



An
Bord
Pleanála

Inspector's Report ABP-312319-21

Development

Retention of change of use from car parking spaces to outdoor seating and dining area; erection of glazed windbreak around seating area; the erection of pergola type structure; change of use from car park to outdoor seating and dining area; erection of further pergola-type structure; the provision of two modified shipping containers, the provision of an outdoor seating and dining area, and the change of use from car parking spaces to a garden centre and erection of a garden centre office building, and all ancillary site works.

Location

Uncle Toms Cabin, Dundrum Road,
Dundrum, Dublin 14, D14 W895

Planning Authority

Dun Laoghaire Rathdown County
Council

Planning Authority Reg. Ref.

D21A/0866

Applicant(s)

UTC Developments

Type of Application

Retention Permission

Planning Authority Decision

Spilt Decision

Type of Appeal

First Party Appeal

Appellant(s)

UTC Developments

Observer(s)

Claire Coleman

Mary and Brian Duncan, and Naomi
and Kieran FitzGerald

Date of Site Inspection

28th June 2022

Inspector

Susan Clarke

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	5
3.3. Prescribed Bodies	6
3.4. Third Party Observations	6
4.0 Planning History.....	6
5.0 Policy Context.....	6
6.0 The Appeal	12
6.1. First-Party Appeal	12
6.2. Planning Authority Response.....	13
6.3. Observations	13
6.4. Further Responses.....	16
7.0 Assessment.....	16
8.0 Recommendation.....	21
9.0 Conditions.....	23

1.0 Site Location and Description

1.1. The site (measuring 0.28ha) is located at Uncle Tom's Cabin, Dundrum, Dublin 14, north of Dundrum Village. The site is located on the western side of Dundrum Road and comprises a public house, associated outbuilding and a large surface car park. I understand that the premises has been operating as a public house since 1890. The site backs onto the Dundrum Slang to the rear, with the Green Luas Line beyond. Rosemount Terrace, a terrace of single storey period dwellings fronting onto Dundrum Road, is located immediately northeast of the site. The topography of the site falls steeply from east (front) to west (rear).

2.0 Proposed Development

2.1. The proposed development consist of retention for the following:

- The change of use of lands to the front of premises from car parking to an outdoor seating and dining area;
- The erection of a glazed windbreak around the outdoor seating and dining area to the front of the premises;
- The erection of a pergola type structure on the south-eastern side portion of the carpark adjacent to the entrance from Dundrum Road;
- The change of use of lands to the north and east of the premises from car parking to outdoor seating and dining area;
- The erection of a pergola type structure with tables and chairs to the rear of the premises next to the car park;
- The provision of two shipping containers for the preparation of food;
- The provision of a food & beverage kiosk to the front of the premises;
- The provision of outdoor seating and dining area on lands to the southeast of the premises and next to the boundary wall between the public house and Advance Pitstop;
- The change of use of lands to the north of the site from car parking spaces to a garden centre; and

- The erection of a garden centre office building (11 sq m).

3.0 Planning Authority Decision

3.1. Decision

The Local Authority issued a split decision on 24th November 2021 in respect of the proposed development, granting retention permission for the café kiosk, the outdoor seating and dining area and associated glazed windbreak fronting Dundrum Road and the pergola type structure on the south-eastern side of the carpark adjacent to the entrance from Dundrum Road (subject to four conditions), but refused retention permission for the outdoor seating areas (including associated picket fencing and planter boxes) and pergola to the rear of the site, provision of the two shipping containers, the change of use of the car park to garden centre and erection of a garden centre office building.

Condition No. 2 attached to the Notification states the works for which retention permission was not granted (as outlined above). Condition No. 3 limits the life of the permission for a two year period.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planning Officer considered that the proposed works to the front of the site (located outside Flood Zones A and B) were acceptable within the MTC zoning objective. It was concluded that a temporary permission would be more appropriate given the nature of the works. However, the Officer stated that the granting of works (even a temporary period to cater for the Covid-19 restrictions) would be unacceptable given the location of the balance of the proposed development within Flood Zone A and B, and due to the unresolved flood risk issues for Dundrum town centre. The Officer detailed that whilst the works could be considered acceptable in principle in land use planning terms, the proximity of the site to the Dundrum Slang and location within Flood Zone A and B completely restricts the type of development proposed and the development seeking retention permission would pose a significant risk in a flood event, contrary to Section 5.2.5 and Section 5.3.9 of Appendix 13 (Strategic Flood

Risk Assessment) of the Development Plan (2016-2022). The Planning Officer's report reflects the decision of the Planning Authority.

3.2.2. Other Technical Reports

Drainage Department: Recommends refusal on the grounds that part of the proposed development lies within zoned residential lands to the north of Dundrum Road/Taney Road Churchtown Road junction (Flood Zone A). As the flood risk issues for Dundrum town centre are unresolved, it was stated that the development is, as such, not in accordance with the 2016-2022 County Development Plan, particularly Appendix 13, and therefore it is recommended that the application be refused.

Transportation Planning: Recommends further information be requested in relation to car parking numbers and layout, cycle parking and shower facilities.

3.3. Prescribed Bodies

Irish Water: Request that the Applicant submit a Pre-connection Enquiry in order to determine the feasibility of connection to the public water/waste water infrastructure.

3.4. Third Party Observations

Two third-party Observations were made to the Local Authority in respect of the proposed development. The issues raised in the submissions are similar to those also raised in the Observations submitted to the Board and are summarised within Section 6.3 below.

4.0 Planning History

No records of previous planning applications relating to the site were identified.

5.0 Policy Context

5.1. Dun Laoghaire Rathdown County Development Plan, 2022-2028

- 5.1.1. Since the Local Authority issued a Notification of Decision to Grant Permission and Refuse Permission for the proposed development, a new development plan has been

prepared and adopted for the County. The applicable plan is the Dun Laoghaire Rathdown County Development Plan, 2022-2028.

Land Use Zoning

- 5.1.2. The site has a split zoning objective; the southern section is zoned Objective MTC with the aim *To protect, provide for and-or improve major town centre facilities*, while the larger northern section is zoned Objective A, which has the aim *To provide residential development and improve residential amenity while protecting the existing residential amenities*. Garden Centre/Plant Nursery, Public House, Restaurant and Tea Room/Café are listed as permitted in principle land uses under the MTC zoning objective. These land uses are listed as ‘open for consideration’ under zoning Objective A.
- 5.1.3. The southern section of the site is also located within the boundary of the future Dundrum Local Area Plan.
- 5.1.4. Section 13.1.2 of the Development Plan refers to Transitional Zone Areas and states *inter alia “it is important to avoid abrupt transitions in scale and use in the boundary areas of adjoining land use zones. In dealing with development proposals in these contiguous transitional zonal areas, it is necessary to avoid developments which would be detrimental to the amenities of the more environmentally sensitive zone. For instance, in zones abutting ‘residential areas’ or abutting residential development within mixed-use zones, particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of these residential properties”*.

Fast Food/Takeaways

- 5.1.5. Section 12.6.5 of the Development Plan outlines the policy context for fast food/takeaways:

The following criteria will be taken into account in the assessment of development proposals for fast food/takeaway outlets, including those with a drivethrough facility, and where relevant, for restaurants.

- The need to retain, protect and strengthen the retail overall variety, and multi-use function of the area.

- The adequacy of existing facilities for the sale of hot food for consumption off the premises in the locality. In this regard, the applicant shall submit details of all existing fast food/takeaway outlets within the locality.
- The cumulative effect of the proposed development on the amenities of the area, particularly so in predominantly residential zoned locales.
- The effect of the proposed development on the existing mix of land uses and activities in the area.
- Careful consideration of the location of fast food outlets in the vicinity of schools and parks.
- Location of vents and other external services and their impact on adjoining amenities in terms of noise/smell/visual impact.
- Fast food outlets/takeaways with proposed drive- through facilities will generally only be acceptable within Major Town Centres or District Centres and will be assessed on a case-by-case basis.
- The proliferation or oversupply of certain premises that cause or are likely to cause disturbance or nuisance, detract from amenities or seriously detract from an area generally in terms of use and services mix may be resisted.
- Hours of operation.

Flood Risk

- 5.1.6. A significant proportion of the site is identified as being located in Flood Zone A, while a smaller proportion is identified as being located in Flood Zone B, as per the Development Plan's Flood Zone Map. Section 10.7 of the Development Plan outlines the Flood Risk policy, while Appendix 15 contains the Development Plan's Strategic Flood Risk Assessment.

Section 6.2.14 relates to The Dundrum Slang and states:

This area was included in the Dodder CFRAM Study, which identified a number of flood management measures, and some follow-on works have taken place. A stage 3 FRA was completed for the 2016-2022 Development Plan, and since then a more detailed integrated catchment modelling study has been carried

out to generate fluvial, pluvial and combined flood extents. The watercourse and resulting fluvial flood extents can be seen in Figure 6-7.

Upstream of Dundrum Town Centre the Slang and its tributaries pass through areas of residential housing (23 and 24). Parts of these areas are shown to be within Flood Zone B. The extents of Flood Zone B indicate that the area may be particularly vulnerable to channel blockage, and sensitive to reductions in channel capacity. In addition, climate change impacts are likely to be significant here. Part 1 and 2 of the Justification Test for Development Plans have been passed but Part 3 has not. Future development in this area shall be limited to Minor Development as defined in Section 5.2.1.

The Dundrum Slang ICM study completed in 2020 has highlighted flooding at the southern end of the Dundrum Shopping Centre (25) and in the vicinity of the Wyckham Way, Sandyford Road and Overend Avenue interchange, and Willowbank; with significant areas of pluvial ponding likely to occur. Development in this area is a mix of existing commercial and residential.

Flooding is shown at Dundrum Shopping Centre Phase Two lands (site of old shopping centre) in Dundrum Village (27), the library (28) and gym site (26). These sites (zoned MTC) have been subject to Detailed FRA under the previous SFRA and the Dundrum Slang ICM Study completed in 2020, and responses to the Justification Test for Development Plans are provided in Section 6.2.1. Modelling carried out as part of this SFRA shows the flow path crosses the shopping centre site and ponds near the river prior to discharging back into the Slang. The modelling also showed that the modelled water levels are very sensitive to model parameters and any ingress to Flood Zone B could increase flood risk to neighbouring properties. It is therefore important that the flow path and the capacity for storage on site is respected in any development proposal.

The detailed modelling assessment also highlighted the vulnerability of the library and gym sites (also zoned MTC) and showed development in these locations would be premature until a flood relief scheme is completed.

Further to the north (29), flooding is indicated in the rear gardens of properties along Dundrum Road and to a neighbourhood centre between,

but not limited to, Highfield Park and west of St. Columbanus Road (30), lands to the east of Patrick Doyle Road and Milltown Grove. Development in this area shall be limited to Minor Development as defined in Section 5.2.1.

Downstream of Dundrum Town Centre there are areas of MTC and residential zoned land to the north of Churchtown Road Upper, and around the junction of Churchtown Road Upper, Taney Road, Dundrum Road, Main Street which are within Flood Zone A and B. These lands are currently developed. It is recommended that until such time as the flood risk issues for the Dundrum Town Centre are resolved, development in this area, with the exception of MTC lands, shall be limited to Minor Development as defined in Section 5.2.1. (Bold: My emphasis.)

- 5.1.7. I note that the previously Development Plan (2016-2022) was more restrictive with respect to development in this area and stated:

Downstream of Dundrum town centre there are areas of MTC and residential zoned land to the north of Churchtown Road Upper, and around the junction of Churchtown Road Upper, Taney Road, Dundrum Road, Main Street which are within Flood Zone A and B. These lands are currently developed. It is recommended that until such time as the flood risk issues for the Dundrum town centre are resolved, development in this area is limited to changes of use and redevelopment within the original development footprint. As overland flow is known to be a problem, even small extensions could have a negative impact on flood risk elsewhere. (Section 5.3.9.)

- 5.1.8. Section 5.2.1 (Minor Development) of the current Development Plan (2022-2028) states *inter alia*:

Applications for minor development, such as small extensions to houses or the rebuilding of houses, and most changes of use¹ of existing buildings and or extensions and additions to existing commercial and industrial enterprises, are unlikely to raise significant flooding issues, unless they obstruct important flow paths, introduce a significant additional number

¹ changes of use that do not increase the level of vulnerability of the development

*of people into flood risk areas or entail the storage of hazardous substances. Since such applications concern existing buildings, the sequential approach cannot be used to locate them in lower-risk areas and **the Justification Test will not apply.** However, **a commensurate assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities.** These proposals should follow best practice in the management of health and safety for users and residents of the proposal. (Bold: My emphasis.)*

However, infill development of any scale is not, as part of this SFRA, considered minor development and should be assessed under Sections 0 and 5.2.2 below.

- 5.1.9. Section 5.2.2 (Less vulnerable development in Flood Zone A or B other than Minor Development) of the current Development Plan (2022-2028) states *inter alia*:

*This section applies to less vulnerable development in Flood Zone A which has passed the Justification test for development plans, and less vulnerable development in Flood Zone B, where this form of development is appropriate, and the Justification Test is not required. Development which is less vulnerable to flooding, as defined in The Planning Guidelines, includes (but is not limited to) retail, leisure and warehousing and buildings used for agriculture and forestry (see Table 2-2 for further information). **This category includes less vulnerable development in all forms, including refurbishment or infill development, and new development both in defended and undefended situations.***

*The design and assessment of less vulnerable development should begin with **1% AEP fluvial or 0.5% AEP tidal events as standard, with climate change and a suitable freeboard included in the setting of finished floor levels.***

*The presence or absence of flood defences informs the level of flood mitigation recommended for less vulnerable developments in areas at risk of flooding. In contrast with highly vulnerable development, **there is greater scope for the developer of less vulnerable uses to accept flood risks while still building to a standard of protection which is high enough to manage risks for the***

development in question. However, any deviation from the design standard of 1%/0.5% AEP, plus climate change (see Table 5-1: Climate change allowances by vulnerability and flood source for further information), plus freeboard, needs to be fully justified within the FRA.

(Bold: My emphasis.)

5.2. Other Relevant National Guidance

The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).

5.3. Natural Heritage Designations

The nearest Natura 2000 sites are the South Dublin Bay (site code 000210) and River Tolka Estuary SPA and the South Dublin Bay SAC (site code 004024) located c. 3.8 km to the east of the subject site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature of the development, comprising of the construction of small-scale structures and change of use in an urban area, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore be excluded by way of preliminary examination.

6.0 The Appeal

6.1. First-Party Appeal

- 6.1.1. A First-Party Appeal was lodged with the Board on 21st December 2021 opposing the Local Authority's decision to refuse permission for elements of the proposed development. The grounds of appeal can be summarised as follows:

- The subject works were undertaken during the covid-19 pandemic, when the Government implemented operational restrictions on the hospitality sector.
- The use of UTC as a commercial premises and the associated car park has been in operation for a substantial period of time.

- The existing public house and car parking area is a low-risk use from a flooding perspective and is not a ‘vulnerable’ use such as residential use.
- Section 5.2.5.2 of the Development Plan (2016-2022) states that “Planning authorities must strike a fair balance avoiding flood risk and facilitating necessary development”.
- The proposed works relate to the public house and are an extension of the existing use of the premises and provide for an improved offer and operation of the site for patrons.
- The additional elements sought for retention associated with the public house do not cause additional flood risk either within the existing premises or the surrounding area. Any flood risk associated with these elements is at an acceptable level.
- The garden centre is located on part of the site which was significantly underused.
- In terms of car parking, there is limited crossover between the garden centre and the public house.
- The garden centre and ancillary elements do not cause an additional flood risk at the premises or the adjoining lands and do not represent ‘vulnerable’ uses.
- The Applicant is amenable to accepting a temporary permission for the proposed works.

6.2. Planning Authority Response

No response received.

6.3. Observations

Two observations were received by the Board opposing the Local Authority’s decision to grant retention permission for elements of the subject works, from:

- Claire Coleman, Le Nid, Dundrum Road, Dundrum, Dublin 14 D14 K6Y7.

- Mary and Brian Duncan, Barraca, Frankfort Park, Dundrum, Dublin 14, and Naomi and Kieran FitzGerald of Gleanntan, Frankfort Park, Dundrum, Dublin 14.

The key points raised in the Observations are outlined below:

Claire Coleman

- The proposed development is contrary to the site's zoning objective.
- The works have intensified the use of the public house on the site and the temporary structures as a permanent use amounts to a significant intensification of uses.
- The development in terms of uses and structures is piecemeal in nature and are a response to an emergency situation.
- The temporary nature of the structures gives rise to significant concerns regarding maintenance of same into the future. The structures are not for purpose and deterioration of same will lead to an unacceptable negative impact on the character and visual amenity of the area.
- The application is deficient in terms of planning drawings and analysis of impacts on residential amenity, including loss of privacy, noise nuisance, odour emissions.
- The development has displaced car parking associated with the original public house and the assessment is deficient regarding traffic impacts.
- The location of the temporary structures and dining tables and chairs pose a risk to flooding upstream. The temporary structures may block and inhibit the flow of flood waters.
- The Dundrum Slang (Slaney River) is currently at risk and the development would jeopardise the river from being restored.

Mary and Brian Duncan, and Naomi and Kieran FitzGerald

- The application does not properly represent the unauthorised developments on the site.

- The Local Authority was negligent in their duty to implement the requirements of making a valid planning application and as such constitutes grounds for a Judicial Review of any decision by the Board.
- The planning drawings do not include the public house and as such, the subject works cannot be considered ancillary elements in the application.
- The removal of disabled parking to the front of the premises could be construed as an act of discrimination.
- The Observation includes the Observer's original submission made to the Local Authority, the key points of which can be summarised as follows:
 - The proposal is out of character with the built form and the subjects works are a source of nuisance noise to residential properties.
 - Concerns that the development may not have fire safety or disability access certificates.
 - Invalid application for 12 No. reasons: Planning Application Form not signed, misleading site notices, coffee shop not represented in statutory notices, no reference to the change of use of the existing basement storage area of the pub, unauthorised signage, unauthorised fencing, unauthorised raising of boundary walls, unauthorised installation of gate, drawings do not comply with Planning Regulations (elevations of buildings to be retained not shown, barn building not shown, dimensions are inadequate, inaccurate drawings), site notice not located on the boundary, applicant name incorrect, and application incorrectly records that the site has not been flooded.
- No noise measurements have been provided with the application. Outdoor seating on top of the containers, which are located closer to the neighbouring residential dwellings than stated by the Applicant, causes considerable nuisance.
- Concerns regarding where appropriate drainage is in place with grease traps and sealed connections to the appropriate drainage systems.

- The number of usable car parking spaces is 21 No, not 30 No. as stated by the Applicant.

6.4. **Further Responses**

None received.

7.0 **Assessment**

Having examined the application details and all other documentation on file, including the submissions received in relation to the planning application and First-Party Appeal, Observations, and inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues on this appeal are as follows:

1. Unauthorised Development and Procedural Matters
2. Land Use Zoning
3. Flood Risk
4. Impact on Residential Amenity
5. Car Parking
6. Validity of the Application
7. Appropriate Assessment.

Each of these issues is addressed in turn below.

7.1. **Unauthorised Development and Procedural Matters**

7.1.1. At the outset, I reiterate that the subject application comprises:

- The change of use of lands to the front of premises from car parking to an outdoor seating and dining area;
- The erection of a glazed windbreak around the outdoor seating and dining area to the front of the premises;
- The erection of a pergola type structure on the south-eastern side portion of the carpark adjacent to the entrance from Dundrum Road;

- The change of use of lands to the north and east of the premises from car parking to outdoor seating and dining area;
- The erection of a pergola type structure with tables and chairs to the rear of the premises next to the car park;
- The provision of two shipping containers for the preparation of food;
- The provision of a food & beverage kiosk to the front of the premises;
- The provision of outdoor seating and dining area on lands to the southeast of the premises and next to the boundary wall between the public house and Advance Pitstop;
- The change of use of lands to the north of the site from car parking spaces to a garden centre; and
- The erection of a garden centre office building (11 sq m).

7.1.2. Notwithstanding this, there are matters raised in the Observations in relation to the use of the existing basement storage area of the pub, signage, fencing, raising of boundary walls, and the installation of a gate. The subject application does not relate to these matters, but rather seeks to regularise matters on foot of a Warning Letter issued from the Local Authority. In my opinion, the Board should limit its assessment to the subject development as described in the Statutory Notices and illustrated on the planning drawings. Any potential unauthorised development are matters for the Local Authority to consider. Furthermore, issues relating to compliance with non-planning regulations, including *inter alia* Building Regulations, Fire Safety Certificate, etc. will be evaluated under separate legal codes, and as such in my opinion, need not concern the Board for the purposes of this Appeal.

7.2. Land Use Zoning

The site has a split zoning objective; the southern section Objective MTC aims *To protect, provide for and-or improve major town centre facilities*, while the larger northern section is zoned Objective A, which aims *To provide residential development and improve residential amenity while protecting the existing residential amenities*. Garden Centre/Plant Nursery, Public House, Restaurant and Tea Room/Café are listed as permitted in principle land uses under the MTC zoning objective. These land uses are listed as 'open for consideration' under zoning Objective A. While noting

Section 13.1.2 of the Development Plan (Transitional Zone Areas), I consider the principle of the development to be acceptable in terms of land use zoning, subject to normal planning consideration.

7.3. Flood Risk

- 7.3.1. The Planning System and Flood Risk Management – Guidelines for Planning Authorities, DEHLG and OPW (2009) require a systematic approach to flood risk management at each stage in the planning process. Table 3.1 of the Guidelines indicate that commercial and retail development is a less vulnerable development class. The Guidelines refer to three flood risk zones – A, B and C. As outlined in the Development Plan’s Strategic Flood Risk Assessment, the majority of the site (northern section and along the western boundary, which borders the Dundrum Slang) is located in Flood Zone A, while a smaller section (north of the public house) is located within Flood Zone B. The proposed seating areas and café kiosk fronting onto Dundrum Road, and pergola type structure on the south-eastern side portion of the carpark adjacent to the entrance from Dundrum Road are located in Flood Zone C.
- 7.3.2. As outlined in the Development Plan (and as per the Flooding Guidelines), applications for minor development, are unlikely to raise significant flooding issues, unless they obstruct important flow paths, introduce a significant additional number of people into flood risk areas or entail the storage of hazardous substances. Since such applications concern existing buildings, the sequential approach cannot be used to locate them in lower-risk areas and the Justification Test will not apply. Notwithstanding this, the Development Plan requires that a commensurate assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. Regarding impacts on flow paths, whilst no detailed information in this respect has been provided by the Applicant, in my view, there is a significant risk that the proposed works could potentially obstruct flow paths. With regards to the introduction of a significant number of people into the flood risk area, I note the Applicant’s statements that the works were undertaken in response to the Covid-19 restrictions on the hospitality sector, which would have severely limited the public house’s patron numbers. However, now that the restrictions are no longer in operation and the public house can operate as per standard conditions before Covid-19, the development would significantly increase the number of people into the area

(notwithstanding for a limited period of time). There are no hazardous substances stored on the site. The planning application was not accompanied by a commensurate risk assessment. Furthermore, notwithstanding the Local Authority's reason for refusal, the Applicant did not avail off the opportunity to submit such an assessment with the First-Party Appeal. Accordingly, it is not possible to robustly assess the significance of the risk from the development, including the potential to obstruct flow paths, on the surrounding area, which includes highly vulnerable residential development immediately abutting the site. In the absence of such information, the potential flood risk from the development would remain unknown, notwithstanding that it may be classified as a 'less vulnerable' use and the development would be contrary to the proper planning and sustainable development of the area. Accordingly, I recommend that permission is refused for the elements of the development that are located in Flood Zone A and Flood Zone B.

7.4. Impacts on Residential Amenity

Noise

- 7.4.1. The site abuts residential development on its northern, eastern and western boundaries. The Observers argue that the works have created noise impacts and reduced the area's residential amenity. I concur with the Local Authority that the garden centre, which is stated by the Applicant to operate from 10am to 4pm, would be unlikely to result in negative impacts on the surrounding residential amenity due to the nature and scale of the subject use.
- 7.4.2. Whilst the Applicant states that the restaurant operates until 10pm, the hours of use have in relation to the outdoor seating areas has not been provided by the Applicant, nor has any noise assessment of areas been provided. Due to the scale of the proposed development, particularly the seating area on top of the shipping container, and the proximity of the works to adjoining residential dwellings, principally to Rosemont Terrace, I am concerned that these works could generate noise impacts that could significantly impact on the area's residential amenity. I agree with the Local Authority that further information regarding the impact and the potential requirement for mitigation measures is required to ensure that no significant noise impacts arise that adversely effects the area's residential amenity. I do not consider it necessary for

this matter to form a reason for refusal of planning permission in this case given the substantive grounds of refusal cited above relating to flood risk.

Having regard to the background noise, mostly generated from traffic on the Dundrum Road, I do not consider that the outdoor seating to the front of the public house and the café kiosk, are likely to create significant noise impacts that would adversely impact the residential amenity of the area. Nevertheless, having regard to the Development Plan's policy in relation to transitional zones, I consider that should the Board be mindful to grant permission for this seating area, that a suitable condition which limits its operating hours should be included.

Visual Impact

- 7.4.3. In my opinion, the provision of the garden centre in the surface car park provides a positive visual impact for the site. Furthermore, having regard to the topography of the site, and the scale and nature of the subject works, the majority of which are not visible from Dundrum Road, I do not consider that the proposed development will adversely impact the area's visual amenity, nor will the proposal have overbearing or overlooking impacts that would reduce the area's residential amenity.

Odour

- 7.4.4. The Applicant has advised that the shipping containers are used for the preparation of food. Having regard to the scale of the structure and the separation distance between same and the surrounding residential properties, I do not consider it likely that the works would generate odour emissions that would adversely impact on the area's residential amenity.

7.5. Car Parking

The Observers have raised concerns in relation to the loss of car parking spaces, including disabled parking spaces, as a result of the development. Furthermore, as highlighted by the Observers the garden centre would appear to occupy a greater area than illustrated on the drawings submitted to the Local Authority. I note that the Transportation Planning division did not object to the proposed works, but did recommend that additional information be submitted with respect to car parking layout, cycle parking and shower facilities. The Applicant highlights that there is a crossover between the garden centre and public house. Having regard to the nature of the

development (i.e. a garden centre and public house) and the provision of public transport in the area, I do not consider that the reduction in car parking would result in traffic and car parking congestion. In my view, the number of disabled parking spaces and the matters raised by the Transportation Planning division could be addressed by way of condition, if the Board was minded to grant permission for the proposed development.

7.6. Validity of the Application

The Observers raise a number of issues regarding the validity of the application in terms of the requirements of the *Planning and Development Regulations 2001 (as amended)* as outlined in Section 6.3 above. I note the Observer's concerns regarding the planning applications discrepancies, including *inter alia* signing of the planning application form, site notice descriptions and location, and drawing errors. These matters were considered acceptable by the Planning Authority. I am satisfied that they did not prevent the concerned parties from making representations. The above assessment represents my de novo consideration of all planning matters material to the proposed development. Notwithstanding my concerns in respect to the information provided by the Applicant in relation to flood risk and noise impacts, I am satisfied that there is sufficient information in respect of the proposed development for the purposes of the planning application and decision.

7.7. Appropriate Assessment

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

8.0 Recommendation

8.1. I recommend a split decision with retention permission granted for

- the change of use of lands to the front of premises from car parking to an outdoor seating and dining area;

- the erection of a glazed windbreak around the outdoor seating and dining area to the front of the premises;
- the provision of a food & beverage kiosk to the front of the premises; and
- the erection of a pergola type structure on the south-eastern side portion of the carpark adjacent to the entrance from Dundrum Road;

for the reasons and considerations set out under Schedule 1 below together with the conditions thereunder and that retention permission for:

- the change of use of lands to the north and east of the premises from car parking to outdoor seating and area;
- the erection of a pergola type structure with tables and chairs to the rear of the premises next to the car park;
- the provision of two shipping containers for the preparation of food and pizzas;
- the change of use of lands to the north of the site from car parking spaces to a garden centre;
- the provision of outdoor seating and dining area on lands to the southeast of the premises and next to the boundary wall between the public house and Advance Pitstop; and
- the erection of a garden centre office building.

be refused for the reasons and considerations set out under Schedule 2 below.

Schedule 1

Reasons and Considerations

Having regard to the zoning objectives for the area in the Dun Laoghaire Rathdown County Development Plan 2022-2028, the established use on the site, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the wider area in terms of excessive noise and general disturbance or traffic congestion, would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development in the area.

Schedule 2

Reasons and Considerations

On the basis of the information provided with the application and First-Party Appeal and in the absence of a commensurate risk assessment of the potential flooding impacts the development may have, the Board cannot be satisfied that the proposed development would not be prejudicial to public health and therefore would be contrary to the proper planning and sustainable development of the area.

9.0 Conditions

1.	<p>The development shall be retained and completed 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. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>This planning permission excludes the change of use of lands to the north and east of the premises from car parking to outdoor seating and dining area; the erection of a pergola type structure with tables and chairs to the rear of the premises next to the car park; the provision of two shipping containers for the preparation of food and pizzas; the change of use of lands to the north of the site from car parking spaces to a garden centre; the provision of outdoor seating and dining area on lands to the southeast of the premises and next to the boundary wall between the public house and Advance Pitstop; and the erection of a garden centre office building.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>The outdoor seating areas and café kiosk fronting onto Dundrum Road to be retained shall not operate later than 11:30pm Monday to Thursday, 12:30pm on Saturdays, and 11pm on Sundays.</p>

	Reason: In order to protect the amenities of residential property in the vicinity.
4.	Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Reason: In the interest of public health.

Susan Clarke
Planning Inspector

20th July 2022