terms of scale and nature of use and compatibility with the surrounding residential development . It is effectively proposed to externalise the public serving area while making the case, in part, that the character of the Protected Structure is being retained to a greater degree. This is based on the reduction in the scale of the extension and the retention of the internal layout. The conservation officer however points out that for the most part, the features stipulated for protection were not adhered to and the building is to some extent vulnerable due to roof

condition and damp penetration and that the weathering and rendering needs to be appropriately addressed e.g. applying a lime render rather than sand and cement render. Accordingly from the examination of the previous proposal and the as constructed development there would appear to be a retrograde step in terms of both conservation and protection of amenity .

- 7.1.7. In terms of the change of use of the 19sq.m. I see no issue with this and note the retention of key features. However, in terms of respecting the unique traditional streetscape and ambiance, I consider permission for the change of use and alteration to the protected structure should be contingent on protecting the character of the facade. I note the content of the Architectural Impact report as summarised in section 2 of this report and concur generally with the nature and degree of impacts in its conclusions.
- 7.1.8. I note the reservation of the conservation planner of the planning authority regarding loss of fireplace and windows as part of the original fabric but the overall satisfaction of the approach going forward. In terms of the facade I consider the replacement windows which maintain the slender profiling of vertical dividing glazing bars in the replicated timber sash windows to be in keeping with the character of the building and the wider streetscape. (They appear visually to be comparatively of a high standard.) The replacement windows also offer an opportunity to fit slim fit double glazing particularly to the rear to mitigate noise if so required (and thereby accommodate a mix of uses side-by-side in the town centre). I concur generally with the conditions such as ensuring appropriate materials in the rendering and weathering of the building. I refer to condition 4 regarding submissions for proposals for ‘the weathering of external walls of the Protected Structure and shall carry out the approved weathering work within 8 weeks from the date of this decision... works shall be supervised by a Conservation Professional and a report on the weathering works shall be submitted to the Planning authority on completion.’ Condition 3 also restricts signage and otherwise normally exempted development associated with advertising the premises. However, I consider the introduction of the shopfront with pilasters and fascia framing one of the pair of windows and the central door jars with the symmetry of the 3-bay elevation. It also departs from the simplicity of the plain painted sign over the door and in this way detracts from the original and unique character of the street. While it is a reversible intervention, I consider that this should

be removed in the event of any permission for retention of other the elements so as to protect the unique character of the building and streetscape at this location.

- 7.1.9. I also note that the upper floor is retained as a series of storage areas rather than the previously permitted tea rooms/public serving area which I consider would be preferable in terms of containing the licensed use and confining it to the street frontage where ambient noise can more readily absorb an increased public area and its intensification of use in the evenings.

7.2. Protection of amenity

- 7.2.1. In this case the external public serving area amounts to 212sq.m. as quantified in the submitted drawings and excludes the stable entrance where there were also tables and chairs observation during my site inspection. An additional table and chairs were also on the street at this time. The paved areas accessible to the public effectively extend from the street to within 18- 20m of the rear boundary and provide what I would consider a disproportionately greater serving area than the internal area (including that which is to be retained). It is not what I would describe as ancillary or incidental to the public house activities. The layout of the extension, crowd capacity and access arrangements combine to further intensify the use of the outdoor area to the rear where there is little buffering from the surrounding residential development. I refer to the large lobby and double door entrance in the original rear wall and the side entrance door to the toilet area from the paved areas. The use of covered booths and extensive seating with umbrellas and general arrangement clearly provides for extended duration of occupancy of this area. The worn floor into the toilets clearly indicates the movement of patrons and their concentration outside to the side and rear of the premises. The external serving area (with no internal access) and covered booths clearly indicates that the area is comprehensively designed to provide a large area for a large volume of patrons independent of the internal public area that is accessed directly off the street. The majority of patrons would appear to access the public bar via the stable entrance and be served and entertained in the outdoor area.
- 7.2.2. The report from the Environment Division clearly summarises the issues relating to the unacceptable level of noise (as supported in the noise assessment report) and

disturbance consequent on the continued use of the external area as a licensed premises with its considerable capacity to accommodate large crowds while serving alcohol and providing entertainment into the evening hours. The submissions on file provide further evidence of the nature and degree of disturbance and what amounts to an incompatibility of the use with the surrounding residential environs.

- 7.2.3. In the Noise Emission Impact assessment – an extract of which is appended to the observing party's submission, the impact is quantified and described and acknowledged as causing both a significant and severe noise impact on occupants of the adjacent dwellings.

'The measurements that were conducted during a typical weekend evening/night of beer garden operation confirmed that noise emission levels in the vicinity of Nuala Moore's dwelling's back garden boundary were of the order of 59-68d (B) L_{Aeq}. These noise levels are significantly above both the developments planning permission criteria (even without applying corrections for the impulsive nature of the noise) as well as all applicable best practice published guidance. Sudden impulsive maximum noise levels of the order of 87dB L_{Amax} (mostly due to yelling from beer garden patrons) would not only be considered extremely excessive by any applicable noise emission guidance for residential dwellings but are also high enough to induce a startle response in dwelling occupants. It is acknowledged that noise levels would be higher using the northern portion of the garden and if patrons used blue tooth speakers.'

- 7.2.4. The applicant proposes a noise mitigation in the form of a barrier wall between the paved area and grassed area. I consider more fundamental measures to control the noise at source is required. I would also have concerns about the implications of this layout for the use of the garden area to the rear of the suggested wall. It is likely to become an unsupervised wasteland and the source of anti-social behaviour. There is a fundamental design and layout issue with this proposed approach.
- 7.2.5. While I note other beer gardens referenced by the applicant in the town and elsewhere, I consider the merits of this case stand alone and there is no reasonable case to support the proposal in the interest of proper planning and sustainable development.

- 7.2.6. Noting the considerable level of disturbance and injury to residential amenity the proposal ultimately serves to undermine the objectives of the local area plan as mandated in the National Planning Framework to provide healthy living urban areas as also advocated in the Dingle LAP which specifically delineates town centre housing for protection in the vicinity of the site. The implementation of this is a challenge when considered against the backdrop of the degree of housing outside the urban areas. I refer for to section 3.3.1 of the CDP which highlights concerns about the urbanisation trends which I consider underlines the need for vigilant protection of urban environments. I say this with reference to the spatial and social trend that '59% of housing has taken place outside of the County's urban areas including small Towns and Villages and consist of private housing. By comparison, a significant portion of the development undertaken within the county's towns and villages comprises social housing.'
- 7.2.7. Accordingly I consider the decision to refuse permission of the external seating and serving area should be upheld on grounds of protection of residential amenity and that it would retention would inherently conflict with the proper planning and sustainable development of Dingle town and its environs.
- 7.2.8. With respect to the noise condition attached in the previous case I consider the nature of the proposal now before the Board in terms of the enclosed space is quite different such as it being a lesser internal floor area with reduced public space and at an increased distance from the neighbouring resident. The scale, intensity and capacity for events is also reduced . Having regard to this I consider the noise restriction could be relaxed to 2200 hours at weekends subject to conditions.

7.5 Appropriate Assessment

- 7.2.9. Having regard to the nature and scale of the proposed development for retention of and that it is considerably smaller in scale than that previously permitted and also noting the serviced nature of the site and its separation from the nearest European site, that no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

GRANT permission for the retention of the change of use within the premises and extension to the rear in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below.

REFUSE permission for the retention of the outdoor beer garden and serving area and associated works and structures based on the following reasons and considerations marked (2) under.

Reasons and Considerations (1)

Having regard to the town centre zoning objective for the site, the pattern of development along Strand Street and the scale, nature and design of the development to be retained, it is considered that, subject to compliance with the conditions set out below, the development to be retained within the existing premises and as extended by the ground floor development would be acceptable in terms of scale and design and would not seriously amenities of the area or of preparty in the vicinity and would be acceptable in terms of protecting the architectural integrity of the protected structure on site. The development to be retained would therefore be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be retained in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars lodged with the planning authority on 20th day of August 2021 and on 13th, 22nd and 29th days of October 2021, 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 and the development shall be retained and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The following alterations shall be carried out within 3 months of the date of the final grant of permission and as constructed drawings and details shall be lodged with the planning authority within 6 months of this grant.
 - (a) The partially enclosed serving area to the rear of the ladies WC as indicated on the submitted layout plans shall be removed together with its roof and the remaining roof over the extension to be retained shall be made good and match in materials and finish.
 - (b) The side door in the rear elevation shall be permanently closed and not used for public access.
 - (c) The new timber shop front elevation shall be removed and the façade signage shall be reinstated over the entrance door as illustrated in the elevation details in drawing 07-0210J041-002, dated 02-07-2021.

Reason: In the interests of the proper planning and sustainable development of the area.

3. The main public entrance shall be from the main street (the original entrance) and the rear entrance shall be for ancillary staff use and fire safety only.

Reason: To ensure that the integrity of the retained protected structure is maintained.

4. The developer shall submit proposal for the weathering of external walls of the Protected Structure together with a timeframe for these works. All work shall be completed in accordance with a written agreement of the Planning authority and an agreed schedule with the planning authority. All works shall be completed within 10 months of the final grant of permission unless otherwise agreed in writing with the planning authority.

Reason: To ensure that the integrity of the retained structure is maintained and that the structure is protected from unnecessary damage or loss of fabric.

5. (a) A conservation expert shall be employed to manage, monitor and implement the works on site and to ensure adequate protection of the retained and historic fabric during the works. In this regard all permitted works shall be designed to cause minimum interference to the retained building and facades of the structure or its fabric.

(b) All repair and reinstatement works to the protected structure shall be carried out in accordance with best conservation practice

Reason: To ensure that the integrity of the retained structures is maintained and that the structure is protected from unnecessary damage or loss of fabric.

6. (a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 0800 to 2000 hours Sunday through to Thursday and 0800 to 2200 Friday, Saturday and days before Bank Holidays and by more than 1dB(A) at any other time when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeqT.

(b) The octave band centre frequencies of noise emission at 63 Hz and at 125 Hz shall be subject to the same locational and decibel exceedance criteria in relation background noise levels as set out in (a) above. The background noise level shall be measured at LAeqT.

(c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating either,

(i) during a temporary shutdown of the specific noise source, or

(ii) during a period immediately before or after the specific noise source operated.

(d) When measuring the specific noise, the time, (T) shall be any five minute period during which the sound emission from the premises is at its maximum level.

(e) Any measuring instrument shall be precision grade.

Detailed plans and particulars indicating the sound proofing or other measures to ensure compliance with this condition shall be submitted to an agreed in writing with the planning authority prior to commencement of development. An acoustical analysis shall be included in with this submission to the planning authority.

Reason In order to protect the amenities of residential property in the vicinity having particular regard to the guidance potential of low frequency sound emission during the night-time hours.

7. Notwithstanding the exempted development provision of the Planning and Development Regulations, 2001 or any statutory provision amending or replacing them, any advertising signs, symbols, emblems, flags, nameplates, canopies or other advertising devices visible from the street shall be the subject of a separate application for permission to the planning authority.

Reason: To enable the planning authority to assess the impacts of any such changes on the character of the protected structure and the visual amenities of the streetscape.

8. Receptacles for waste shall be provided and available for use at all times on the premises in accordance with details which shall be submitted to and agreed in writing with the planning authority within 3 months of the date of the final grant of permission.

Reason: To provide for a satisfactory standard of development.

9. Landscaping of the site shall be carried out in accordance with a landscaping scheme which shall be submitted to and agreed in writing with the planning authority prior to its commencement. All works shall be completed within 12 months of the date of the final grant of permission.

Reason: To ensure the protection of the hedgerow habitat and in the interest of visual amenity.

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

I recommend that permission be refused based on the following reasons and considerations.

Reasons and Considerations (2)

The proposed development would seriously injure the residential amenities and depreciate the value of residential properties in the vicinity due to the noise and disturbance generated. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Suzanne Kehely

Senior Planning Inspector

14th December 2022