



An
Bord
Pleanála

Inspector's Report

ABP-314194-22

Development	Retention and completion of modifications made to public house.
Location	Aunty Biddys, No. 9 and 10 Rock Street, Town Parks, Cloyne, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	216492
Applicant(s)	Liverbird Ltd
Type of Application	Retention and Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	Andrew Mullen Denise Clifford
Observer(s)	Niamh Clifford
Date of Site Inspection	April 13 th 2023
Inspector	Adrian Ormsby

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1.0 Site Location and Description

- 1.1. The site is located in the village of Cloyne c. 25km east of Cork City Centre. Cloyne is identified as a 'Small Town (1,500-4/5,000)' in Table 2.9 of the Cork County Core Strategy as set out in the County Development Plan (CDP).
- 1.2. The site is located within the settlement boundary of Cloyne, on the R629 Regional Road. This road connects Cloyne to Ballinacurra to its northwest and Ballycotton to its southeast. The site is located c. 75m to the east of the junction of the R629 and R631 regional roads.
- 1.3. The site is an end of terrace style building where two properties appear to have been amalgamated to form one public house. The building is two/two and a half storey with part of the building providing attic accommodation as evident by two existing dormer style windows in the attic space of the main wall plate. The roadside elevation is finished in stone with two shop front's providing access to the pub's different areas. The pub is now known as 'The Rock'.
- 1.4. The site comprises a recently renovated public house premises to the south side of the R629 with a large beer garden to the rear. The rear beer garden can be accessed from within the public house but also via a stone archway to the eastern side of the building. The levels of the lands to the rear of the main building line fall in a southerly direction with the extent of this evident through the existing ground works and stepped level changes across the beer garden. Much of the beer garden and the rear service area of the site are finished with an artificial grass surface.
- 1.5. The premises adjoins a terrace of typical two storey town houses to its west, opposes two and three storey properties to the north and is flanked to its east by the remnants/ruins of a possible ecclesiastical style structure fronted by a stone wall and pedestrian gate to the public path. Cloyne house is located c. 75m to southeast of the site and is a designated Protected Structure (RPS No. 586). The rear of the site is c.140m northeast of the Cloyne Round Tower (RPS 592) and 130m north of Cloyne Cathedral (RPS 587). The site is located within the Zone of Archaeological Protection around Recorded Monument CO088-019001 i.e. Cloyne- Historic town. Much of Cloyne is designated an ACA with all boundaries of the site included within.

2.0 Proposed Development

2.1. The application comprises of-

- Retention Permission for-completion of modifications to public house to include:
 - 1) Flat roof structures with 3 no. rooflights to replace the existing pitched roofs of the public house.
 - 2) Retractable roof canopy off the rear of the existing public house.
 - 3) Single storey extension to the rear of the existing public house.
 - 4) Open smoking area with roof structure only to the rear of the existing public house.
 - 5) Extension of existing beer garden area to the rear of existing public house.
 - 6) Elevational changes to the existing public house.
 - 7) Converting existing outside shed to the rear of the existing public house to new boiler house and food catering unit with signage/elevation changes.
 - 8) 1.No window to the eastern boundary on ground level of the existing public house.
 - 9) All associated site development works.
 - 10) Existing office/w.c's on ground floor/store at first floor plan and stairwell.
 - 11) Second floor dormer windows and roofs to front elevation.
 - 12) Demolished existing walls to enable proposed works.
 - 13) 2.No high level stained windows to the western boundary on ground floor level of the existing public house.
 - 14)Converted external space to new covered floor area

And

- Permission for-

15) New signage to front façade of existing public house.

16) Modify existing 2 No. new windows to the first floor rear elevation of the existing public house.

2.2. The Applicants submitted unsolicited Further Information on the 14/10/21 to address matters raised in third party submissions.

2.3. The Planning Authority sought Further Information (FI) on the 03/11/21 to address concerns including-

- Impacts on residential amenity including scale and use of beer garden as well as the capacity of the existing beer garden and the intended capacity of the current proposal.
- Noise impact assessment.
- Odour Control
- Waste Management
- Impacts upon the ACA

2.4. The Applicants sought an Extension of three months to respond to the FI request on the 24/03/21. The Planning Authority permitted this on the 24/03/21.

2.5. The Applicant submitted a response to the FI on the 09/06/22 (RFI). The RFI detailed the existing beer garden has a standing capacity of 260 people and the proposed capacity of the new beer garden would also be 260 people. A drawing was submitted in support of this based on a standing occupancy load factor of 0.3 people per sq.m. The response also included-

- A Noise Impact Assessment prepared by Brian Johnson of CVL Consulting
- A Ventilation Report prepared by John Kelleher and Associates Building Service Engineers
- A Waste Management Statement

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission on the 05/07/22, subject to 18 conditions. The following conditions are relevant to this appeal-

- C2- The extent and capacity of beer garden restricted to drawing submitted on 09/06/22. Southerly section shall be used for service related purposes only with access prohibited for patrons of the pub.
- C3- Noise levels restrictions with Noise Sensitive Locations detailed.
- C4- Music or other amplified sound restrictions, noise management plan to be implemented.
- C6- Ventilation/ air extraction to limit manner and quantity of emissions to air including maintenance programme.
- C9- Lighting
- C10- Waste storage to include noise mitigation measures to mitigate against glass recycling/disposal.
- C12- Within 6 weeks of the final grant, or at the Planning Authority's discretion the archway shall be rendered. Details to be agreed.
- C13- Within 6 weeks of the final grant the Bar Food sign shall be removed.
- C14- Signage exemptions restricted.
- C15- Archaeological monitoring of ground works
- C16 Within 6 weeks of the final grant the western elevation of the boiler house/food catering unit shall be clad in stone.
- C18- Development Contribution €642.72.
- C10- Special Development Contribution of €21,000 to be paid in respect of works for the future resurfacing at the entrance to facilitate the development.

4.0 Planning Authority Reports

4.1. Planning Reports

The planning reports reflects the decision of the Planning Authority.

4.2. Other Technical Reports

- Water Services
 - 15/10/21- No objections raised.
- Area Engineer-
 - 19/10/21- No objections raised.
- Environment-
 - 26/10/21- FI required in relation to odour control, ventilation, waste management, noise impact etc.
 - 18/06/22- No objections subject to conditions
- Conservation Officer-
 - 02/11/21- FI required on a number of items.
 - 30/06/22- Concerns raised in relation to signage and stone arch. Overall no objections subject to conditions including dealing with concerns.
- Archaeologist-
 - 03/11/21- No objections subject to conditions

4.3. Prescribed Bodies

- Irish Water-
 - 28/10/21- No objections

4.4. Third Party Observations

Three third party submissions were received which can generally be summarised as follows-

- Not in favour of the proposal
- Impacts upon residential amenity-
 - Noise and nuisance
 - Overlooking/privacy
 - Loss of light
- Out of character with area
- Traffic
- Pollution
- Visual and structural impact on boundary walls

5.0 Planning History

- None recent
- The following historical records which are on this file are considered relevant to the site-
 - 01/971- Conditional grant on 21/06/01 for retention of extension to licensed premises & incorporation of bar at No. 10 into existing bar at No. 9. A yard area is shown in the drawings provided and does not specifically show if a beer garden was in situ.
 - 97/1247- Conditional grant on 28/05/97 for renovations and extension to licensed premises to include restaurant/lounge and beer garden. The permitted beer garden is clearly visible in the drawings supplied.

6.0 Policy Context

6.1. National Planning Framework

- Section 9.4 is titled “Creating a Clean Environment for a Healthy Society”. It provides a section on ‘Noise Quality’ and details its “*it is important to more proactively manage noise*”.
- National Policy Objective 65 states-
“Promote the pro-active management of noise where it is likely to have significant adverse impacts on health and quality of life and support the aims of the Environmental Noise Regulations through national planning guidance and Noise Action Plans.”

6.2. Regional Spatial Economic Strategy- Southern Region

- Regional Policy Objective RPO 131- Noise
It is an objective to promote the pro-active management of noise where it is likely to have significant adverse impacts on health and the environment. It is also an objective to support the aims of the Environmental Noise Regulations through national planning guidance and Noise Action Plans for major urban centres as considered appropriate.

6.3. Cork County Development Plan 2022-2028 (CDP)

- The Plan came into effect on 6th of June 2022.
- Figure 1.3 of Volume 1 of the CDP identifies Cloyne as located in the Cork Metropolitan Area Strategic Planning (MASP).

6.3.1. Volume 1

- Chapter 9 of the CDP deals with Town Centres and Retail. The following Objective is relevant-
 - *TCR 9-1: Town Centres-*

a) *Maintain, strengthen and reinvent the role of town centres as dynamic, attractive, resilient, inclusive, cultural and creative environments and enhance their mixed-use character by encouraging the retention and development of general office, retail, housing, office-based industry, community, civic and entertainment uses.*

.....

g) *Support proposals for development involving evening and night time commercial, retail, cultural, food and beverage or entertainment uses within, or immediately adjacent to, the defined town centres or local service centre, where it can be demonstrated that the development will enhance the character and function of the area; this may include extended opening hours, proposals for outdoor dining and event space as well as proposals for greater utilization of existing heritage assets.*

- Chapter 15 of the CDP deals with Biodiversity and Environment. Section 15.11 deals with Noise and Light Emissions. Section 15.11.1 details the Council has produced two finalised Noise Action Plans (NAP's), in accordance with the European Noise Directive 2002/49/EC. These NAP's are 5 year strategic plans covering the period to 2023:

- 1) Cork County Noise Action Plan for Major Roads 2018-2023; and
- 2) The Cork Agglomeration Area Noise Action Plan 2018-2023.

It is noted the former NAP deals **only** with the Agglomeration area¹ which Cloyne is not located within, and the latter applies **only** to the extents of major roads within its planning area.² The R629 and R631 both in Cloyne are not included. Therefore these NAP's do not appear to make provisions for the application site or the development type.

- Although section 15.11.2 refers specifically to NAP' when assessing planning applications it does states-

¹ [Microsoft Word - 2019 05 03 Cork Agglomeration - Noise Action Plan 2018-2023 FINAL for SPC \(corkcity.ie\)](#)

² <https://corkrdo.ie/wp-content/uploads/2018/11/Cork-County-Noise-Action-Plan.pdf>

- *The planning authority will also give careful consideration to the location of noise sensitive developments so as to ensure they are protected from major noise sources where practical.*

This does not preclude consideration of adverse noise impacts from the subject application site upon existing noise sensitive developments.

- The following Objective is relevant-
 - BE 15-13: Noise and Light Emissions
 - a) *Seek the minimisation and control of noise pollution associated with activities or development, having regard to relevant standards, published guidance and the receiving environment.*
 - b) *Ensure noise-sensitive developments are adequately protected from potential sources of noise (e.g. national roads). New developments should take account of, and mitigate against, any existing noise sources.*
 - c) *Support the implementation of Noise Action Plans prepared for the Cork County area.*
 - d) *Seek the minimisation and control of light pollution associated with activities of development, having regard to relevant standards, published guidance and the receiving environment and Dark Sky principles.*
 - e) *Review and update Cork County Council Policy Guidelines for Public Lighting to take account of impacts of public lighting on wildlife and night skies.*
- Chapter 16 deals with Built and Cultural Heritage. Section 16.2.9 details that Cloyne is identified as an Historic Town and that Zones of Archaeological Potential around Historic Towns can be viewed on the Map Browser. I have not been able to identify these zones within the CDP documentation but do note the site is located within the Zone of Notification as identified by the National Monuments Service³. It also details provisions for Architectural

³ <https://maps.archaeology.ie/HistoricEnvironment/>

Conservation Areas (ACA) and I note the Map Browser does show the site within the ACA for Cloyne.

The following Objectives are relevant-

- HE 16-4: Zones of Archaeological Potential in Historic Towns and Settlements

Proposed development works in Historic Towns and settlements, Zones of Archaeological Potential, Zones of Notification and the general historic environs in proximity to the zones, should take cognisance of the impact potential of the works, and all appropriate archaeological assessments employed to identify and mitigate the potential impacts.

- HE 16-5: Zones of Archaeological Potential

Protect the Zones of Archaeological Potential (ZAPs) located within historic towns, urban areas and around archaeological monuments generally. Any development within the ZAPs will need to take cognisance of the upstanding and potential for subsurface archaeology, through appropriate archaeological assessment.

- HE 16-18: Architectural Conservation Areas

Conserve and enhance the special character of the Architectural Conservation Areas included in this Plan. The special character of an area includes its traditional building stock, material finishes, spaces, streetscape, shopfronts, landscape and setting. This will be achieved by;

(a) Protecting all buildings, structures, groups of structures, sites, landscapes and all other features considered to be intrinsic elements to the special character of the ACA from demolition and non-sympathetic alterations.

(b) Promoting appropriate and sensitive reuse and rehabilitation of buildings and sites within the ACA and securing appropriate infill development.

(c) Ensure new development within or adjacent to an ACA respects the established character of the area and contributes positively in terms of design, scale, setting and material finishes to the ACA.

(d) Protect structures from demolition and non sympathetic alterations.

(e) Promoting high quality architectural design within ACAs.

(f) Seek the repair and re-use of traditional shopfronts and where appropriate, encourage new shopfronts of a high quality architectural design.

(g) Ensure all new signage, lighting advertising and utilities to buildings within ACAs are designed, constructed and located in such a manner they do not detract from the character of the ACA.

(h) Protect and enhance the character and quality of the public realm within ACAs. All projects which involve works within the public realm of an ACA shall undertake a character assessment of the said area which will inform a sensitive and appropriate approach to any proposed project in terms of design and material specifications. All projects shall provide for the use of suitably qualified conservation architects/designers.

(i) Protect and enhance the character of the ACA and the open spaces contained therein. This shall be achieved through the careful and considered strategic management of all signage, lighting, utilities, art works/pieces/paintings, facilities etc to protect the integrity and quality of the structures and spaces within each ACA.

(j) Ensure the protection and reuse of historic street finishes, furniture and features which contribute to the character of the ACA.

- Chapter 18 deals with Zoning and Land use. Section 18.3.41 deals with “Town Centres/Neighbourhood Centres (TC)”. The following objective is relevant-

ZU 18-17: Town Centres/ Neighbourhood Centres

a) Promote the development of town centres and neighbourhood centres as the primary locations for retail and other uses that provide goods or services principally to visiting members of the public. The primary retail areas will form the main focus and preferred location for new retail development, appropriate to the scale and function of each centre and in accordance with the Retail Strategy. Residential development will also be encouraged particularly in mixed use developments while the use of upper floors of retail and commercial premises in town centres for residential use will in particular be encouraged.....

Appropriate Uses in Town Centre/Neighbourhood Centres are then detailed as-

Retail, cultural uses, recreation uses, hotel, bed and breakfast, public houses, financial services, professional services, medical and healthcare services, leisure facilities, places of worship, residential, mixed residential, childcare facilities, education facilities, community facilities, civic uses, offices, public transport facilities, car parks, funeral homes.

6.3.2. Volume 4

- Cloyne is also located in the East Cork Municipal District to which Volume 4 of the CDP (South Cork) relates. Chapter 3 deals with Cloyne.
- The site is located within the Cloyne Settlement Boundary and is zoned Town Centre/Neighbourhood Centres (Map on Page 281 of Volume 4).
- The Cork County online mapping system identifies this zoning as- CY-T-01 which is detailed as a ‘Specific Development Objective’ for Cloyne on page 279. It states-

-Development within the core of the village shall be designed to a high standard and reinforce the character of the streetscape.
-New development should consolidate and strengthen the existing village core, be sympathetic to the scale and character of the village, contribute to the compact form of the village and respect the views and settings of existing heritage buildings in the village ^{*4}

6.4. Guidance Documents

- Daylight and Sunlight etc-
 - BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' 2022 edition.
- Noise- In the absence of any clear Irish Planning Guidance on Noise the following were reviewed-
 - The World Health Organisation's (WHO) Guidelines for Community Noise (1996/1999)
 - Institute of Acoustics- 'Good Practice Guide on the Control of Noise from Pubs and Clubs (2003)'.
 - Noise From Pubs and Clubs (Phase II) Final Report May 2006 UK Guidance for the Department for Environment, Food and Rural Affairs (UK)
 - BS 4142: 2014 (+A1:2019): Methods for rating and assessing industrial and commercial sound
 - BS 8233: 2014: Guidance on Sound Insulation and Noise Reduction for Buildings (BS 8233:2014)
 - ISO 1996 Acoustics- Description, measurement and assessment of environmental noise (3rd Edition 2017)
 - EPA 'Guidance Note for Noise: Licence Applications, Surveys and Assessments in Relation to Scheduled Activities' (NG4), 2016

⁴ The Asterix * relates to flood risk as detailed on page 279. The zoning map indicates the application site is not part of the zoned land located within flood zone A or B.

- The Association of Acoustic Consultants of Ireland- “Environmental Noise Guidance for Local Authority Planning & Enforcement Departments” 2021.

6.5. Natural Heritage Designations

The site is-

- c. 3.2 km east of the eastern extent of the Cork Harbour SPA (004030)
- c. 4.2 km south east of the Great Island Channel SAC (001058)
- c. 6.5km north west of the Ballycotton Bay SPA (004022)

6.6. EIA Screening

6.6.1. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- *Class (10)(b)- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)*

6.6.2. I am not entirely convinced the proposal can be described as an ‘urban development’. The site is located within a settlement boundary however it is not located within a ‘business district’ and is not within the ‘built up area’ as defined by the Regulations (i.e. where “city” and “town” have the meanings assigned to them by the Local Government Act, 2001). In this regard the site has a stated area of 0.1022ha and is well below the applicable threshold of 20 ha for urban development sites identifiable as ‘elsewhere’.

6.6.3. This application is for retention and permission for works to a public house and its external area. The nature of works proposed and to be retained will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is located in the existing settlement boundary, is generally built up and any ecological impacts were not likely to significant in this context. The site is not designated for the protection of the landscape, of natural heritage and the

development is not likely to have had a significant effect on any European Site (as discussed in section 8.10) and there is no specific hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site/or other).

- 6.6.4. While the site is located within an Archaeological Zone of Notification, a designated ACA and c. 75m north-west of a Protected Structure I am satisfied the site is generally developed and the extent of works proposed and to be retained would not significantly impact upon the cultural heritage of the area to any significant extent warranting EIA.
- 6.6.5. The proposal would not give rise to waste, pollution or nuisances that differ significantly from the existing permitted use on site or from other developments of this nature located in similar town or village settings. It would not give rise to a risk of major accidents or risks to human health. The development would use the public water and drainage services of Irish Water and Cork County Council, upon which its effects would be marginal.
- 6.6.6. Having regard to the above I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development and that to be retained would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report was not necessary in this instance (See Preliminary Examination EIAR Screening Form).

7.0 The Appeal

7.1. Grounds of Appeal

Two third party appeals have been received from.

- Cunnane Stratton Reynolds on behalf of Denise Clifford of 7 Rock St. Cloyne.
- Andrew Mullen of 20 Leeview, Ballincollig, Cork, P31Y192.

The grounds of appeal can be summarised as follows-

- The main concerns appear to be impacts on Residential Amenity from unauthorised raising of levels across the site leading to overlooking of private garden, overshadowing of private garden, loss of light due to higher

boundaries, invasion/trespass of property by patrons of the public house, light intrusion and noise.

- The submitted drawings do not accurately reflect the extent of works carried out to the flat roof structure with photographs of same and the original from Appellant's property submitted. The new existing roof blocks natural light into the Appellants kitchen and is not built as per the submitted drawings. A photograph of the roof and kitchen from the appellants garden is provided. These works are tied into the party boundary wall and concerns are raised about structural integrity of same.

Noise

- Noise is a major concern for both Appellants. A Noise Impact Report prepared by James Walsh of 'Sound Engineering by Design' accompanies one of the appeals. This report concludes that it will not be possible to restrict levels at nearby noise sensitive receivers to below the Planning Authority's limits during the day, evening or night. The noise management plan is not a feasible measure to restrict noise emissions sufficiently.
- The extension of the beer garden /smoking area and installation of the retractable roof have given rise to unacceptable noise levels. The Applicants noise reports claim the capacity of the original beer garden and the new garden approx. 6 times the size of the pre-existing area will have the same capacity and therefore noise level is not accepted.
- The beer garden is not just for outdoor dining but is also for regular live bands performing outside with speaker systems. It is designed as an outdoor entertainment venue.
- Noise impacts are occurring both during and outside operational hours. Weekend licensing law significantly impact residents of the area getting to sleep.
- A fan has been installed on the flat roof and is not identifiable on the drawings. It can run 24/7.

Daylight/Sunlight Impacts

- Should the site levels remain as they are mitigation measures are required to address overlooking i.e. higher boundary treatments and the expense of this should not be on the appellant. Any such treatment will also then generate further shadow casting.
- A daylight/sunlight assessment should have been carried out or at the very last a shadow assessment.
- Trespassing has been witnessed by persons retrieving footballs i.e. from the Astro turf area which is used as such (now conditioned as a service area). Reference is made to the Planning Authority's condition this area be used a 'service area' and if this condition would pass the 6 tests for conditions set out in the Development Management Guidelines. Consideration is required to the scale and intensification of the development and its impact on behaviours.
- The construction of the catering unit increased the height of the boundary wall leading to further overshadowing.
- The intensification of the site has led to an increased number of patrons availing of the development. Thereby more people access the rear of the pub and beer garden leading to more noise.

Odours

- Intrusion of odours from the catering unit location along the boundary of the site. Prevailing winds blow odours to the appellants property.
- A kitchen never operated from these buildings and was instead located in the pub. The proposed extraction is at a lower level than previously existed.
- There are alternative technologies better suited for odour control.
- There are concerns relating to fire from existing ductwork.

Allegations of unauthorised development

- There are questions if a permitted beer garden exists at the site given the drawings for 01/971 do not show the beer garden permitted under 97/1247. Other allegations of unauthorised development are detailed.
- There have been major impacts upon ecology and wildlife in the area through the unauthorised destruction of a woodland without AA screening or Ecological screening.
- Excavations and filling of the site were done without archaeological tests. There are architectural impacts through removal of walls. An 'erection panel sheeting' does not align with the ACA designation.

Discrepancies and issues with submitted documentation.

- There are inconsistencies and a lack of clarity in the information submitted with the application. Ground levels are not consistently identified on the drawings. There is limited information as regards the service area.
- A site attenuation area is proposed but a site characterisation and suitability has not been submitted nor are separation distances indicated.
- There is no cross-section drawing submitted identifying the elevation changes or level changes across the site.

Other Concerns

- Impacts of light intrusion on birds and bats
- Concerns also relate to structural integrity of the shared boundary wall and seeping drainage outfall from the attenuation area given its proximity to shared boundary and potential health impacts.
- This type of bar is not in keeping with a quiet rural village like Cloyne.
- Removal of rendering to the arch is supported.
- Increased capacity of the bar is leading to more parking of vehicles on public paths.
- The site does not operate in accordance with the spirit of sustainability.

7.2. Applicant Response

The Applicants have submitted a response to the Appeals prepared by Tom Philips and Associates. The response can be summarised as follows-

- The proposed development and in particular the rear extension and ground levels were carefully conceived so as not to be unduly obtrusive and to be consistent and compatible with the existing grain of development on the street.
- The Cork County Council (CCC) planners did not cite any concerns in relation to loss of privacy, overlooking and loss of light.
- Specific design measures have been incorporated to ensure opportunities for overlooking are minimised.
- The height of the flat roof is lower than existing pitched roof in order to reduce any adverse impacts on properties adjacent. The flat roof does not exceed the existing function room roof granted under 97/1247.
- The beer garden had an existing capacity of 260 patrons and the proposed capacity remains at 260 patrons. The purpose of the development is to upgrade and to increase the size of the beer garden to provide additional tables and seating across the expanded area.
- All works to the beer garden and boundary walls were carried out under the supervision, instruction and specification of the Engineer.
- The proposed works include a 2.1m high boundary fence. It is considered this is not significant enough to generate substantial overshadowing impacts. Reference is made to the CCC planner's comments on loss of light.
- Condition 9 deals with light intrusion and is considered reasonable.
- In terms of Noise, the response details the existing nature and use of the property in the context of Cloyne and the Noise Impact Assessment (NIA). In relation to the beer garden predicts an increased noise level of +6dB(A) based on the proposal increase in size and capacity. It then details mitigation measures concluding there will be a +4dB(A) increase. It then highlights conclusions of the NIA with noise levels from the beer garden expansion to

increase noise levels at nearest residential properties by approx. 3dB(A) i.e. a slight noise impact.

- CCC recommended permission be granted with a condition limiting noise levels and is considered reasonable. The applicant will comply.
- The NIA submitted by the Appellant finds the area of the site as an 'area of low background noise'. The classification of one property to several properties and a town is questionable.
- A series of assumptions have been made in an attempt to model the beer garden. The modelling has shown an increase of between 5 and 7 dB at No. 7 Rock Street which is noted as an indication of adverse impact depending on the context. This aligns with the NIA submitted by the applicant i.e. a predicted increase of +6dB. This is estimated to drop to a +3dB increase following implementation of proposed mitigation.
- The extractor fan is not operational at night and it should be expected that the kitchen can operate at daytime to serve patrons.
- The service area shall be used as such.
- There is no condition restricting sound systems in the external areas of the public house.
- The existing 6m road width is appropriate and will act as a traffic calming measure as opposed to a traffic hazard. Illegal parking is a matter for active traffic management and outside the control of the applicant.
- The proposed catering unit replaces an older unit within the existing footprint. It will provide additional environmental controls. The extractor fan and wall vent are located to the southern elevation and are approx. 10m from habitable window of adjoining property. A detailed Ventilation Report was submitted in response to the FI request. Baffle filters are designed to effectively capture grease and prevent release to the environment. The applicant intends to comply with condition 6 of CCC grant of permission.
- The applicant will fully comply conditions requiring rendering of the arch and the removal of signage.

- The height of the new catering unit at 2700mm is an existing measurement and not a proposed one. There are no structural changes to this building. External changes are the upgrade of roof covering only. It will not lead to further shadow casting and loss of light.
- The applicant's proposal for surface water discharge were deemed satisfactory by CCC and there is nowhere else to locate it within the site. It was overseen by an engineer.
- The beer garden has an existing capacity of 260 persons and the proposed capacity will remain at 260 persons. The proposal is an upgrade and extension of the beer garden. Significant intensification will not materialise. The Archaeology and Conservation Reports from the council do not raise concerns in this regard.
- The applicant will take all reasonable steps to reduce the impact on neighbours and neighbouring properties to ensure effects on the environment are sufficiently mitigated against during the operational phase of the development.
- In terms of inconsistencies in the drawings it is considered the discrepancies does not detract from the ability to interpret the drawings. CCC have validated them.
- A site suitability assessment is not required for the proposal.
- Matters related to the Land and Conveyancing Law Reform Act 2009 are civil matters.

7.3. Planning Authority Response

The Planning Authority's response to the grounds of appeal (19/08/22) can be summarised as follows-

- All the relevant issues have been covered in the technical reports and no further comment is made.

7.4. Observations

One observation has been received from Niamh Clifford of Castleview House, Commons East, Cloyne. The observer indicates she is a daughter of the residents of No 7 Rock Street. The observation includes photographs and a large number of video files showing footage such as external music from bands, DJ's, sporting events, pub operations etc. These are submitted on a USB flash drive which I have viewed (Note I was not able to view HIEF files but given the name description of each file I am satisfied I understand the points being made.)

The observation can generally be summarised as follows-

- The development is not in keeping with the rural village of Cloyne and poses a significant threat to the health, safety and wellbeing of neighbouring residents.
- Ground level changes impacting upon privacy and leading to trespassing.
- Boundary level changes impacting upon overshadowing and loss of light in garden.
- Increased noise mainly from the changes to ground levels.
- Lack of clarity in the application drawings with specific reference to existing and new ground levels. No reference to levels of adjoining property.
- There has been an overwhelming increase in patronage in the beer garden impacting upon adjoining residential amenity by way of loss of privacy and increased noise levels.
- The assertion the proposed capacity of the beer garden is the same as the original is incorrect and misleading.
- The Councils condition 2 impacts residential amenity instead of protecting them.
- There is another beer garden located to rear of a pub and adjoining the southwestern boundary of the rear garden to No. 7 Rock St.
- The original beer garden at this site does not have planning permission. Planning reference number 97/1247 was revoked. 01/971 did not show plans for a beer garden.

- The catering unit causes a loss of internal light, overshadowing, increased noise levels including from extractor fan on the boundary and a boiler flue in close proximity to living rooms and bedrooms, odours and fumes.
- There are a number of additions to the public house that are not detailed in the planning application including units and vents installed on the pub's new roof. These are not included in the applicant's noise impact assessment.
- The applicant removed some of the boundary wall adjacent to the service area.
- There is live music in the beer garden on a regular basis. A new sound system including outdoor speakers have been installed including at the boundary wall. TV's have also been installed.
- Windows at first floor enable a line of sight into neighbouring properties.
- Light intrusion
- Lack of parking
- Security cameras impacting privacy.
- Works undertaken without archaeological supervision.
- Condition 2 will be difficult to enforce.
- The noise limits set in Condition 3 are too high in comparison to low background noise.
- Condition 4 is ambiguous and places an onus on the residents. There is no mention of music or sound to the rear. A noise management plan is proving unrealistic.

8.0 **Assessment**

8.1. **Introduction**

- 8.1.1. I have examined the application details and all other documentation on file, including the Appeals, Observation and the Responses to the Appeals. I have inspected the

site and viewed it from the Appellants property at No. 7 Rock Street. I have had regard to relevant local/regional/national policies and guidance where relevant.

8.1.2. I am satisfied the substantive issues arising from the grounds of these third-party Appeals relate to the following matters-

- Nature of the Application and Unauthorised Development.
- Drawings and Specifications
- Principle of the Development
- Nature of Use and Intensification
- Impact on Residential Amenities
 - Noise
 - Odour
 - Daylight, Sunlight and Overshadowing
 - Overlooking
- Surface Water Discharge/Requirement for site suitability assessment.
- Trespass
- Other Concerns
- Appropriate Assessment

8.2. **Nature of the Application and Unauthorised Development.**

8.2.1. It is clear from the content of the appeals and the observation on file there are strong feelings against the application based on the unauthorised nature of the development on site. However it must be acknowledged that the application is predominantly for retention permission with the intention of regularising the site which clearly includes the unauthorised elements.

8.2.2. The Appellant's question the basis of a beer garden at this site at all. They highlight that the permissions granted under 01/971 and 97/1247 call into question if the beer garden at this site was ever authorised. I have examined the history documents for these permissions which are on file. Based on the contents of same I cannot categorically say if the beer garden permitted under 97/1247 was not provided for within the yard area of the drawings under 01/971 or that the permission may have been taken up at a later date after the submission of 01/971 while 97/1247 was still

live. I see no evidence of or reason why the permission granted under 97/1247 would have been revoked as detailed by the observer to the Appeal.

8.2.3. Notwithstanding the above, it is clear from the contents of the appeal that a beer garden did exist and has operated to some extent at the rear of the original pub prior to the commencement of works which form this application for retention. I also note Ordnance Survey Ireland aerial photography⁵ dated from 2013-2018 is supportive of this use.

8.2.4. While matters for unauthorised development are not for An Bord Pleanála and are instead concerns for the Planning Authority it is important to state that notwithstanding these concerns, a beer garden use is generally an appropriate ancillary land use to a public house subject to other normal planning considerations.

8.3. Drawings and specifications

8.3.1. I note concerns raised in relation to discrepancies or inconsistencies in the drawings. I have considered the concerns raised in relation to levels on the site as shown in the drawings. I do not consider this discrepancy has a materially bearing on the assessment of the application.

8.3.2. Having considered the information submitted, having inspected the site and noting that the Planning Authority have validated the application in accordance with the relevant provisions of the Planning and Development Regulations 2001 (as amended) I am generally satisfied the drawings reflect the conditions of the site and the development proposed and for retention. In this regard they form a reasonable basis for the consideration and assessment of the application.

8.3.3. Notwithstanding this, it must be acknowledged that Article 23 of the Regulations- 'Requirements for particulars to accompany an application under article 22' (i.e. Article 22-. 'Content of planning applications generally') details-

Plans, drawings and maps accompanying a planning application in accordance with article 22 shall all be in metric scale and comply with the following requirements:

⁵ <https://webapps.geohive.ie/mapviewer/index.html>

(a) *site or layout plans shall be drawn to a scaleof not less than 1:500
..... the site boundary shall be clearly delineated in red, **and buildings,**
roads, boundaries, septic tanks and percolation areas, bored wells,
significant tree stands and **other features on, adjoining or in the vicinity**
of the land or structure to which the application relates **shall be shown.***

.....

(d) *drawings of elevations of any proposed structure shall **show the main**
features of any buildings which would be contiguous to the proposed
structure if it were erected, **whether on the application site or in the**
vicinity, at a scale of not less than 1:200, as may be appropriate.....⁶*

- 8.3.4. The submitted site layout plans do not show buildings or other features such as structures and amenity spaces etc. on the adjoining site. I consider the proximity, layout and extent of the existing residential buildings to the western boundary and their individual private amenity spaces should have been detailed in order to adequately demonstrate the impact of the development to be retained.
- 8.3.5. While acknowledging this application is predominantly for retention, I note the submitted front elevation drawings do provide for the adjoining contiguous building to the immediate west. However the rear elevation drawings do not adequately show the contiguous rear elevations and features of the neighbouring building to the west and how the levels of the site relate to the adjoining property.
- 8.3.6. It is therefore difficult to assess the impact of the works to be retained based on the drawings alone which include changing site levels and subsequent impacts upon existing and proposed boundary treatments to adjoining private residential amenity spaces. The Appellants assert these impacts affect daylight to internal spaces and overshadowing of private amenity spaces. These will be considered accordingly in section 8.6 below.
- 8.3.7. I have inspected the site and witnessed the physical impact of the development from within the property known as No. 7 Rock St. (Ms. Clifford's appeal) and its external private amenity space. I also inspected the rear garden of the property between No. 7 Rock St. and the public house (Mr Mullen's Appeal relates) from the flat roof of the

⁶ Note the underlined and bold formatting have been added for emphasis purpose.

public house. I note photographs and video footage are provided by the Appellants. I have also provided my own photographs in addition to this report.

- 8.3.8. It is a matter for the Board to decide if they have sufficient information to decide on the application from the submitted drawings and specifications with the application. However, I am satisfied based on the information provided by all parties and from my own observations on site that I can provide a reasoned assessment and recommendation on the matters highlighted in the Appeals, Observation and Responses.

8.4. Principle of the Development

- 8.4.1. The site is located within the Cloyne Settlement Boundary and is zoned Town Centre/Neighbourhood Centres as per the provisions of the Cork County Development Plan 2022-28 (CDP).
- 8.4.2. Objective ZU 18-17 of the CDP deals with Town Centres/ Neighbourhood Centre zonings and seeks to '*Promote the development of town centres and neighbourhood centres as the primary locations for retail and other uses that provide goods or services principally to visiting members of the public*'. Public Houses are then listed as appropriate uses in such zonings.
- 8.4.3. The Cork County online mapping system (Volume 6- maps)⁷ further identifies the sites zoning as- CY-T-01 which is detailed as a 'Specific Development Objective' for Cloyne on page 279 of Volume 4. The following is considered relevant-
-*Development within the core of the village shall be designed to a high standard and reinforce the character of the streetscape.*
 - *New development should consolidate and strengthen the existing village core, be sympathetic to the scale and character of the village, contribute to the compact form of the village and respect the views and settings of existing heritage buildings in the village.*
- 8.4.4. Chapter 9 of the CDP deals with 'Town Centres and Retail'. CDP 'Objective TCR 9-1: Town Centres' paragraph (a) seeks to encourage the retention and development of entertainment amongst other uses. Paragraph (g) specifically seeks to support

⁷ [Plean Forbartha Contae Chorcaí 2022 - Cork County Development Plan 2022 \(arcgis.com\)](#)

proposals for development involving evening, night time, food and beverage or entertainment uses within, or immediately adjacent to, the defined town centres where it can be demonstrated that the development will enhance the character and function of the area; this may include extended opening hours, proposals for outdoor dining and event space as well as proposals for greater utilisation of existing heritage assets.

8.4.5. Having considered the above I am satisfied the works to be retained including those to the beer garden generally do contribute to consolidating and strengthening the existing village core, do contribute to the compact form of the village and do respect the views and settings of existing heritage buildings in the village i.e. the works and use of the beer garden do not detract significantly from the ACA or the setting of protected structures visible from the site. In this context, the development is generally in accordance with Specific Development Objective CY-T-01 and is acceptable in principle at this location.

8.4.6. However, it must be acknowledged that Cloyne is a village. In this regard and based on the information submitted with the appeal, the observations and from what I have witnessed during my site inspection including other anecdotal evidence of ticketed live events at this site⁸, it would appear that the site has been developed a use akin to a larger entertainment style venue in addition its typical public house function with ancillary beer garden.

8.4.7. The scale and extent of this use needs to be considered through the remainder of this assessment in the context of Specific Development Objective CY-T-01 i.e.- if the development is “*sympathetic to the scale and character of the village*” as well as CDP Objective TCR 9-1: Town Centres paragraph (a) and (g) i.e. to enhance the mixed use character of Town Centres and to support proposals involving evening and night time commercial, food and beverage or entertainment uses.

⁸ <https://secure.tickets.ie/Listing/EventInformation/44867/fever-105>
<https://allevants.in/bantry/dwywts-live-at-the-rock-cloyne-co-cork/200024313280935>

8.5. Nature of Use and Intensification

- 8.5.1. The Appellants raise reasonable concerns relating to the use and intensification of the site and in particular the extent and scale of the beer garden. These are important considerations in the context of Specific Development Objective CY-T-01 as detailed in paragraph 8.3.5 above. The Applicant's assert in their response to Further Information (RFI) and the appeal that the capacity of the beer garden remains the same as the original beer garden prior to the works i.e. 260 people despite it clearly being significantly larger in size.
- 8.5.2. RFI Drawing No. 18235_P_202 00 (Existing Beer Garden Capacity Plan) details the original external standing area as 78 sq.m with a standing occupancy based on 0.3 people per sq.m or 260 people. RFI Drawing No. 18235_P_201 00 (New Beer Garden Capacity Plan) details a larger area with two separate standing areas with a combined capacity for 166 people and a seating area for 94 people also giving a total capacity of 260 people.
- 8.5.3. The Board are advised that section 4.2 of the Applicant's Noise Impact Assessment (NIA) submitted with the RFI details the existing beer garden area was 143 sq.m and the proposed area is 518 sq.m or 3.6 times the size.
- 8.5.4. While the original beer garden may have been capable of physically hosting 260 people standing in an area detailed at 78 sq.m and based on the submitted RFI drawings or 143 sq.m as per the NIA, I find it completely disingenuous and highly questionable to suggest the proposed capacity and overall development to be retained is in any way reflective of the original beer garden and its likely historical usage patterns.
- 8.5.5. I note the general Objective ZU 18-17 for sites zoned 'Town Centres/Neighbourhood Centres' is to promote the development of such zonings as the primary locations for uses that provide goods or services principally to visiting members of the public. Objective TCR 9-1: Town Centres' is also supportive of proposals involving evening and nighttime commercial, food and beverage and/or entertainment uses at such sites. The development subject to this application is consistent with these objectives.
- 8.5.6. While there are good reasons to say the use of the site has been intensified, ultimately the nature of this will be dependent on the successful operation of the

public house which will obviously vary over the course of a day, week, month and year.

- 8.5.7. The information obtained from the Appellants, the Observer, with the application and from the owner of the property (who I met during my inspection) in my mind, point to the external beer garden space being used for live music events as well as amplified music and broadcasting of televised sporting events. Anecdotal evidence of live ticketed events is also detailed in footnote 8 above. I acknowledge it is not clear if ticketed events are internal or external, but I would expect such events to at least be amplified throughout the site including the whole beer garden area where speakers were evident.
- 8.5.8. In my opinion the application site is considered to include an entertainment venue which, may represent a material change of use. The frequency, times and in particular the noise volumes of all occasion types on this site in particular those in the beer garden and external area (adjoining existing residential properties) would in my opinion be inconsistent with the original use of the public house and its beer garden, notwithstanding licensing laws and applicable hours of operation. In this regard I refer to Article 10 (1) (c) of the Planning and Development Regulations 2001-23 (as amended) i.e. provisions for change of use and exempted development.
- 8.5.9. There is limited or no information on file in this regard and in the absence of a detailed indications of same there is a real risk to proper planning that such events could occur uncontrolled (save for licensing laws) at the site significantly detracting from existing residential amenity within the village setting.
- 8.5.10. I note Condition 2 of CCC grant of permission attempts to manage the capacity and extent of the external area by detailing *“the extent of beer garden shall be in accordance with the capacity layout submitted on the 9th of June 2022 only”*. The applicants have not appealed this and they appear to accept its imposition through their response to the Appeal.
- 8.5.11. Having considered all of the above, a proposal for a beer garden ancillary to the pub and the works to be retained are generally considered appropriate for this site given its zoning objective, the *TCR 9-1: Town Centres (g)* CDP objective and its location within the settlement boundary. However in the absence of detailed information in relation to intended usage patterns of the beer garden including the sites apparent

use as an entertainment venue, I do not consider the nature and intensity of the use of the external area as acceptable. This application should be **Refused**.

8.6. Impact on Residential Amenities

8.6.1. Introduction

- i. In order to consider the impacts of the development upon adjoining residential amenities it is important to understand the layout of the Appellant's neighbouring properties.
- ii. The application site has its address as No. 9 and 10 Rock St. The Appellant's raise concerns in relation to the impacts upon No. 7 and No. 8 Rock Street i.e. the immediate west⁹. The Urban Place Map drawing submitted with the application does not appear to accurately reflect the layout of No. 7 and No. 8 on the ground at the time of the inspection and as detailed in section 8.3 above the other submitted drawings do not provide sufficient information in this regard.
- iii. No's 7 and 8 are typical town or village style houses with narrow plans typically one room wide save for hallways. No. 7 appears to have extended to the rear at some point with a first-floor rear return and further at ground level with an internalised living room space centrally located and kitchen extension area at the rear of this space. The living space has an internal east facing window. The rear boundary of No. 8's rear amenity space appears to generally align with the rear of No. 7's kitchen area which has a south facing window. The rear garden of No. 7 appears to then enclose the private amenity space of No. 8 on three sides (the application site encloses the fourth side) and then runs further south along the boundary of the application site for c. 15-20m. Some shed structures adjoin or are close to the rear of the house and run along the western boundary of that amenity space.
- iv. The private amenity space to No. 8 is very small and is enclosed with a tunnel style effect on its eastern and western boundary as well as a rear boundary

⁹ The noise report submitted by one Appellant is detailed to be on behalf of a number of residents of Rock St and specifically identifies No. 4 Rock Street as a noise sensitive location.

wall to its southern boundary and a corrugated shed like structure within. A photograph with Mr Mullen's Appeal shows south facing windows at ground and first floor. The ground floor window is indicted in that Appeal as the kitchen.

- v. In terms of proximity to nearest windows the Applicant details in Response No. 2 of their RFI submission that the extract fan and wall vent are approx. 10m from any opening window to a habitable room to the neighbouring property. Drawing no 18235_P_504 00 submitted with the RFI then shows the catering unit to be approx. 13m from the first-floor window of No. 8 and 7m from the first-floor window of No 7. It is not clear on the drawing where on the catering unit these dimensions are from, but I suspect it is the northern most point. The drawing and RFI submission do not refer to the proximity of the ground floor kitchen area window at the rear of No. 7 which I estimate to be c.6-10m from the extract ducts on the southern elevation of the catering unit.
- vi. There is also limited information on the drawings in relation to external mechanical plant on the flat roof of the public house (I observed at least 5).

8.6.2. Noise

8.6.2.1. Policy, Objectives and Other Guidance

- i. CDP objective BE 15-13 deals with Noise Emissions. It seeks to minimise and control noise pollution associated with activities or development, having regard to relevant standards, published guidance and the receiving environment. It also seeks to ensure noise-sensitive developments are adequately protected from potential sources of noise and gives an example of national roads. The objective does refer to two Noise Action Plans both of which do not provide for the application site within Cloyne.
- ii. NPO 65 of the National Planning Framework seeks to promote the pro-active management of noise where it is likely to have significant adverse impacts on health and quality of life and support the aims of the Environmental Noise Regulations through national planning guidance and Noise Action Plans. RPO 131 of the Regional Spatial Economic Strategy for the Southern Region also espouses much of NPO65.

iii. There is limited if any national planning guidance on 'Noise' at this time for proposals such as this application. In the absence of same it is reasonable to consider some of the provisions of the guidance and standards documents described in section 6.4 above including-

- a. The World Health Organisation's (WHO) Guidelines for Community Noise 1996 discusses some of the health impacts of noise in dwellings. This is important in the context of NPO 65 and RPO which seek to pro-actively manage noise where it is likely to have significant adverse impacts on health and quality of life. The WHO Guidelines identify adverse noise impacts such as sleep disturbance, annoyance and speech interference. A relevant summation of Table 1 of the Guidance is set out-

Specific environment	Critical health effect(s)	L _{Aeq} [dB(A)]	Time base [hours]	L _{Amax} fast [dB]
Outdoor living area	Serious annoyance, daytime and evening	55	16	-
	Moderate annoyance, daytime and evening	50	16	-
Dwelling, indoors Inside bedrooms	Speech intelligibility & moderate annoyance, daytime & evening	35	16	
	Sleep disturbance, night-time	30	8	45
Outside bedrooms	Sleep disturbance, window open (outdoor values)	45	8	60
Ceremonies, festivals and entertainment events	Hearing impairment patrons:<5 times/year)	100	4	110

Interestingly in relation to 'Ceremonies, Festivals and Entertainment Events' the Guidance highlights widespread concern about the effect of loud music and impulsive sounds. It generally focuses on people

attending these occasions and employees of the venues detailing that both should not be exposed to 100 dB L_{Aeq} during a four-hour period more than four times per year or in the case of employees established occupational standards.

Noting the proximity of the site to neighbouring residential properties I suggest such recommendations are especially pertinent and the negative impacts of generally uncontrolled (save licensing laws) and unmeasured loud noise from music, amplified sound, patron sound etc from the site are significant considerations.

- b. Institute of Acoustics- 'Good Practice Guide on the Control of Noise from Pubs and Clubs (2003)'.

This guide does not provide objective noise criteria for the purpose of assessing and controlling noise from all the main sources of noise that can be present at such properties. It does however identify sources of noise disturbance originating from outside such buildings including music, singing and speech, both amplified and non-amplified and rowdy behaviour all of which could reasonably considered to occur at sites such as the one subject to this application. Interestingly section 7.1 of this guide states

Where noise could affect the occupants of neighbouring properties, consideration should be given to noise control issues prior to applying for planning consent, or a licence that permits entertainment, or before introducing any material changes to buildings or operations. Such consideration is financially prudent, as it could reduce the likelihood of failed planning or licence applications and/or costly remedial measures, in the event of justified complaints from local residents.

Section 7.2 states-

In order to minimise the risk of noise problems arising, extreme caution should be exercised in permitting developments that result in pubs, clubs and other similar premises being structurally attached to noise-sensitive properties. Such

development should not be permitted without it being clearly demonstrated that acceptable noise levels can be achieved and maintained at, and in, the noise-sensitive properties. When demonstrating acceptability, a conservative approach should be adopted in the calculations, which, in turn, must be based on realistic source noise levels.

- c. 'Noise From Pubs and Clubs (Phase II) is a 2006 UK Guidance Report prepared for the Department for Environment, Food and Rural Affairs (UK).'

This report attempted to identify the most appropriate methodology and criteria for assessment of entertainment noise from pubs and clubs. It identified three noise metrics for measuring noise and highlighted significant weaknesses within each. The following were suggested-

- Absolute $L_{Aeq\ 5min}$,
- $LA_{90} - LA_{90}$ (no music) or $L_{Aeq} - LA_{99.95}$, OR
- existing UK Noise Act methodology ($L_{Aeq} - LA_{99.8}$).

While I accept the limitations of each of these metrics detailed in the Guidance Report, I note the control and assessment of music and other sound sources at this site would be within the remit of the Applicant in this instance and a comprehensive noise assessment to include these noise sources and more substantive mitigation measures to address such noise should be included.

- d. BS 4142 is a British Standards publication titled '*Methods for rating and assessing industrial and commercial sound*'. Clause 1.1 clearly details its use as an appropriate methodology for considering '*sound from fixed installations which comprise mechanical and electrical plant and equipment*' such as the extraction system and other plant located on the application site. Clause 1.2 details its appropriateness for complaints and impact from premises used for residential purposes. The standard notes that a difference between specific and background levels of 10 dB or more is indicative of a significant adverse impact. A

difference of 5 dB is indicative of an adverse impact, with lower differences suggesting reduced impacts. The standard states that impact will be increased or reduced depending on local context which is pertinent to the subject application.

- e. BS 8233 provides ‘*Guidance on sound insulation and noise reduction for buildings*’ (2014). It provides recommendations for internal ambient noise levels for houses-

Activity	Location	07:00 to 23:00	23:00 to 07:00
Resting	Living Room	35 dB L _{Aeq,16hour}	-
Dining	Dining Room/area	40 L _{Aeq,16hour}	-
Sleeping (daytime resting)	Bedroom	35 L _{Aeq,16hour}	30 B L _{Aeq, 8hour}

It should be noted this standard is not directly applicable to the assessment of impacts from external sources such as the application site on neighbouring properties. The Applicants NIA submitted at RFI stage does however refer to this standard.

- f. ISO 1996 details a methodology for measuring noise in the community and this methodology forms the criteria of CCC third condition. Considering the difficulties in terms of adequately measuring noise from music, low frequencies etc as discussed elsewhere in this section, I am not convinced it is the most appropriate methodology for managing this development.
- g. The EPA produced the ‘Guidance Note for Noise: Licence Applications, Surveys and Assessments in Relation to Scheduled Activities’ otherwise referred to as (NG4). While these Guidelines clearly don’t relate to the subject application it is noted that typical limit values at noise sensitive locations (including dwellings) are detailed at-
- Daytime (07:00 to 19:00hrs) – 55dB L_{Ar,T};
 - Evening (19:00 to 23:00hrs) – 50dB L_{Ar,T};
 - Night-time (23:00 to 07:00hrs) – 45dB L_{Aeq,T}.

- h. In January 2021, the Association of Acoustic Consultants of Ireland published an advice document titled “*Environmental Noise Guidance for Local Authority Planning & Enforcement Departments*”. While this has no statutory influence on planning assessment and decisions it does provide helpful and sensible guidance on a number of matters that I consider applicable to consideration of this application e.g. in providing an example for establishing noise level frameworks for formal guidance it details that a rural pub that has music entertainment once a month ending before midnight would not be treated as stringently as a nightclub in a densely populated urban area that operates every night until early morning hours.

Section 20 of the advice focuses on Pubs & Clubs in which it highlights breakout music noise as the source that gives rise to the majority of complaints. It details that there are no normalised, universally applied method for assessing music noise from pubs and clubs. Typical issues are highlighted including the inadequate use of $L_{Aeq,T}$ for assessing music noise due to bass elements i.e. low frequency sound. It recommends carrying out low frequency assessments with exceedances of 5dB at a dwelling’s façade may indicate it is audible inside and may therefore be unacceptable to the resident. The section concludes-

“...the ultimate noise control objective should be to ensure that the music is at such a level that it is acceptable to a resident of a nearby noise sensitive property. The stringency of the limit imposed will depend on the frequency of events and the venue’s hours of operation, but this will often mean that the music should be virtually inaudible inside the dwelling, even with the windows slightly open.”

- iv. The NPF and the RSES seek to manage noise where it is likely to have significant adverse impacts on health and quality of life. The CDP seeks to minimise and control noise pollution. The WHO Guidelines details the negative effect of adverse noise on health. It and the EPA’s NG4 attempt to set thresholds/standards that are relevant and appropriate to residential

amenity. Other BS standards and guidance discussed highlights the difficulties in assessing different noise sources and difficulties in applying measuring techniques to each type.

- v. It is therefore clear there are no established ideal method for considering the impact of noise such as that emanating from the application site. It is clear to me that the standards suggested by the WHO and NG4 Guidelines are too restrictive for the site to operate as required. However they are a reasonable baseline to manage residential amenity.

8.6.3.1. **Applicant's consideration of Noise Impacts**

- vi. The Appellant's have raised significant noise concerns arising from the use of the site and in particular the external beer garden area. These concerns are further emphasised by the submissions of the observer which appear to demonstrate the actual impact of music from the site within private amenity spaces and internal to houses. Adverse noise impacts from extraction and other plant equipment are also highlighted.
- vii. Noise concerns were raised by the Planning Authority at FI stage and a Noise Impact Assessment (NIA) was requested. A NIA was submitted prepared by Brian S. Johnson of CLV Consulting in response. This report was prepared in January 2022.
 - The report discusses the situation at that time and the renovation/expansion elements which included internal cosmetic modifications and the extension of the beer garden area. Section 3 highlighted the atypical nature of ambient noise levels at the time due to Covid 19 restrictions.
 - The report considers the nature of the site and the development to be unique for three listed reasons the third of which details that the noise emissions associated with the external expansion areas are expected to be similar to those of the bar's pre-existing outdoor seating area.
 - The report considers an approach based on a 'relative noise increase' as opposed to an 'absolute noise limit' as preferable. It provides a table

offering guidance to the likely impact associated with various range changes in noise level but does not provide a source for the table.

- The NIA then discusses refurbishment to the internal areas before focusing on the external areas. The internal measures appear reasonable.
- In terms of the external area the NIA is relatively silent on identified noise sensitive locations or noise sources.
- Its relative noise increase approach proposes a noise level increase proportional to the increase in the size of the beer garden i.e. 143 m² to 518 m² equalling a 3.6 times increase thereby translating to an equivalent increase in total noise level of +6dB(A).
- I note RFI Drawing No. 18235_P_202 00 (Existing Beer Garden Capacity Plan) highlights the 'Existing Beer Garden' area in hatched blue and details the area as 78 sq.m. This is an increase equalling c. 6.6 times and therefore should represent an increase in total noise level substantially larger than the submitted +6dB(A) based on the approach taken.
- The report then discusses mitigation such as provision of a canopy, increased propagation and decreased reflection through removal of perimeter walls and increased distance off the beer garden from the residential dwellings to the north. It is not clear if the dwellings referred to here are the neighbouring dwellings to the northwest or those on the opposite side of Rock St.
- The report considers these factors to decrease noise emissions to dwellings to the north +4dB(A). Referring to the table provided the report considers there to be a slight noise impact. The report details that the only way to provide further attenuation would be to provide a noise barrier at the top of the existing roof which could be considered to suggest the main roof of the public house as neighbouring properties to the west would retain their views south. This section of the report

concludes the only practical method of reducing beer garden noise is through the implementation of a noise management policy.

- The report then goes on to discuss noise from the services units of the kitchen catering unit only i.e. the extract duct and boiler vent. It suggests a combined noise level of 27 dB L_{Aeq} while in operation to the residential units to the north. The report then focuses on recommended indoor Ambient Noise Levels set out in BS8233 (2014)- and finds a noise level of L_{Aeq} to be well below the criteria at all time periods even allowing for an open window correction.
- The report concludes with some suggestions for the noise management policy.

- viii. I appreciate the difficulties of carrying out a NIA in January 2022 due to Covid 19. However having reviewed the contents of the report a number of noise related concerns remain. I also question the appropriateness of the 'relative noise increase' approach taken simply by considered the size increase of the space.
- ix. There is very little focus on the dominant noise sources over different time periods of any day. This focus should address people congregating in the beer garden, external music and amplified sound as well as the other plant equipment located on the flat roof at the rear of the public house. I also note the extractor fan surveyed is not currently in situ with a much larger one in place at the time of my inspection. The report does not appear to adequately identify the nearest noise sensitive locations i.e. the two residential properties to the site's immediate west.
- x. As the application is mainly for retention where plant equipment units were in situ, it is reasonable to question the use of BS8233 for measuring such noise when BS4142 is the more appropriate standard for rating and assessing industrial and commercial sound (Clause 1.1 b). I also consider the proposed noise management policy to be perfunctory at best e.g. to suggest staff should discourage raised voices and singing in an external area where music is played and amplified over speakers would have very little, if any meaningful impact.

8.6.3.2. **Planning Authority's consideration of Noise Impact**

- xi. The Planning Authority recommended a grant of permission subject to Condition 3 which details the testing methodology for assessment as ISO 1996. And sets noise level limits that appear to generally align with
- WHO 1999 standard thresholds for serious and moderate annoyance from outdoor areas from 07.00 - 23.00hrs and from outside bedrooms between 23.00-0700 hours and the
 - typical limit values for noise from licensed sites as per the EPA's NG4.

In this regard, I consider these limits to be relatively standard and typical. But it needs to be determined if they are appropriate to the site's context and the nature of the application.

- xii. Condition 4 details that no music or other amplified sound shall be emitted to the public street or broadcast in such a way to cause nuisance to the occupants of nearby properties. There is a degree of ambiguity about this condition as it is clear that music and amplified from the rear beer garden is causing nuisance to the occupants of nearby properties both internally and within their private amenity spaces and thereby impacting upon residential amenity.

8.6.3.3. **Appellants consideration of Noise Impact**

- xiii. One of the Appellants has submitted their own Noise Impact Assessment (NIA) prepared by James Walsh of 'Sound Engineering by Design' and dated 31/07/22.

- The report highlights four specific noise sources-
 - Amplified Live Music
 - Amplified other music including TV audio etc (speakers in beer garden)
 - Patron Noise
 - Noise from Plant

- The report considers the protection afforded by Condition 3 and 4 will not provide sufficient protection from these sources to houses to the west of the site.
- The report details Condition 3 does not sufficiently consider the character of the source and the low background noise levels in the area and Condition 4 is ambiguous and will do little to mitigate the noise intrusion to protect residential amenity.
- The report details that A-weighted noise limits are inadequate for music noise intrusion due to the bass elements of such noise. It refers to the Institute of Acoustics 2003 Guide suggesting where entertainment takes place on a regular basis music etc. it should not be audible inside a noise sensitive property at any time. Limits are recommended in an Annex¹⁰ to the Guide, detailed in the NIA and suggested as criteria for this application.
- In terms of noise from plant the report highlights shortcomings in the Applicant's choice of BS8233 as far as effects of changes in the external noise levels to occupants of an existing building and in particular Table 2 is for anonymous noise i.e. noise without character.
- The report then puts forward the methodology provided in BS: 4142 and highlights the application of penalties for distinguishing characteristics such as tonality, impulsivity, intermittency or other sound characteristics. This standard emphasises that an understanding of context is required.
- The report highlights a discrepancy in the size of the beer garden as detailed in the Applicant's submission i.e. 78 sq.m as per the FI submitted drawings (see paragraph 8.3 above) versus 143 m² in the Applicants NIA. It also questions the assumption that the original beer garden was standing area only.

¹⁰ It is my understanding that this Annex was not formally published with the Guide because trials of the proposed criteria produced inconclusive results and therefore were not considered robust enough. The annex and the criteria was, however, published separately in an article (Hinton and Somerville, 2003) to stimulate discussion of the criteria.

- The report detailed a BS:4142 assessment of noise from the kitchen extract fan (i.e. one item of plant) from the rear of No. 7 Rock St. Background measurements were taken after 1 am (Saturday night into Sunday morning 18/06/22) when all other sources had abated.
- Measurements from the extractor fan were also taken on 07/07/22 (Thursday) when no persons were in the beer garden and the background level was again taken when the extractor fan was switched off at 22.30 hours. Another background level was taken on the morning of 08/07/22 at 10.00hrs with the fan off.
- The results determined the Rating Level exceeded the background level by 16 dBA (without penalty by 13 dBA) and in accordance with BS 4142 is likely to indicate a significant adverse impact.
- The report refers to section 4.4.2 of the EPA Guidance Note for Noise 2016 (NG4)- Setting Appropriate Noise Criteria. It details background levels recorded during daytime, evening and night-time as 32, 32 and 28 dB LA90,15 min and Cloyne would therefore be objectively considered an area of low background noise. Limits set out in NG4 for such areas are then detailed as 45 dB, 40 dB and 35 dB.
- The report details the absence of a rating method relating to patron noise. It instead puts forward a noise prediction model based on a number of parameters set out in the application including capacity, standing, seating, boundary treatment (noise barriers) etc as well as assigned values for normal and raised voices and directivity.
- A noise model is also prepared for the previous beer garden using similar assumptions put forward by the applicant.
- The model provides a noise contour plot showing the preexisting versus the beer garden for retention with increases of 7, 5 and 11 dBA at identified noise sensitive locations¹¹.

¹¹ Note- modelling shows the impact to number 4 Rock St as well as No. 7 (An Appellant) but not No. 8 (An Appellant)

- The report details these values far exceed the limits set out in the Planning Authority conditions. They are also in excess of 10dB(A) over the limits recommended for low background noise as per the EPA's guidance- NG4 (2016). No penalties for impulsive character noise have been applied.
- Compliance with the Planning Authority conditions when the space is fully occupied will not be possible. The Applicants Noise Management Plan is not a feasible measure to restrict noise emissions sufficiently.

8.6.3.4. **Conclusion**

- xiv. It is important to highlight that in the Applicants Response to the Appeal they have clearly indicated their satisfaction with and intention to comply with the Planning Authority's conditions. However it appears to me that the development will not be able to operate as intended within these parameters.
- xv. Having considered all of the above, it is my view the Applicant's NIA is not an adequate consideration of the noise related concerns evident at the application site. While I accept considerable time has passed since the preparation of the NIA and the circumstances may not have been the same as the time of the Appellants NIA, I do note noise level concerns were raised through the original submissions to the application and have remained evident throughout the appeal. The extent and control of noise sources from this site remain wholly within the control of the Applicant and assessment of each type is lacking regardless of the difficulties and formal guidance for measuring same.
- xvi. I consider the NIA submitted by the Appellant's to be a robust and comprehensive consideration of the issues at hand. In particular, it identifies and addresses the main noise sources. Noise from music, amplified sound and patrons using the beer garden are likely to be the most dominant sources detracting from residential amenity. This report also applied the provisions of BS4142 which I consider an appropriate methodology for consideration of noise from the extraction plant on the catering unit.

xvii. I acknowledge CCC and their Environment Section raised no noise related concerns following the submission of RFI other than those which they consider can be adequately addressed through conditions 3 and 4. They have sought to set sound levels during the days as follows-

- 07.00-19.00 at 55dB(A) over 30 mins (LAR),
- 07.00-19.00 at 50dB(A) over 30 mins (LAR),
- 23.00-07.00 at 45dB(A) over 15 mins eq.

They require sound measurements to be taken in accordance with ISO Recommendations R 1996 with noise sensitive locations including houses. Condition 4 requires no music or amplified sound to be emitted to the public street or broadcast to cause nuisance.

xviii. Having considered these conditions in the context of the existing public house, the sites location within Cloyne, the zoning objective for the site and the proximity of neighbouring houses, I tend to agree with the findings of the Appellant's NIA in that these conditions will not achieve their stated reasons i.e. "In the interests of residential amenities" and "In the interests of protecting amenities". In order to comply with these conditions it is my view that music, amplified sound and patron noise would not be possible at this site as clearly intended.

xix. In saying that, it must also be acknowledged the site is an existing public house with an existing beer garden pre-existing this application. The works subject to this application represent an improvement of the overall quality of the premises and the service of the existing use within the settlement of Cloyne and is zoned accordingly. In order to balance existing residential amenity needs and the appropriate development of the site as per its zoning there may be a need to facilitate breaches in typical sound levels such as those suggested by the condition or in the guidance documents discussed earlier.

xx. However in my opinion, detailed consideration of the full extent of noise is needed i.e. live music, amplified music, patrons on site, decibel levels for certain events, times per day and number of days etc. This could and should

form part of a well-designed 'Noise Management Policy' that would contribute to the determination of all noise impacts from the beer garden either as a use ancillary to the pub and/or as an entertainment venue and most importantly should address frequency of usage, timing by month, days, hours etc. and other noise mitigation measures.

- xxi. Given the competing needs of the Applicant and the Appellants I do not consider it appropriate to attempt to strike such a balance through conditions setting noise limits for music, amplified sounds or patron noise or even a condition managing usage e.g. times of day, days of week or areas of the space etc.
- xxii. Having considered all of the above the development as proposed should be **refused** due to the likely significant and negative noise impact which would detract from residential amenity of existing properties in the area.

8.6.4. **Odour**

- a) The Appellant's raise concerns in relation to odours emanating from the use and conversion of shed structures to a food catering unit located along the site's western boundary. The concerns generally relate to the proximity of this building and its extraction utilities to private amenity spaces and windows of their houses. The impact is further detailed as influenced by the prevailing winds. The use of a baffle filter is also questioned.
- b) The Planning Authority raised odour as a concern at FI stage. The applicant submitted a Ventilation Report from John Kelleher and Associates which details the ventilation system consists of a single kitchen extract hood canopy with baffle filters to remove grease moisture and smells. Photographs are supplied. This extract duct external location is on the southern gable of the food catering unit building.
- c) The Board are advised the extract plant as shown in the report and drawings is not the one in-situ during my inspection. The one in-situ is a much larger feature that protrudes further off the wall at the same location. It is likely the system in place during the inspection is superior to the pre-existing one in

terms of emission treatment. Notwithstanding this I can only consider the information on file and the system proposed within.

- d) The details submitted at FI stage were considered acceptable by the Council's Environment Section as set out in their report subject to condition. The Planning Authority decided to grant permission with a condition (6) requiring the ventilation extraction system to incorporate best practical means to limit the manner and quantity of emissions to air, regard to detailed specification documents and for a maintenance programme and log to be put in place.
- e) The applicants have indicated in their response to the Appeal their intention to comply with condition 6 of CCC decision to grant.
- f) Odour emissions in close proximity to residential amenities is always contentious and is an understandable concern of the Appellants. However it must be acknowledged the site is located within the settlement boundary and is zoned accordingly. A kitchen operating from a public house is a typical and reasonable operation.
- g) In this regard, I tend to agree with the approach the Planning Authority have taken and should the Board decide to grant permission I recommend a condition to control odour emissions be attached for further agreement with the Planning Authority.

8.6.5. Daylight, Sunlight and Overshadowing

- a. The Cork CDP appears generally silent on standards relating to 'Daylight and Sunlight' impacts from new development. However, such impacts do have the potential to significantly detract from existing residential amenity and need to be considered in the context of the submitted Appeals.
- b. In terms of these impacts it is considered reasonable to refer to the principles of 'Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2022) i.e. BRE209.
- c. BRE209 provides a number of measures that contribute to assessing 'Daylight and Sunlight' impacts. Having examined the contents of this Application, the Appeal and BRE209, I consider the following measures appropriate for this assessment-

- Existing Diffuse Daylight to the rear of No.'s 7 and 8 Rock St.
 - Existing Sunlight to the interior of No.'s 7 and 8 Rock St
 - Existing Sunlight to rear amenity areas of No.'s 7 and 8 Rock St
- d. Section 1.6 of BRE 209 specifically details that the advice given is not mandatory and should not be seen as an instrument of planning policy. However, it is considered appropriate that these measures are used to consider the impacts of the development to be retained upon existing residential amenity.

8.6.5.1. Diffuse Daylight

- a. Section 2.2 of BRE209 titled 'Existing Buildings' details it is important to safeguard daylight to nearby buildings. The guidelines are clear in that they relate to rooms in adjoining dwellings where daylight is required including living rooms, kitchens and bedrooms. Windows to circulation areas such as hallways need not be analysed. In this regard it is considered the following 3 ground floor windows are possibly affected-
- the south facing kitchen window to No 8 and
 - the east facing living space windows to No. 7
 - and the south facing kitchen window to No. 7
- b. In terms of the south facing kitchen window to No. 8 the Appellant has submitted a photograph (page 3 of appeal) of the original roof profile of the pub from the rear of No. 8. This shows the roof pitching down from the main rear elevation before meeting the original function room. The Appellant then submits a photograph showing the pitched roof replaced with a flat roof as per the application for retention. I have examined this elevation from the upper floors of No.7 and I note the works to this elevation have been substantially completed since the picture in the Appeal.
- c. Based on the submitted photo of the original roof profile it would appear that the Appellant may be correct in his assertion that the roof is now higher at this point than it previously was. However it must be noted the applicants have submitted a photograph with unsolicited further information (figure 2) on the

14/10/21 that suggests the new roof does not go above the original pitch. Given that this picture was submitted as 'Unsolicited Information' the Board may wish to consider how much weight should be given to it. However the Board are advised that I have taken and provide a similar picture for their consideration.

- d. Notwithstanding the above, it appears to me that the roof has been completed substantially in accordance with the submitted FI drawings. In this context I do not consider the revised roof profile significantly impacts upon daylight to the kitchen window of No. 8.
- e. It may be the case that a small amount of direct sunlight to the kitchen window is lost but any such sunlight would likely to have been minimal over a short period of the morning having regard to the windows orientation and at certain times of the year. It would also be entirely dependent on weather conditions. I give further consideration to loss of sunlight to the kitchen in section 8.6.5 below.
- f. In terms of a loss of diffuse daylight Section 2.2.16 of BRE209 provides a 'quick method' i.e. the 45° approach' to assess diffuse daylight impacts which could be considered an appropriate tool for assessing the impact upon the south facing kitchen of No.8. However in the absence of contiguous elevation and plan drawings of the existing site pre-works and the proposed site post works including the neighbouring property it is not considered possible to apply this test (see section 8.3 above).
- g. Notwithstanding the above, the extent of works to provide a flat roof at this point are relatively minor. The roof level is not likely to have changed by more than c. 0.5m at its deepest point and would not in my opinion result in a significant loss of daylight to the kitchen. Furthermore, I note the south facing window is not obstructed in a plane perpendicular angle in any way by the development (figure 14 of BRE209) and the test of such impacts as set out in Figure 20 are therefore not necessary.
- h. I am also satisfied the same finding applies to the south facing kitchen window of No. 7 which is not obstructed in a plane perpendicular angle in any way by the development.

- i. The east facing internal living space window to No. 7 is orientated towards the application site. This arrangement is unlikely to achieve recommended daylighting standards for such room in any event, given the narrow nature of the properties and proximity to boundaries. This window is clearly obstructed in a plane perpendicular angle by its nearest boundary and this would be the case regardless of the application. In this regard it is unlikely this window benefitted from the BRE recommended unobstructed 'Vertical Sky Component' of 27 degrees in any event.
- j. I further note the single storey return extension to No. 7 benefits from two existing east facing roof lights that are likely to significantly supplement diffuse daylight into these areas.
- k. Having considered the above and in particular the site's context in the settlement boundary, as well as that of No. 7 and 8 as existing residential properties and noting that BRE209 is not intended to be an instrument of planning policy I am satisfied the development would not subject No. 7 or No 8 to significant undue loss of daylight.

8.6.5.2. Sunlight to the Interior of No. 7 and 8.

- a. Section 3.2 of BRE209 provides guidance in relation to safeguarding access of sunlight to interiors of existing dwellings. Summary box 3.2.13 states-

'If a living room of an existing dwelling has a main window facing within 90 degrees of due south and any part of a new development subtends an angle of more than 25 degrees to the horizontal measured from the centre of the window in a vertical section perpendicular to the window, then the sunlighting of the existing dwelling may be adversely affected.'
- b. Having assessed the ground level windows of No. 7 and 8, I consider the only windows that may face within 90 degrees of due south directly towards the development to be retained is the existing east facing window to No.7. Aerial photography available to the Board suggests that this elevation and window may in fact be orientated within 90 degrees of due north and in such circumstances need not be analysed (Figure 27 of BRE).

- c. If the window does face within 90 degrees of due south I am satisfied the window is clearly obstructed in a plane perpendicular angle by its nearest boundary and this would be the case regardless of the application.
- d. Having considered the above and in particular the site's context in the settlement boundary, as well as that of No. 7 and 8 as residential properties and noting that BRE209 is not intended to be an instrument of planning policy I am satisfied the development would not subject No. 7 or No 8 to significant undue loss of interior sunlight.

8.6.5.3. Sunlight to rear amenity areas

- a. Section 3.3 of BRE 209 considers the impact of development on sunlight to existing amenity spaces such as private gardens. Section 3.3.7 recommends that at least half of the amenity space should receive at least two hours of sunlight on March 21st and in scenarios where detailed calculations cannot be carried out it is suggested that the centre of the area should receive at least two hours of sunlight on March 21st.
- b. It is clear the proposed development intends to retain 2.1m high fencing from the area of the catering unit building running south to the point of the beer garden which adjoins the service area as per the FI drawings. These drawings also indicate a rise in the site levels by c. 0.92m. I also note the Appellant's and Observer alleged increased heights of the pre-existing pitched down roof and the catering shed unit.
- c. I have inspected the shared boundary from the private amenity space of No. 7 and from upper rooms of the same house. I note the levels of the site and adjoining lands generally fall from north to south, the boundary wall is considered c. 30-40 cm deep and the fencing to be retained is attached to the inside (application side) of the wall. I have noted the minor change to the roof profile adjoining No. 8 (as discussed in section 8.6.5.1 c. above), the level of the catering unit above the wall which probably ranges from 0.4-0.6m. I note existing landscaping including mature trees and vegetation growing along this boundary.

- d. It is clear the level changes on the application site have led to the need for boundaries to be increased to avoid undue overlooking. The concerns of the Appellants in this regard are considered reasonable.
- e. The private amenity space to No. 7 is located on the southern side of the house and extends a considerable distance to the south. In this regard No. 7's southern and western boundaries are not impacted by the subject application. I see no reason why the development to be retained would obstruct the amenity space from retaining at least two hours of sunlight on March 21st across at least half of the amenity space or in the worst-case scenario that the centre of the amenity space would not receive at least two hours of sunlight on March 21st especially as the two most favourable orientations for sunlight (south and west) remain untouched.
- f. In terms of the amenity space to number 8 I noted it is significantly enclosed on all boundaries impacting access to direct sunlight. I do not consider the works to the previously pitched roof so significant to unduly reduce available sunlight to the amenity space. Given the enclosed nature of the space, its current use and existing structures within it, it may well be that this space did not meet the recommendations of BRE in any event.
- g. Having considered the above and in particular the site's context in the settlement boundary, as well as that of No. 7 and 8 as residential properties with a long and narrow private amenity space and a small-enclosed space and noting that BRE209 is not intended to be an instrument of planning policy I am satisfied the development would not subject No. 7 or No 8 to significant undue loss of sunlight to their private amenity spaces.

8.6.6. **Overlooking**

- a. Having inspected the site from within the rear amenity space of No. 7, I am satisfied the concern raised by the Appellants are reasonable. Generally speaking a 1.8 – 2m boundary treatment is considered reasonable to protect residential amenity from undue overlooking. However, in this context it is clear the concern relates to the area that was previously used as an Astro turf and

football area as this is the only part of the site boundary not benefiting from the fencing proposed for retention or existing buildings.

- b. As per the drawings submitted at FI stage this area is now to be used for 'service related purposes' CCC condition 2 restricts the use of this area further with access prohibited for patrons of the pub. The Applicants have not appealed this condition and have indicated their intentions to comply in the response to the Appeal. Therefore the Applicants should not benefit with the removal of this condition on the basis of third party appeals alone. Subject to a similar condition I am satisfied concerns of overlooking by patrons have been addressed.
- c. However, I note the existing boundary along this 'service related purposes' area is low as a result of the change in site levels. It may be that overlooking may arise from staff and not patrons using the service area.
- d. Should the Board decide to grant permission, I recommend a condition be attached to ensure the eastern boundary of the service area is raised to at least 1.8m with final details to be agreed with the Planning Authority.

8.7. Surface Water Discharge/Requirement for site suitability assessment.

- 8.7.1. I note concerns raised by the Appellant in relation to surface water drainage. Question 2.20 of the planning application form indicates the applicant proposes to dispose of surface water through a new soakpit to the rear of the site and as per the submitted site plan. This is clearly shown on the drawings submitted with the application and is located within the area identified as a 'service area' in the drawings submitted at FI stage.
- 8.7.2. While the drawings do appear to suggest a general area close to the western boundary, I note the specifications and separation distances required for such works are set out within Part H of the Building Regulations and its TGD and accordingly are not matters for the Planning code. I note the Applicant has indicated such works were overseen by an engineer.
- 8.7.3. The Applicant indicates wastewater drainage will be to the public sewer an existing connection clearly exists. In this regards a site suitability assessment is not required or appropriate for this location or development.

8.8. Trespass

- 8.8.1. I acknowledge the concerns raised in relation to trespass from the site into private amenity spaces. This concern appears to relate to use of the area finished with artificial grass to the southern boundary of the site as a small football pitch. This use is evident from the site visit as well as the contents of the Appeals and Observation.
- 8.8.2. However condition 2 of CCC grant of permission specifies this area shall be used for service-related purposes only with access prohibited for patrons of the pub. The Applicants have not appealed this condition and indicate in their response to the appeal their satisfaction to comply with same.
- 8.8.3. I am satisfied a similar condition can reasonably address concerns over trespass from a planning point of view. However, ultimately matters of trespass are likely criminal actions and therefore ones for the Gardaí and not An Bord Pleanála.

8.9. Other Concerns

- Concerns relating to the structural stability of the shared boundary wall are considered civil matters.
- Light Intrusion- I am satisfied this concern can be adequately addressed by condition to ensure all lights are cowled into the site only i.e. similar to No. 9 of the Council's grant of permission. I do not consider the impacts from such lighting within an existing settlement and to an existing generally developed site would impact significantly upon birds or bats in this context.
- Archaeology- I acknowledge the concerns raised by the Appellants in this regard. Condition 15 of the Councils permission details archaeological requirements including monitoring of groundworks. As the groundworks were completed at the time of my inspection, I am not convinced attaching a condition like this is appropriate should the Board decide to grant permission.
- Built Heritage- I do not consider the development to be retained has any significant negative impact on the ACA. I note condition 12 requires the existing arch to be rendered. In my opinion, exposing the original stonework of this archway complements the ACA and should permission be granted I would not consider a condition like this necessary.

- Signage- Noting the site location within an ACA, conditions similar to No's 13 and 14 of the Council decision to grant are considered appropriate.
- Roads and Paths- I note concerns raised in relation to traffic generated from the site including illegal parking and absence of parking. The site is located within the settlement boundary and is zoned Town Centre/Neighbourhood Centres. Both sides of the road benefit from existing footpaths and on street parking is widely available and would reasonably cater for the site. Illegal parking on public roads is not a matter for An Bord Pleanála. I do not share the Appellants and Observers concerns in this regard.
- Ecology- I note concerns raised in relation to site clearance works and impacts upon hedgehogs and pygmy shrews. I understand hedgehogs and possibly the shrew benefit from protection under Irish Wildlife Legislation in which enforcement powers are provided to the relevant authorities. I am not satisfied that sufficient information has been submitted to warrant further consideration of this from a planning perspective. Significant environmental impacts including ecology are addressed in section 6.6. Section 8.10 deals with Appropriate Assessment.
- CCTV- I note concerns relating to unauthorised CCTV on the public road over property not in the control of the applicant. These are shown on drawing 18235_P_503 submitted with the RFI. These are generally considered necessary for such developments. I do not consider concerns of privacy intrusion on public property to be matters for the Board.
- Matters related to the Land and Conveyancing Law Reform Act 2009 are considered civil matters.

8.10. Appropriate Assessment

8.10.1. Having regard to the nature of the development to be retained and that proposed, the established use of the site, its location on existing zoned lands, and the separation distance to European sites, no Appropriate Assessment issues are considered to arise and it is not considered that the proposed development would 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 permission is **refused** for the following reason-

10.0 Reasons and Considerations

1. Having regard to the extent and outdoor nature of the development to be retained, the overall scale and intensity of use it facilitates, the proximity to residential properties and the late operating hours of such usage, it is considered that the extent of adverse noise generated from the site would be contrary to National Policy Objective 65 of the National Planning Framework (February 2018) which seeks to pro-actively manage noise where it is likely to have significant adverse impacts on health and quality of life. The development to be retained is therefore considered to seriously injure the residential amenities of the area by reason of noise and general disturbance.

Furthermore the extent, scale and intensity of usage facilitated at this site is not sympathetic to the scale and character of the village and is therefore considered contrary to the sites 'Specific Development Objective' CY-T-01 and accordingly is considered contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Adrian Ormsby
Planning Inspector

26th of May 2023