



An
Bord
Pleanála

Inspector's Report ABP-314197-22

Development	Outside bar area, external deck and seating, and pop-up shelters to rear garden. Retention permission for 3 garden sheds.
Location	Killaghy Street, Mullinahone , Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	211664
Applicant(s)	T.J.Macs Bar Ltd
Type of Application	Retention Permission
Planning Authority Decision	Grant Retention Permission
Type of Appeal	First Party against Contributions
Appellant(s)	T.J.Macs Bar Ltd
Observer(s)	None
Date of Site Inspection	23 rd of March 2023
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. Mullinahone is located south of the Slieveardagh hills at a junction on the R690 and the R692 and is within Co. Tipperary close to the county border with Co. Kilkenny. The development site is located on the west side of Killaghy Street in the centre of the village of Mullinahone. The site is occupied by T.J.Macs public house and rear beer garden area. There is living accommodation above. The public house faces the street. There is some roadside parking, but it does not appear to be dedicated to the public house.
- 1.2. There is rear vehicular access from Cois Na hAbháinn residential estate to the rear (west). This is an estate of detached and semi-detached housing. The gated rear access to the sheds and public house is at the end of this estate.
- 1.3. There are a number of small sheds on site and a rear seating area for use of customers of the public house. There is a surfaced access road and a small area for parking proximate to these sheds. There appears to be no dedicated parking area for the site, other than this parking area at the rear. The parking spaces have not been marked out and appear to be for domestic use associated with the residential above the public house.

2.0 Proposed Development

- 2.1. Permission is sought for Retention of the following to the rear of T.J. Macs public house, Mullinahone:
 - 1) An outside bar area,
 - 2) An external decking area,
 - 3) External seating and
 - 4) Demountable Canopy Gazebo's or pop-up tents with external lighting to the rear garden area for use ancillary to the existing main public bar,
 - 5) 3 no. garden sheds for use ancillary to the existing combined bar business and residential premises.

The Site Notice includes that all of the above is located within the overall landownership area of the applicant.

3.0 Planning Authority Decision

3.1. Decision

On the 1st of July 2022 Tipperary County Council, granted retention permission for the proposed development subject to 5no. conditions. In summary these included compliance with plans and particulars, restriction of times of usage and noise relative to outdoor entertainment, surface water drainage, the garden sheds only to be used for storage purposes, development contributions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner had regard to the locational context of the site, planning history and policy and to the submissions made. Their Assessment included the following:

- The site is within the Village Centre of Mullinahone on lands zoned for Village centre use.
- They consider that the principle of the development proposed for retention to be acceptable.
- They note that the Roads Section did not object and that there are no roads or access issues, but that they recommended development contributions towards parking shortfall.
- They noted that the vehicular and pedestrian entrance to the rear of the premises accessing from Cois na hAbhain is unauthorised and recommend that this be regularised.
- The proposed development has been screened and it has been determined that AA is not required.
- They refer to development contributions calculations.

Further Information request

In summary the Council requested the following:

- The applicant was advised that the vehicular and pedestrian entrance at the western end of the premises accessing Cois na hAbhainn estate roadway is unauthorised development. They considered that the proposed retention development may be served with access from this unauthorised development. They are not favourably disposed to granting permission where there is unauthorised development on the site and the applicant was requested to address this matter.
- In the event the applicant intends to seek retention for this unauthorised development under the current application the red line site boundary should be revised to ensure the unauthorised entrance is contained within the site. The publication of new public notices in accordance with Article 35(1) of the Planning and Development Regulations 2001, as amended would be required to account for the above.

Further Information response

A response has been received from Thomas Brennan, on behalf of the applicant and in summary this includes the following:

- The purpose of this application is essentially to regularise alleged unauthorised development identified within the boundary of the site outlined in red. This application will if granted address all unauthorised development within the said boundary and should close out the open Planning Investigation file TUD-20-117.
- The stated unauthorised development (Vehicular and Pedestrian access) which is now the subject of the F.I request is c.49m from the current application site. Consequently, there will be no change to the status of the vehicular and pedestrian access gate if the subject application is either granted or refused i.e the stated unauthorised development will remain unauthorised, but time barred in terms of planning enforcement.
- The development within the subject application is essentially for the retention of a beer garden with access routes clearly indicated and set out in the application via the main bar. Access, patron parking and deliveries to the main bar have also been clearly identified on the application i.e Killaghy Street via the main bar entrance doors.

- Due to its remote location, the configuration and split-level nature of the premises property it is not simply practical to the Cois na hAbháinn access for the commercial bar business and/or beer garden to be retained.
- The Vehicular and Pedestrian Access from Cois na hAbháinn is ancillary to the residential part of the premises only and it is not used in connection with the commercial bar business in any way. The AADT is in the order of 3 vehicles per day, which is consistent with other residences within the estate.
- The applicant considered that Council's F.I request would raise significant and unwarranted concerns locally with residents within the estate in terms of use of the rear access in connection with the commercial bar business and beer garden, in a situation where it was never intended to use the access for that purpose for the practical reasons as stated and having regard to the existing use.
- They contend that the F.I request in this instance is outside the intended scope of both sub-Articles 33(a) and 33(b) of the Planning and Development Act 2000 (as amended).
- The primary intension of Article 33 is to resolve issues identified by the planning authority within the planning application and site outlined in red or contiguous to the said site. The fact that the applicant is in control of or owns the land where the unauthorised vehicular and pedestrian access is located is incidental.
- However, they acknowledge the planning authority's role of addressing unauthorised development and have submitted a recent retention planning application P.22.299 for the rear access, including its use ancillary to the enjoyment of the residential part of the premises.
- They request that the planning authority consider the foregoing and application P.22-299 in response to the F.I request and proceed to a decision on the planning application.

Planning Authority response

This includes the following CFI request:

- They acknowledge the application made under P.22-299 to regularise the unauthorised development on the site. They are concerned that this application has not been determined and the unauthorised development has not been addressed.
- They ask for clarification as to how the making of the said application addresses the matters raised in the F.I request regarding the unauthorised status of the entrance onto the Cois na hAbháinn estate. They advise that a decision on the subject application is premature until a decision has been determined on P.22-299.

Clarification of Further Information response

- The applicants requested an extension of time having regard to Article 33(3) of the Planning and Development Regulations 2001 (as amended). They note that the CFI response is now contingent on the decision of the adjacent application P.22-299 (T.J. McInerney).
- They subsequently note the Council's decision to grant P.22-299 and conclude that this now fully addresses their C.F.I request.
- They reiterate that the use of the vehicular and pedestrian access from Cois nah Abhainn is ancillary to the residential part of the premises only and it is and will not be used in connection with the commercial bar business in any way as previously advised in their F.I response.

Planning Authority response

- They subsequently note that a planning application has been granted under P.22-299 for permission to retain the vehicular and pedestrian access from the lands onto Cois na hAbháinn. They state that this addresses this unauthorised development.
- They provided further details relative to the Development Contribution calculations for the parking spaces.
- They recommend that permission for retention be granted subject to conditions.

3.3. Other Technical Reports

None noted on file.

3.4. Prescribed Bodies

None noted on file.

3.5. Third Party Observations

None noted on file.

4.0 Planning History

The Planner's Report refers to some earlier planning history, and to unauthorised development. It was established under ENF. 162/12 that a vehicular and pedestrian entrance has been developed at the western end of the premises accessing Cois na hAbhainn. It is provided that the Planning Section were precluded under Section 157(4) of the Planning and Development Act 2000, as amended from pursuing the matter however the entrance remains unauthorised and could potentially serve the development. They recommended that the applicant be advised/requested to regularise.

The most recent relevant decision is as below:

- Reg.Ref.22229 – Retention permission granted subject to conditions to T.J McInerney for:
 - (1) An existing vehicular access and
 - (2) An existing pedestrian access, with associated stone walls and piers and with access via Cois na hAbhainn housing estate.

The notices provide all of the above being located within the overall land ownership area of the applicant and ancillary to the enjoyment of the residential part of the premises at Killaghy Street, Mullinahone.

Condition no.2 is of note: *The entrance permitted herein shall be used solely for domestic purposes only and shall not be used as a means of access for patrons of the adjoining public house.*

Reason: In the interests of residential amenity.

5.0 Policy Context

5.1. Tipperary County Development Plan 2022-2028

The new Tipperary CDP 2022-2028 for the entire county of Tipperary has been made and has been adopted. This Plan provides a framework for the sustainable development of the County and includes protecting the environment and to maintaining the viability of towns, villages and rural communities throughout the county.

Settlement Strategy

Section 4 provides the Settlement Strategy for the County and supports the sustainable development of towns and villages.

Table 4.1 includes Mullinahone as a Service Centre.

Section 4.7 provides the Planning Policies. Policy 4-1 includes: - *Support and facilitate the sustainable growth of the county's towns and villages as outlined in the Settlement Strategy Chapter 4, thereby promoting balanced development and competitiveness, and a network of viable and vibrant settlements to support the needs of local communities.*

Mullinahone

Volume 2 provides the Settlement Plans and this includes Mullinahone. This includes regard to Sustainable Communities and to the role of the Village Centre and Economic Development. Specific Objectives include:

SO5 - : *To facilitate the expansion of existing local services and businesses where appropriate and to facilitate the provision of further local employment opportunities in accordance with the proper planning and sustainable development of the area.*

Parking Standards

The Development Management Standards in Volume 3, Table 6.4 sets out the Minimum Parking Standards. For bars restaurants this is 0.5 per staff plus 1 per 15 sq.m public open space.

Development Contributions

Volume 3, Appendix 6 provides the Development Management Standards. This includes section 1.5 relating to development and implementation of the Development Contributions Scheme.

The planning authority when granting planning permission may include conditions requiring the payment of a financial contribution in respect of public infrastructure and facilities benefiting development in the area and provided by, or that it is intended to be provided by, or on behalf of the planning authority. The Tipperary County Council Development Contribution Scheme, 2020, was adopted by the Elected Members of the Council on the 9th December 2019, and came into effect from the 1st January 2020. The provisions of the Development Contribution Scheme (or any review thereof) shall apply, as appropriate, to development permitted under the Plan.

It is provided that this Scheme has been adopted in accordance with the Development Contributions, Guidelines for Planning Authorities. Reference is had to the “Development Contributions, Guidelines for Planning Authorities”, (DECLG, 2013).

5.2. Tipperary County Council Development Contributions Scheme 2020

This is the pertinent Scheme. This notes that Sections 48 and 49 of the Planning and Development Act 2000 (as amended) provides for three different types of Development Contributions that may be attached as conditions to grants of planning permission.

Section 5 – Types of Development Contributions

- (i) General Development Contributions
- (ii) Special Development Contributions
- (iii) Supplementary Development Contributions

Section 5.1 relates to General Development Contributions and includes that these contribution schemes apply in respect of public infrastructure and facilities provided by or on behalf of the Local Authority that benefit development in the Local

Authority's functional area. It provides a list of types of public infrastructure and facilities that can be funded by the Scheme ((a) – (h)). This includes:

(c) The provision of roads, car parks, car parking places, surface water sewers and flood relief work and ancillary infrastructure.

(e) The refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places, surface water sewers, flood relief work and ancillary infrastructure.

Section 5.2 relates to Special Development Contributions. This relates to the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by the Local Authority in respect of public infrastructure and facilities which directly benefit the proposed development.

Section 5.3 to Supplementary Development Contributions. Under Section 49 of the Act, a Planning Authority may, when granting planning permission under Section 34 of the Act may in addition to applying the general DCS, include conditions requiring the payment of a contribution in respect of any public infrastructure service or project.

Section 6 - Classes of Development Contributions

The basis for determination will be the rate for developments which are listed in the scheme, and where not specifically listed, are deemed closest in nature to the proposed development.

This includes:

Class 2 – Residential on appropriately zoned lands and/or within a settlement boundary of a town or village...

Class 4(a) Commercial - The provision of a business premises including:

- A hotel, restaurant or public house;

Section 8 – Basis for determination of development contribution. This takes into consideration:

- The amount of the actual estimated costs which are attributable to new residential development and other new development from 2020-2025 for the provision of infrastructure,
- The aggregated floor areas in square metres of probable residential development (2020-2025) and
- The benefit of new infrastructure and facilities attributable to existing development.

It provides a breakdown between Residential and Non-Residential Development.

Section 9 - Calculation of Contribution

In determining the contributions in accordance with this scheme, regard has been given to the actual estimated cost of providing the classes of public infrastructure and facilities benefitting new development.

Section 9.1 – Infrastructure and Facilities and notes that the detailed capital works programme for the period of the Scheme are set out in the Appendix.

Section 9.2 – Car Parking Facilities. *Where the developer is unable to meet the requirements relating to car parking, a development contribution, commensurate with the shortfall in spaces, shall be paid to the Planning Authority to facilitate the provision of car parking spaces elsewhere.*

Section 10 – Exemptions and Reductions

In order to promote employment and enterprise development in the County, a 50% reduction on Development Contributions will be applied where it is considered by the Planning Authority that the development constitutes economic development on lands zoned for commerce/ industry/ enterprise and/or economic development save for the following types of development;

It is noted that the list mainly excludes larger developments and does not exclude public houses, so they are included in the 50% reduction.

Section 11- Points to Note

This Development Contribution Scheme does not provide for any rebate or refund. The Scheme aims to avoid any double charging of contributions and so an allowance

will be made in respect of pre-existing authorised development in place prior to the introduction of Development Contributions.

This includes that the exemptions do not apply relative to Retention Development.

Section 12 – Schedule of Contributions

In addition to the table below, a charge of €3,000 per space in lieu of the provision of required car parking spaces may be payable subject to the provisions of Section 9.2 above. See also Section 5.0 for relevant footnotes and fuller descriptions.

Class 4 – per sqm. – commercial premises – 22sq.m.

Section 13 – Implementation of the Scheme

This includes that the Scheme will also apply to An Bord Pleanála on or after that date where it is a condition of the order that the amount of development contributions is to be determined by the Planning Authority.

Appendix: Infrastructure & Facilities Work Programme 2020-2025.

5.3. Development Contributions - Guidelines for Planning Authorities 2013

The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in performance of their functions under the Planning Acts.

The primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed. Development contributions have enabled much essential public infrastructure to be funded since 2000 in combination with other sources of, mainly exchequer, funding. Discussion is made of the concept of the General Development Scheme, Special Contributions and Supplementary Contributions Schemes. This also provides that Planning authorities should ensure that the necessary monitoring and control procedures are in place to prevent double charging.

5.4. **Development Management Guidelines for Planning Authorities 2007**

Section 7.12 has regard to development contribution conditions (sections 48 and 49 of the Planning Act). This also provides details relative to appeal of the three categories of conditions for development contributions i.e General as covered by the Section 48 Development Contributions Scheme, Special Contribution as covered by Section 48(2)(c) and Supplementary as covered by Section 49.

5.5. **Natural Heritage Designations**

The site is located c.2.9kms to the southwest of the River Barrow and River Nore SAC (site code: 002162).

5.6. **EIA Screening**

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

Thomas Brennan, BEng CEng has submitted a First Party Appeal on behalf of the Applicant against condition no.5 *Development Contributions* of Reg.Ref.21-1664 of the Council's permission. The Grounds of Appeal include the following:

- They consider the parking charge to be excessive, punitive and completely unreasonable and they wish to appeal the proper application of same.
- They have regard to calculations and provide a list of their detailed concerns (summarised in the Appellant's case in the Assessment below). These include reference to hours of opening and seasonal variations.

- The applicant at this stage is requesting a significant reduction or removal of the Parking Charge element of the development based on these factors.
- In the event that ABP is not willing to remove the Parking Charge they submit their assessment on the following for consideration:
 - (1) Area Based Calculation Assessment – regard to floor area i.e 80sq.m requires 5 car parking spaces and their interpretation about this. They query this interpretation.
 - (2) Use Based Calculation Assessment – this includes regard to Assumed Actual Usage and application to the condition.
 - (3) Average Calculation – this has regard to the calculations they have put forward and results in 14.5% of the Original Park Charge Parking Charge Amount.
- They provide details of various calculations based on opening hours and seasonal usage.
- Separately they request that ABP consider monthly instalments for the payment of Development Charges, depending on the outcome of the above considerations. In this regard they request that the condition if retained be modified or amended accordingly.

6.2. Planning Authority Response

The Planning Authority have not responded to the First Party Grounds of Appeal.

6.3. Observations

None noted on file.

7.0 Assessment

7.1. Legislative Context

- 7.1.1. This First Party Appeal is solely against Condition no. 5 of the Council's permission relative to development contributions. Section 48 of the Planning and Development

Act 2000, (as amended) details the methodology and guiding principles by which Development Contributions Schemes should be arrived at. The wording of S.48(10)(b) of the 2000 Act states that “an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the Planning authority”. The wording of this section is restrictive in so far as it limits consideration of such appeals to the application of the terms of the adopted development contribution scheme and the powers of the Board to consider other matters. Therefore, the application is not considered ‘de novo’ and issue in question in this case is solely whether the Council’s Development Contribution Scheme has been properly applied.

- 7.1.2. The Development Contributions – Guidelines for Planning Authorities issued by the DoECLG in January 2013 offers non-statutory guidance for Planning Authorities in preparing Schemes. This provides that a key aim for future development contribution schemes is to promote sustainable development patterns, secure investment in capital infrastructure and encourage economic activity. These Guidelines are issued under section 28 of the Planning and Development Act 2000 (as amended). This includes regard to reduced rates in certain cases. Of note: “However, no exemption or waiver should apply to any applications for retention of development. Planning authorities are encouraged to impose higher rates in respect of such applications.”

7.2. Regard to Calculations - Condition no.5

- 7.2.1. This First Party Appeal is made against Condition no.5 of the decision of Tipperary County Council to grant retention permission, under Reg.Ref. 212664.

Condition no.5 is as follows:

Within one month of this grant of permission payment of a financial contribution shall be paid to the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of Tipperary County Council that is provided, or intended to be provided, by or on behalf of the Authority in accordance with the terms of the Tipperary County Council Development Contributions Scheme 2020 made under Section 48 of the Planning and Development Act, 2000 (as amended). The

amount of the development contribution under this condition is €8,522.80 which is calculated as follows:

Class	Rate 2020 per sq.m.	Area sq.m.	Total
4	€22	12.4 sq.m	€272.80
Parking Charge			€8,250
Total			€8,522.80

Reason: It is considered reasonable that a contribution be made in accordance with the Tipperary County Council Development Contributions Scheme 2020 made under Section 48 of the Planning and Development Act 2000 (as amended).

7.2.2. The Planner's Report has regard Section 6 of the Tipperary County Council Development Contributions Scheme 2020 relevant to Classes of Development. They noted that Contributions are required under Class 4 which includes reference to a 'public house'. They consider that the same should be charged for the floor area of the outside bar 12.4sq.m. They do not consider it reasonable to levy contributions on the use of the outside area for seating or the gazebo structures as the same will be intermittently used. They do not consider it reasonable to levy charges on the garden sheds.

Section 9 of the Scheme refers to the Calculation of Contributions. 9.2 refers to Car Parking Facilities. This provides that the contribution in lieu of car parking spaces is charged at a rate of €3,000 per space. It states: *In order to promote desirable town/village centre development the following will apply to commercial/office/retail development within that town/village centre land use zoning:*

- *Where a requirement for car parking spaces is generated but car parking cannot be provided on site the car parking contribution will be reduced by 50% for the first 2 spaces and 25% for the next 3 spaces.*
- *Where a development generates a requirement for more than 5 parking spaces the full development contribution will be applied for all subsequent spaces.*

7.2.3. The Planner's Report provides that the above reduction applies as the development is not located within the village town centre. Their calculations provide that parking contributions are required for 5 additional spaces based on 80sq.m i.e:

- Spaces 1-2 = €1,500
- Spaces 3-5 = €6,750

Based on these figures the total parking charge is €8,250

It is also of note relative to the Council's calculation of the total contribution charge in Condition no. 5 that Section 12 of the Scheme provides a Schedule of Contributions. This notes that for Class 4 it is €22 per metre i.e. €272.80 plus €8,250 = €8,522.80.

7.3. First Party Case

7.3.1. They acknowledge that the Council may apply development charges under Section 48 of the Planning and Development Act 2000 (as amended) and the published document "Development Contribution Scheme 2020". They consider that the application of a 'Parking Charge' to the value of €8,250 is excessive, punitive and completely unreasonable and they wish to appeal the proper application of same. Their reasoning as stated in the First Party Appeal against development contributions is in summary based on the following:

- The calculation by the Planning Section is based upon as assumed area of 80sq.m, with only the roofed part being the outside bar of only 12.4sq.m. Some of the areas which form part of the application have a dual use in that they are also ancillary to the enjoyment of the residential part of the premises i.e rear garden, walkway, yard, decking, seating, private residential parking, garden sheds etc.
- They note that the development which is the subject of this application is seasonal and can only be used occasionally in the summer months. They note that their calculations assume that it can only be used for 5.6% of a total calendar year.
- They provide details of the restricted opening hours of the public house. They have regard to Condition 2(b) of Reg.Ref. 211664 i.e. *The use of the outside bar area and associated decking and seating areas shall be restricted to the*

period from 10.00 hours to 22.30 hours on all days without exception. They submit that combined these factors also serve to reduce the practical use of the development during the summer months.

- The outside development is not and does not function as an overflow area, but merely provides an option for patrons to sit outside during the warm weather. Additionally, the proposal has not resulted in more bar staff.
- They note the impact that Covid-19, experiencing a 30-40% loss in earnings, and of rising costs has had on their business and looming recession.
- They note the Planner's Report dated 17/01/2022 where the following is stated: *Parking charges can be applied for the shortfall in spaces on site however charging for parking same maybe unreasonable given the area will be intermittently used and unroofed.*
- That the contribution is essentially described as a "Parking Charge" as opposed to the infrastructural provision of car parking spaces. However, that the calculation and provision provided for in the Planners Report and DCS 2020 relate to the provision of car parking spaces in a situation where there is no intention to provide such car parking.
- The current reality in a rural location is that the majority of patrons walk or get dropped/picked up from the bar and therefore the provision of a parking charge is counter-intuitive given the current drink driving laws.

7.3.2. They are requesting a significant reduction or removal of the Parking Charge element of the development contribution based on the aforementioned factors. In the event, that the Board is not willing to remove the Parking Charge they submit the following for consideration:

(1) Area Based Calculation Assessment

Tipperary County Council has determined that 80sq.m requires 5 car parking spaces. The actual roofed area is 12.4sq.m which equates to 1 parking space. In accordance with section 9.2 of the DCS a charge of €1,500 would apply (applying the reduction of 50% for the first 2 spaces).

(2) Use Based Calculation Assessment

Assumed Actual Usage: May – September. They provide a breakdown of the restricted opening hours, for weekday opening (6.5 hours/day) and weekend working (7.5 hours/day). They note that this gives a total estimated: 489 Hours/Annum (5.6%) of a calendar year. In addition, that 50% is assumed based upon previous years and to reflect the weather.

They provide a calculation for applying Condition No. 2(b) based on the seasonal usage and the restricted opening hours i.e Parking Charge Applied by Tipperary County Council = €8,250/1925 = €4.29/Hour. Whereas they note that the charge based on the assumed actual usage hours (as they have stated) i.e. 489 x €4.29/Hour = €2,097.81

Average Calculation

This is referred to in their conclusion:

- €0 i.e. : Assuming no parking charge should be applied to the development for the reasons they have stated.
- €1,500 (1) Area Based Calculation as above
- €2,097.81 (2) Use Based Calculation as above

7.3.3. They also submit that separately the applicant would also request the Board to consider monthly instalments for the payment of Development Charges, depending on the outcome of the above considerations. In this regard they would request that this condition if retained be modified or amended accordingly.

7.4. **Consideration of Development Contribution**

7.4.1. Regard is had to the Tipperary County Council Development Contributions Scheme 2020. It is of note that in accordance with the Scheme, Condition no. 5 relative to parking is considered under the criteria of the General Development Contribution Scheme i.e. Section 48 of the Planning and Development Act 2000 (as amended). Therefore, it is not considered separately as a Special Development Contribution.

7.4.2. Note is had of the current Tipperary County Development Plan 2022-2028. The Development Management Standards in Volume 3, Table 6.4 sets out the Minimum

Parking Standards. For bars restaurants this is 0.5 per staff plus 1 per 15 sq.m public open space. The Planner's Report set out that 5 additional spaces are required based on an additional public area of 80sq.m approx.

- 7.4.3. As per the application form the area of the site as shown in red is given as 0.072ha. The g.f.a of any existing buildings to be retained as 54sqm. As noted in the description of development refers to elements for retention to the rear of the existing public house to primarily provide an external seating and decking area. While there appears to be no dedicated parking for the existing public house, this is not an issue for consideration relative to the subject application.
- 7.4.4. The Planner's Report has referred to the need for 5no parking spaces for the subject application, based on an additional public area of 80sq.m approx. However, I do not see this area marked out on the drawings submitted. As shown on the drawings the area to the rear of the public house (Site Layout – Scale 1: 200), which contains the beer garden area is c. 187sq.m. i.e. (11 x 17m) the area shown within the redline boundary within the narrower section of the site. However, all of this more extensive area which includes circulation area, shed etc is not in use for the rear bar area.
- 7.4.5. The wider (more western) part to the rear of the site, also shown in red is not included in the case regarding carparking. This is to be used for domestic parking associated with the residential accommodation above the public house. Reference is had in the Planning History Section above to Reg.Ref.22299 where retention permission was granted for the rear vehicular and pedestrian access. That included Condition no. 2 that the entrance to the rear of the site be used solely for domestic purposes and not used for patrons of the adjoining public house.
- 7.4.6. The First Party provides that the actual roofed bar area is 12.4sq.m which they provide would in accordance with Development Plan standards equate 1 space. In view of the details submitted with the retention application it is noted that the use of the rear outside bar garden area is seasonal and subject to time restrictions. The differences between their Area Based Calculations Assessment and their Use Based Calculations have been noted relative to the First Party response above.
- 7.4.7. As has been noted the issue is whether the Tipperary County Council Development Contributions Scheme 2020, has been properly applied. There is no reference in the

Scheme to hours of operation or a seasonal allowance. Therefore, this issue is not of relevance.

7.4.8. The issue of the parking spaces relative to the scheme has been based on public area. The Scheme does not distinguish to whether the area has to be roofed or not. Regard is had to the application of Section 9.2 of the Scheme, which has been noted in the Council's calculations above. They based their calculations on 80sq.m. requiring 5no. spaces. However, I would consider that it would be in order to base this calculation on the outside bar area of 12.4sq.m. That the more extensive area containing the sheds and the area used for circulation and domestic parking at the rear should not be included in the calculation.

7.4.9. Based on the Minimum Car Parking Standards as specified in Table 6.4 of Volume 3 of the Tipperary CDP 2022-2028, (0.5 per staff member plus 1 per 15sq.m public area) 12.4 sq.m of public area to the rear of the public house would require 1no. space.

7.4.10. Section 10 of the Scheme provides for Exemptions and Reductions. This includes regard to Economic Development and allows for a 50% reduction on Development Contributions to be applied where it is considered by the Planning Authority that the development constitutes economic development on lands zoned for commerce/industry/enterprise and or/economic development.

7.4.11. In this respect I would refer to Section 11 of the Scheme, *Points of Note*. This includes that the exemptions do not apply relative to Retention Development:

No reductions as set out in Section 10 shall apply to any developments subject to retention permission save where it applies to a previously permitted development (e.g temporary permission).

7.4.12. As has been stated Section 9.2 of the Scheme provides details of the contribution in lieu of car parking spaces is charged at the rate of €3,000 per space. In this case as it is a retention development, the aforementioned 50% reduction would not apply so the parking charge for the outside public bar area for 1 space would be €3,000.

7.4.13. In addition, the levy as per Section 12 *Schedule of Contributions* should as per Condition no.5 also be applied i.e €272.80. It is noted that this levy is not the subject of this appeal and the total levy would be €3,272.80. If the Board decides to permit,

I would recommend that Condition no.5 of permission Reg.Ref. 21/1664 be amended accordingly.

7.5. Appropriate Assessment Screening

- 7.5.1. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues 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.

8.0 Recommendation

- 8.1. I recommend that Condition no.5 of Reg.Ref.211664 be amended.

9.0 Reasons and Considerations

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of condition number 5 and directs the said Council to amend the said condition number 5 so that it shall be as follows for the reason stated.

10.0 Condition 5

The developer shall pay to the planning authority a financial contribution of €3,000 (three thousand euro) in respect of a shortfall of car parking facilities and €272.80 i.e €3,272.80, in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the

planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

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

I 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.

Angela Brereton
Planning Inspector

24th of May 2023