



An
Bord
Pleanála

Inspector's Report

ABP-313612-22

Development	Shed for use as an outdoor seating area and a beer garden area
Location	The Phoenix Tavern, Main Street, Bundoran, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2250431
Applicant(s)	K & H Promotions,
Type of Application	Permission.
Planning Authority Decision	Split decision.
Type of Appeal	First party and third party.
Appellant(s)	1. K & H Promotions. 2. Paul McGuirk.
Observer(s)	None.
Date of Site Inspection	15 th September 2022
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The 0.62ha appeal site is situated on Main Street, Bundoran, County Donegal. It lies on the southern side of the public road and comprises a public house, the Phoenix Tavern, and its curtilage to the rear, which includes a car park. The Tavern comprises a two storey building over basement. On the western side of the building is a covered outdoor beer garden directly alongside the public house. Opposite this, on the western side of the site, is an open shed with internal seating area and stage (southern end).
- 1.2. Access to the site is direct from Main Street, with the internal access road running west of the Phoenix Tavern and east of the shed, to the rear car park. The access road also serves Dartry View Caravan Park (the appellant's property) that lies to the south west of the appeal site. Two small ramps provide traffic calming measures on the internal access road (see photograph 6).
- 1.3. Within the Caravan Park caravans are sited in rows running on an east west axis. The main entrance to the Caravan Park is to c.60m the west of the appeal site, off Main Street.

2.0 Proposed Development

- 2.1. The proposed development comprises retention permission for a shed, for use as an outdoor seating area, and beer garden. The covered beer garden (47.46sqm) is situated alongside the existing public house. The existing shed (186sqm) is situated to the west of the beer garden and is separated from it by the access road to the car park and a right of way. There is a stage area indicated in the outdoor seating area at its southern end.
- 2.2. It is stated in the planning application that the development was initially constructed as a direct response to the Government's covid restrictions and the need for open air serving areas. The applicant is due to renew his licence for the premises and has been advised by An Garda Siochana to include the two areas subject to the application as part of the licencing application for the overall building.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 28th April 2022 the planning authority decided to refuse permission for retention of the shed and grant permission for the beer garden subject to 5 no. standard conditions. Reasons for refusing the shed were, in summary:

1. Substandard and temporary nature of the shed to be retained, incongruous and visually obtrusive scale and mass of development and conflict with zoning objective for the site.
2. Conflicting pedestrian and vehicular traffic movements at the location of the entrance to the shed and obstruction of vehicular access to right of way to existing car park and risk to pedestrian and traffic safety.

3.1.2. Planning Reports

- 25th April 2022 – The Planning Report describes the site location and proposed development. It refers to internal, external reports, third party submission and policy context. It assesses the merits of the development under a number of headings including principle, siting and design, access, public health and appropriate assessment. It recommends (a) refusing permission for the shed on the grounds of visual impact and conflict with zoning objective for the site and pedestrian and traffic safety and (b) granting permission for the beer garden to the side of the Phoenix Tavern.

3.1.3. Other Technical Reports/Prescribed Bodies

- None.

3.2. Third Party Observations

3.2.1. There is one observation on file, made by the third party appellant:

- Covered outdoor facility impinges on an established right of way to the caravan site which is the subject of a legal case. The covered outdoor facility is unacceptable in terms of design, mass, scale and finishes.

4.0 Planning History

- PA ref. UD21379 – Enforcement action (warning letter) in respect of unauthorised erection of a shed for use as an outdoor seating area and beer garden without the benefit of planning permission.
- PA ref. 111005 - Retention permission granted for basement and toilet facilities at basement level, door to south of entrance lobby and inclusive of link stairs to basement level and erection of roller shutter to west side elevation at the Phoenix Tavern.

5.0 Policy Context

5.1. Donegal County Development Plan 2018 to 2024

- 5.1.1. In Part C, the CDP sets out objectives and policies in respect of towns. Bundoran is identified as a Layer 2A settlement, a Strategic Town serving a Special Economic Function relating to its strong role as a centre for tourism. Strategic economic development objectives, specific to the town are to, *'support and strengthen the town's role as a family orientated seaside resort, broadening the range of tourist facilities available, developing its tourism potential to complement the existing tourist resources to combat the seasonality of the tourism market and attract year-round visitors'* (Policy BD-SO-ED-2).
- 5.1.2. Town centre policies include, in summary:
- BD-TC-O-1 – To enhance the towns attractiveness, including by promoting a high standard of architectural design.
 - BD-TC-P-1 – Development proposals to contribute to environmental improvement of the streetscape.
- 5.1.3. The northern part of the appeal site lies is zoned 'town centre' and the car park area is zoned 'tourist facilities'. The objective for the town centre zoning is *'To protect and enhance the vitality, viability and character of the Town Centre by providing for and improving retailing, residential, commercial, office, cultural and other uses appropriate to the centre of a developing town'*.

- 5.1.4. In Part A, Chapter 2 sets out Core Strategy of the Plan and Policy CS-P-2 requires that proposals for all development in Bundoran be considered in the light of all relevant policies of the CDP.
- 5.1.5. Chapter 3 sets out policies in respect of towns and villages. Policy TV-P-4 sets out criteria for development proposals in Town Centres or built up areas. These include that development avoid the use of industrial type gladding or the glazing of extensive areas.
- 5.1.6. In Part B, Chapter 4 of the Plan deals with Economic Development and Policy ED-P-14 sets out criteria that all economic development proposals are required to meet, including compatibility with surrounding land uses, impact on amenity of nearby residents and building design.
- 5.1.7. Chapter 5 deals within infrastructure. Policy T-P-15 requires that all development proposals comply with the Development and Technical Standards set out in Appendix 3 of the Plan to promote road safety.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site lies c.450m west of Donegal Bay Special Protection Area (SPA, site code 004151).

5.3. EIA Screening

- 5.3.1. Having regard to the modest nature and scale of the proposed development, it would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. First party grounds of appeal are:

- Both structures erected at short notice in response to global pandemic and the need to provide open air space and enable the business to survive.

Concerns regarding next flu season, survival of the business and need for the building. Notoriety for all parties if demolition of structure is required.

- Reason no. 1 – Land is zoned town centre uses and use is consistent with zoning. Structure is set back from the main street (22.6m from centre of public road) and is only visible when vehicular/pedestrian traffic is more or less parallel to the site. Conditions can be imposed to address appearance of the development. The Board's decision should be based on the suitability of the site for the development of a commercial building. If it is appropriate to have such a building at the location then the matters to be considered are ones of design.
- Reason no. 2 – Court case concluded. Appellant rarely uses this access to caravan site. Main entrance to the site is situated to the west. At busy times there is traditionally no traffic associated with the caravan park and limited traffic to the car park to the rear of the premises. Pedestrians using open seated area have full view of the limited traffic that might be using the site during busy periods. Suggests demarcation of pedestrian route to and from shed. Site has been operational for a significant period with no safety issues arising. Inspection by An Garda Siochana and area Fire Officer did not raise any safety issues regarding safe operation of the site or site of adjacent caravan park.

6.1.2. Third party grounds of appeal are:

- Requests that permission for the development as a whole be refused.
- Inadequate assessment by PA of issues and consideration of all relevant policies in CDP (CS-P-2, ED-P-14, BD-SO-ED-2, BD-TC-O-1, BD-TC-P-1).
- Use of beer garden has not been adequately considered by the PA (late night, outdoor smoking and drinking). Impact of development on caravan park (disturbed sleep, uncontrolled noise and disturbance). CCTV footage available if required.
- Town's role as a family orientated seaside resort is not supported by the uncontrolled operation of a beer garden or shed that is not integral to the main pub structure but forms part of the public domain (BD-SO-ED-2).

- Shed structure and finishes to beer garden do not improve the streetscape (BD-TC-O-1) and, directly fronting onto the street, do not contribute to environmental improvements of the streetscape and are of concern in terms of public safety (BD-TC-P-1).
- Pedestrian traffic movements and congregation by patrons of beer garden and shed may obstruct right of way.
- Absence of sanitary facilities for shed, with increase in patrons and risk of use of public spaces for urination.
- Absence of condition to control noise/use of premises (as per ABP-302789), including that outdoor area be cleared by 10pm.
- Inadequate consideration of noise effects on adjoining property and lack of control over same.
- Precedent cases – PL26.246500 (retention of beer garden in County Wexford refused on the grounds of impact on residential amenity); Kerry County Council PA ref. 21/760 (retention of open seating/serving area refused on grounds of impact on residential amenities).
- Extent of outdoor area – Outdoor area opens onto a public street/road. Most patrons using the beer garden and seating area are standing. Difficult to control use of the open area i.e. impacts of the use of the beer garden are not confined to a limited footprint of the beer garden but overspill into the right of way and car park area on a regular basis, particularly at evenings and at night.
- Reference to licensing legislation and compliance with this.

6.2. Applicant Response to Third Party Appeal

6.2.1. The applicant makes the following additional comments in response to the appeal:

- The applicant is in control of all of the lands and the beer garden and seating area are separated from the public road by an area of car parking to the west of the Phoenix Tavern.

- Application is pending for licencing of beer garden and seating area, subject to outcome of appeal. Areas for consumption of alcohol are limited to beer garden and seating area. If granted a licence, the areas will be subject to strict closing hours and monitoring by An Garda Siochana.
- CCTV footage – Applicant seeking legal advice on whether the offer of footage would affect final decision in case.
- Subject premises have operated as a night club, pub/restaurant and at one stage a Bingo hall for a period in excess of 15 years without incident or complaint from neighbouring landowners. Premises has been licenced consistently and has had significant numbers of people using the outside areas for smoking and general congregation over this period. Development will provide a roof for some patrons and safe open space during times when covid nos. are high. Development, with design amendments and restrictions to opening hours, is appropriate to its location and well established use of the site.

6.3. Third Party Response to First Party Appeal

6.3.1. The appellant makes the following additional comments on the first party appeal:

- No exemptions provided by legislation for construction of agricultural type shed in an urban area for outdoor drinking under government section 28 Guidelines for Planning Authorities Enforcement of certain planning conditions during Coronavirus (COVID-19) outbreak. Development is an unauthorised structure and was undertaken at applicant's own risk.
- Reference to reports by Gardai and Fire Officer are not relevant to planning assessment.
- If granted permission, development will be used as a replacement for the main premises, bringing an indoor activity to outdoor space adjacent to the Caravan Park which is unacceptable.
- Structure has direct access from the public road and cannot be effectively policed like a normal enclosed beer garden.

- Third party right of way is used by the appellant for the delivery of large caravans and by customers of the Caravan Park as a means of access to it.
- Access, previously two way, is impeded by the structures which narrow it (see images in submission). Structures also impose on previous footpath to access the car park (subject of conditions of previous permission under PA ref. 27/99 and 11/10005). Conditions not complied with. Blind spot where patrons could walk directly from shed into oncoming traffic.
- Applicant does not factor in intoxicating of patrons (traffic safety/hazard).

6.4. Planning Authority Response

6.4.1. The planning authority respond to the first and third party appeals and makes the following additional comments:

- No reference in application to proposed upgrading of external finish of the building. Assessment made on existing development.
- Continued use of beer garden area adjoining existing premises is an integral part of the existing business and can be assessed positively. Management of this area is associated with the overall management of the exiting business and it is considered appropriate that the hours of operation of the existing business apply to the small extension.

6.5. Observations/Further Responses

- None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local and national policies and guidance, I consider that the main issue in this appeal are:

- Consistency with zoning objective.
- Impact on townscape.

- Impact on residential amenity.
- Public health.
- Traffic safety.

7.2. In addition I comment briefly on the following issues:

- Licensing legislation – This is referred to by both the third party appellant and the applicant and, as another code, lies outside the scope of this appeal.
- Review of premises by An Garda Siochana and Fire Officer – Again these statutory bodies/functions are regulated by their own codes and conclusions under these codes are matters which lie outside of the scope of planning appeal system.
- Precedent cases – I have reviewed the cases referred to by the third party appellant, PL26.246500, Wexford County Council reg. ref. 20160111 and Kerry County Council register ref. 21/760 (currently under appeal, ABP-312291). Both cases raise issues in relation to the impact of outdoor beer gardens on residential amenity but have been determined on the basis of their site specific context. Similarly, I consider that the proposed development should be assessed and determined on its own merits having regard to the site specific sensitivity of the receiving environment.
- CCTV footage – This has not been sought from the third party appellant and is not considered in the appeal.
- Planning history and compliance with conditions – Compliance with conditions of previous permissions is the responsibility of the planning authority.
- Right of way – Issues regarding the ROW through the appeal site have been addressed in the Courts and are not a matter for this appeal.

7.3. **Consistency with Zoning Objective**

7.3.1. The appeal site is zoned Town Centre, the car park to the rear of the site as ‘Tourist Facilities’. Land use zoning objectives for ‘Town Centre’ are *‘To protect and enhance the vitality, viability and character of the Town Centre by providing for and*

improving retailing, residential, commercial, office, cultural and other uses appropriate to the centre of a developing town’.

7.3.2. The appeal site comprises a commercial enterprise situated on Main Street in Bundoran. The use of the site, as a public house, at this central location is established. The proposed development comprises an extension of the existing use, into additional areas adjoining the public house. I am satisfied therefore that in principle, the proposed use of the site is consistent with the land use zoning objective. However, for the reasons stated below I consider that the appearance of the outdoor seating area is not of a high architectural standard and detracts from the appearance of the area, and in this respect detracts from, rather than strengthens, the vitality, viability and character of the town centre.

7.4. Impact on Townscape

7.4.1. Town centre objectives and policies specific to Bundoran, as set out in the CDP, Part C, require that development provide for streetscape improvement and a high standard of architectural design (BD-TC-O-1 and BD-TC-P-1).

7.4.2. The proposed beer garden and outdoor seating area are situated to the west of the existing Phoenix Tavern building. As argued by the first party appellant, the site is not overly visible from Main Street, with views of both the beer garden and outdoor seating area only visible from a short section of Main Street as one is passing the site.

7.4.3. The proposed beer garden is situated alongside the existing public house. The roofed and fenced area is set back c.11m from the front of the building, uses a similar palette of colours to the main structure, is modest in size and subservient to the main building. I do not consider, therefore, that the beer garden detracts from townscape or provides a poor standard of development.

7.4.4. The proposed outdoor seating area is set back c.18m from the edge of the public road. The steel framed structure is finished in a mix of close fitting timber boards (ground level) and blue/grey profiled cladding sheets (above). The structure is agricultural in appearance, poor in terms of architectural design and out of keeping with its urban setting. I would consider therefore that the development is not consistent with Policy Objectives BD-TC-O-1 (high standard of architectural design)

or BD-TC-P-1 (contribute to environmental improvement of streetscape). For the same reasons, I consider the development is contrary to policy TV-P-4 which precludes the use of industrial type cladding in town centres.

7.5. Impact on Residential Amenity

- 7.5.1. Donegal County Development Plan recognises the primary nature of the town's Special Economic Function relating to its strong role as a centre for tourism. Strategic objectives BD-SO-ED-2 supports and strengthens the role of the town as a family orientated seaside destination.
- 7.5.2. As stated the appeal site comprises an established commercial development in the town centre of Bundoran. The site lies north and east of an established Caravan Park, Dartry View Caravan Park. The proposed beer garden is over 25m from the Caravan Park and is physically adjoins the main building and I consider would be used in conjunction with it the main building and as a relatively minor adjunct to it, with management of the area associated with the overall management of the business. I do not consider that this area would therefore detract from the residential amenity of the Caravan Park.
- 7.5.3. The outdoor seating area is a more substantial structure. It is situated c. 4m from the adjoining Caravan Park and c.6m from the nearest mobile home. With an area of 186sqm, the outdoor seating area has the potential to accommodate a large number of patrons, moving the activity of the public house much closer to the Caravan Park. There is also potential for patrons to utilise the area between the outdoor seating area and beer garden.
- 7.5.4. Use of the outdoor seating area, which includes a stage and is constructed to provide an open environment, would, in my view, introduce late night noise and the potential anti-social behaviour in proximity to the north eastern corner of the Caravan Park. The applicant has indicated that the use of the outdoor seating area would be governed by the same licencing arrangements for the public house. Whilst this may be the case, the proposed development nonetheless introduces the outdoor activity in very close proximity to an established Caravan Park, with little potential for sound attenuation.

7.5.5. Policy ED-P-14 of the CDP requires that any proposals for economic development be compatible with surrounding land uses, do not harm the amenities of nearby residents or create noise nuisance. Having regard to the foregoing, notably the proximity of the outdoor seating area to the Caravan Park, the use of the structure, likely hours of operation and potential for large numbers of patrons, I consider that the development would not be compatible with surrounding land uses, would be likely to create noise nuisance and would harm the amenities of nearby residents and.

7.6. Public Health

7.6.1. As stated above, the proposed outdoor seating area is a large structure and has potential to host a large number of patrons. Whilst the area was developed during, and as a consequence of, Covid, it is now proposed as a permanent structure. It could therefore be used alongside the existing premises and add substantially to footfall and requirement for facilities. I do not consider that this matter has been adequately addressed by the applicant.

7.6.2. I also consider that there is a risk of antisocial behaviour arising from the use of the outdoor seating area (alcohol consumption) and location of the area removed from facilities (external urination). This matter could be addressed by way of lighting etc. is not of itself a reason for refusing permission.

7.7. Traffic Safety

7.7.1. In their decision to refuse permission (reason no. 2) the PA considered that the retention of the outdoor shed would result in conflicting vehicular and pedestrian traffic movements at the location of the entrance to the shed and obstruct the vehicular right of way to the Caravan Park.

7.7.2. The proposed beer garden and outdoor seating area are separated by an access road which serves the Phoenix Tavern's car park, to the rear of the building, and Dartry View Caravan Park. From the information on file, and inspection of the site, it is evident that this is not the main entrance to the site but a secondary one which is used infrequently, including for the movement of large caravans. At the time of site inspection, the gate to the Caravan Park was closed.

7.7.3. The outdoor seating area is situated on the western side of the appeal site in the location of previous car parking spaces. The c.7m wide shed extends to the edge of the right of way but does not encroach on it or obstruct it. On the opposite side of the right of way the beer garden extends entirely across the paved area that formed the pedestrian route alongside the pub. The effect of the two structures is to narrow the access route, introduce pedestrian areas in close proximity to both sides of the access route, increase pedestrian movements across the route and move pedestrians accessing the car park onto the access road. Having regard to the scale of the outdoor seating area, the potential for large gatherings and the use of the site (consumption of alcohol), I consider that these consequences have the potential to result in conflicting vehicular and pedestrian traffic movements and endanger public safety by way of traffic hazard. It may be possible to reduce the risk of traffic hazard by more significant traffic calming measures and demarcation of pedestrian routes. However, this may have implications for the potential use of the outdoor area by patrons (increasing the capacity of the venue) and would have to be considered in the wider context of a comprehensive approach towards the development of the structures on the site, impact on neighbouring development and capacity of services/facilities.

8.0 Appropriate Assessment

8.1. Having regard to the location of the proposed development in an established urban area, the nature, scale and form of the proposed development, and absence of any significant emissions to the natural environment, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

9.1. I recommend that retention be (a) granted for the proposed beer garden, and (b) refused for the outdoor seating area.

10.0 Reasons and Considerations

A. Retention of beer garden.

Having regard to the modest size of the proposed development to be retained and its location removed from nearby residential development and situated alongside the existing public house, it is that the proposed development, subject to compliance with the conditions set out below, would be consistent with the Town Centre zoning of the site and compatible with adjoining land uses and would not seriously injure the amenities of property in the vicinity, give rise to traffic hazard or be prejudicial to public health. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

1.	<p>The development shall be carried out 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>Surface water from the site shall not be permitted to drain onto the adjoining public road.</p> <p>Reason: In the interest of traffic safety.</p>
3.	<p>Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority within 3 months of the date of this Order.</p> <p>Reason: In the interests of amenity and public safety.</p>
4.	<p>Signage shall be in the Irish Language only, or if bilingual signage is proposed, then the Irish language shall be first and shall be of an area,</p>

	<p>size and prominence that it is greater than the average, size and prominence of other languages.</p> <p>Reason: To cater for orderly development and to support the linguistic base of the area.</p>
5.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid 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.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

B. Retention of shed for use as an outdoor seating area.

1. Having regard to the substantial scale of the outdoor seating area, its proximity to residential properties and late opening hours, it is considered that the development for which retention is sought would seriously injure the residential amenities, and depreciate the value, of property in the vicinity by reason of noise and general disturbance. The development for which retention is sought would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location, nature, scale and form of the proposed outdoor seating area it is considered that the development would result in conflicting vehicular and pedestrian movements at the location of the entrance to the eating area and on the access road to the car park and caravan park. The proposed development would therefore endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.

Deirdre MacGabhann

Planning Inspector

21th September 2022