



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315512-23

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<b>Development</b>	Retention of single storey pavilion structure located in existing car-park
<b>Location</b>	The Arches Bar & Restaurant, Bellevue, Ballydahin, Mallow, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	226384
<b>Applicant(s)</b>	The Arches
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Refuse Retention Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	The Arches
<b>Observer(s)</b>	Emmett O'Kane
<b>Date of Site Inspection</b>	17 <sup>th</sup> June 2023
<b>Inspector</b>	Sarah Moran

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## 1.0 Site Location and Description

- 1.1.1. The site is a single storey bar and restaurant premises located in a predominantly residential area on the southern side of Mallow, Co. Cork and close to the southern banks of the River Blackwater. There is a nursing home nearby to the east of the site and Bellevue House, a protected structure, adjoins to the west. The Church of the Resurrection, also a protected structure, is immediately across the road from the site, also Scoil Ghobnatan. There is also a supermarket and neighbourhood centre complex nearby to the west.
- 1.1.2. The site is accessed from the R619 to the south. There is an existing single storey standalone pavilion structure located to the rear of the main bar/restaurant building, in the car park, which has a stated area of 203 sq.m. There is a separate mixed use complex on the eastern side of the overall lands, outside of the red line site boundary but served by the same vehicular access from the R619. This contains a stage school, a betting outlet and several residential units. There are treelines at the site boundaries. There are undeveloped lands between the northern site boundary and the riverbank.

## 2.0 Proposed Development

- 2.1. A temporary five year permission is sought to retain the existing pavilion structure, to be used as an events venue ancillary to the main bar/restaurant premises. The submitted floor plan indicates a bar, a stage and a central open area with adjoining seating and W.C. facilities. The structure has a curved, retractable roof. It connects to the existing public sewer and water supply.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Cork County Council issued a notification of a decision to refuse permission on 13<sup>th</sup> December 2022, for the following stated reason:

*Having regard to the temporary nature of the structure and its proposed use for events on lands zoned 'Residential/ Mixed Residential and Other Uses' in the County*

*Development Plan 2022 and within a wider residential setting, it is considered that the proposed development would adversely impact the residential amenity of the area and would thus conflict with Policy Objective ZU 18-9 of the County Development Plan which states that ‘other uses/non-residential uses should protect and/or improve residential amenity and uses that do not support, or threaten the vitality and integrity of, the primary use of these existing residential/ mixed residential land other uses will not be encouraged.’ The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- Report of Executive Planner dated 12<sup>th</sup> December 2022. States concerns in relation to potential noise impacts and adverse impacts on residential amenities; consistency with the residential zoning objective; potential intensification in use of the premises as an events venue; lack of clarity regarding the nature and frequency of the events and hours of operation of the premises; lack of adequate sound proofing; need for adequate car parking provision. Recommends refusal.
- Report of Acting Senior Executive Planner dated 12<sup>th</sup> December 2022 recommends refusal.

#### **3.2.2. Other Technical Reports**

- CCC Area Engineer report dated 24<sup>th</sup> November 2022. Recommends a further information request for parking provision for the existing premises and that for which retention permission is sought.
- CCC Environment Officer report dated 2<sup>nd</sup> December 2012. Recommends further information request for a site specific Noise Impact Assessment including proposed noise mitigation measures and details of days and hours of operation, also a waste management plan.
- CCC Ecologist report dated 8<sup>th</sup> December 2022. Notes that the main channel of the River Blackwater, part of the Blackwater River SAC (site code 002170), is located c. 60m from the pavilion to be retained. The development is buffered from

the river by treeline habitats (riparian and venue northern boundary treeline) and large open grassland habitat. With regard to the SCIs of the SAC, there are risks of potential adverse effects on the SAC associated with disturbance/ displacement of the qualifying species Otter; with construction release of silt or other contaminants via surface water and risk of impacts on water quality arising from the disposal of wastewater. The detailed analysis of these risks concludes that there is insufficient information on file to allow for a complete AA screening. Recommends a further information request for clarification of the extent of additional P.E. loading, if any, generated by the development to be retained which would be directed to Mallow WWTP. Also notes that the development site is not within an area at risk of fluvial flooding as per the SFRA produced for the 2022 development plan.

### **3.3. Prescribed Bodies**

3.3.1. None on file.

### **3.4. Third Party Observations**

3.4.1. There are two no. third party submissions on foot of the application. These object to the proposed retention on grounds relating to adverse impacts on residential amenities due to noise, litter and general disturbance, traffic impacts due to additional traffic generated by the venue, also ecological impacts on bats and compliance with environmental legislative requirements.

## **4.0 Planning History**

### **4.1.1. Development Site**

Permission granted to JH Services Ltd. for retention of extensions and alterations to existing licensed premises to include basement area, smoking area and decking under Reg. Ref. 08/44037.

### **4.1.2. Mixed Use Development at Lands to Southeast**

Permission granted to JH Services Ltd. for a mixed use building with a stated area of 1.050 sq.m. including five no. retail units (200 sq.m.) at ground floor; three no.

commercial units (264 sq.m. total) and two no. one-bed apartments with open terraces (176 sq.m. total) at first floor with associated stores, toilets and circulation areas; two no. bin stores and all associated site works under reg. ref. 05/55036.

Under reg. ref. 19/6656, JH services sought permission to retain an existing two storey mixed use building (353 sq.m.) and the uses bookmakers (89 sq.m.), dance school reception (39 sq.m.), crèche (50 sq.m.), and shared circulation at ground floor (15 sq.m.); and apartment (76 sq.m.) including balcony, dance school studio (79 sq.m.), and shared circulation at first floor (6 sq.m.), and all associated parking, services and signage. Change of use also sought for 50 sq.m. crèche area on the ground floor to additional dance school facilities. Permission also sought for the construction of a two storey pitched roof, mixed use extension to the existing building, including (A) ground floor crèche unit (125 sq.m.), (B) a first floor dance studio (119 sq.m.), (C) associated stores, toilets and circulation areas, (D) external corporate signage, (E) new vehicular parking spaces, (F) two no. windows to the ground floor of the south elevation and (G) all associated external site works and services. This application is currently indicated as 'incomplete' on the Cork County Council website. The planning report on file dated 12<sup>th</sup> December 2022 states that Cork County Council refused to consider the application with regard to section 34(12) of the Planning and Development Act 2000 (as amended), as the development to be retained would have required Appropriate Assessment.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. The site is within the settlement boundary of Mallow Town, in an area zoned 'ER' for 'Existing Residential/Mixed Residential and Other Uses'. As per development plan section 18.3.2, this zoning objective is to distinguish areas which are predominantly residential and have the potential to expand residential development and compatible uses and those areas which are predominantly employment uses, which are zoned 'Existing Mixed/General Business/Industrial Uses'. Development plan section 18.3.3 states:

*The objective for this zoning is to conserve and enhance the quality and character of established residential communities and protect their amenities. Infill developments, extensions, and the refurbishment of existing dwellings will be considered where they are appropriate to the character and pattern of development in the area and do not significantly affect the amenities of surrounding properties. The strengthening of community facilities and local services will be facilitated subject to the design, scale, and use of the building or development being appropriate for its location.*

Development plan Objective ZU 18-9: Existing Residential/Mixed Residential and Other Uses applies:

*The scale of new residential and mixed residential developments within the Existing Residential/Mixed Residential and Other Uses within the settlement network should normally respect the pattern and grain of existing urban development in the surrounding area. Overall increased densities are encouraged within the settlement network and in particular, within high quality public transport corridors, sites adjoining Town Centres Zonings and in Special Policy Areas identified in the Development Plan unless otherwise specified, subject to compliance with appropriate design/amenity standards and protecting the residential amenity of the area. Other uses/non-residential uses should protect and/or improve residential amenity and uses that do not support, or threatens the vitality or integrity of, the primary use of these existing residential/mixed residential and other uses areas will not be encouraged.*

The uses 'small scale commercial' and 'bed and breakfast/guesthouses/hotels' are listed as appropriate uses under the ER zoning objective. Development plan section 18.2.3 states in relation to non-conforming uses:

*Throughout the County there are uses which do not conform to the zoning objective of the area. These are uses which were in existence on 1<sup>st</sup> October 1964, or which have valid planning permissions, or which are unauthorised but have exceeded the time limit for enforcement proceedings. Reasonable intensification of extensions to and improvement of premises accommodating these uses will generally be permitted subject to normal planning criteria.*

Development plan section 18.2.4 also states:

*Planning permission sought for developments which are ancillary to the parent use, i.e. they rely on the permitted parent use for their existence and rationale, should be considered on their merits irrespective of what category the ancillary development is listed in the 'Land Use Zoning Categories' section of this Chapter.*

The following related development plan objective applies:

*ZU 18-7: Ancillary Uses*

*Ensure that developments ancillary to the parent use of a site are considered on their merits.*

- 5.1.2. Development plan Volume 3, Chapter 2, section 2.4 provides detailed objectives for the Kanturk/Mallow municipal district. The following objectives relating to Mallow are noted in particular.

*MW-GO-09 Support and promote Mallow town centre as the primary and most appropriate location for the expansion of retail development. Protect the amenities of existing residential areas within the centre of the town and encourage the provision of new residential uses to strengthen the vitality of the town centre. Support the development of neighbourhood centres where needed particularly in areas of the town where additional growth is planned.*

*MW-T-01 Promote the Town Centre as the primary area for retail and mixed use development, encourage sensitive refurbishment/ redevelopment of existing sites and promote public realm improvements. Take appropriate consideration of the Architectural Conservation Area designation.*

*MW-T-06 To facilitate the regeneration of site at Ballydaheen Road for retail and other neighbourhood uses.*

*MW-T-07 Ballydaheen Neighbourhood Centre. To consolidate neighbourhood centre uses and improve the overall visual aesthetic and physical accessibility of the area.*

The lands to the north of the site are within the Blackwater Amenity Corridor and are subject to the objective MW-GR-04:

*Protect and enhance the habitat, landscape, visual and amenity qualities of the River Blackwater (including town park) and its flood plain so that they can contribute to the environmental diversity of the area for future generations and can be used for recreation and other compatible uses during the lifetime of the Plan.*



*Opportunities to extend the riverside park should be considered over the lifetime of the plan including provision of further pedestrian crossings over the river to link the north and south parts of the town.*

*Protect and enhance vistas of Mallow Castle and other landmarks within the town and environs.*

*The Castlelands area (south and east of Mallow Castle) is subject of a Tree Preservation Order designation. Some of this area is located within or close to the Blackwater Special Area of Conservation and any proposals within this area will need to give appropriate consideration to this designation.*

- 5.1.3. There are several protected structures to the immediate west of the site comprising Bellevue House and an associated farm complex and walled garden (RPS 2495, 2496, 2497, 2498), which are also listed on the NIAH (ref. nos. 20816009, 20816018 and 20816019), where they are rated as of 'Regional' importance.

## **5.2. Mallow Town Council Plan 2010**

- 5.2.1. Documentation on file refers to the Mallow Town Council Plan 2010-2016. This has been superseded by the current County Development Plan, which includes various objectives for Mallow including land use zoning.

## **5.3. Natural Heritage Designations**

- 5.3.1. The site is c. 60m from the main channel of the River Blackwater, which forms part of the Blackwater River SAC (site code 002170). Kilcolman Bog SPA (site code 004095) is c. 12.5 km to the east-northeast of the site.

## **5.4. EIA Screening**

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

## 6.0 The Appeal

### 6.1. Grounds of First Party Appeal

6.1.1. The first party appeal was lodged with the Board on 11<sup>th</sup> January 2013 against the decision of Cork County Council to refuse permission to retain the structure. The grounds of appeal may be summarised as follows:

- The Arches Bar and Restaurant is an established premises that has been in place since 1991. The pavilion structure was constructed in response to Covid-19 restrictions to facilitate social distancing. It is predominantly occupied by younger patrons of the overall premises.
- The primary use of the pavilion is between 8.00 pm – 12.00 am every Saturday night when there is a DJ and on one Friday night a month when live music, a comedian or similar is provided. It is also occasionally used during daytime for televised sporting events that are also shown in the main bar. It is currently typically used 6-8 times a month. The opening hours are in line with the bar's existing licence, closing no later than 00.30 hours.
- It is submitted that this use does not represent an intensification of the existing use of the premises as it involves an occasional relocation of existing activities that would otherwise take place within the main bar. The building in effect operates as an 'overflow' for the main premises during the busy nights of the week. The applicant/appellant confirms that they are not seeking permission for an 'events venue' as understood by the planning authority and they are happy to accept a condition limiting the use of the structure as ancillary to the existing and long-established bar and restaurant at the site.
- The development will not result in additional traffic or car parking demand as it will not result in any increase in the number of patrons at the premises. The current parking provision represents a significant surplus above development plan car parking standards. Many customers walk or use public transport due to the consumption of alcohol at the premises.

- The principle of the proposed use is long established at this location. The development is not a change or departure from the existing use and is not precluded under development plan objective ZU 18-19.
- It is not accepted that the development would detract from Mallow town centre or contravene objective MW-T-01. The use to be retained does not take patrons from the town centre and is intended to improve the amenities available to existing patrons.
- The pavilion building is not a temporary structure. It is permanent but temporary permission is sought for retention to allow for a review of the use and operation when the temporary permission expires. The applicant/appellant is happy to monitor car parking and traffic during this period and is willing to submit further details of car parking provision by way of further information if required to do so by the Board.
- Development plan objectives allow for 'non-conforming uses' and 'ancillary uses' to be considered, ref. sections 18.2.3 and 18.2.4. The pavilion building is operated as an occasional ancillary space to the permitted use at the site, reflecting modern/post Covid customer preferences for greater space and social distancing.
- The applicant did not have scope to prepare the further information referred to in the technical reports on file during the limited appeal timeframe, which included the Christmas period. The Board may wish to seek same by way of further information.
- The pavilion structure is fully insulated and sealed and is constructed to a high quality. The retractable roof is seldom open and only during the summer period to facilitate air flow. The roof is not opened when amplified music is playing and the applicant is happy to accept a condition in this regard. The design and construction have mitigated against adverse noise impacts. The temporary permission sought allows for noise issues to be reviewed after the five year period. There have been no noise issues with the neighbours to the immediate east and west of the site, the closest noise sensitive locations. Letters of support from the two contiguous property owners are submitted. The single objector who raised issues in relation to noise lives c. 2 km from the development site.

- It is submitted that the development does not threaten the vitality or integrity of the primary use of these existing residential/ mixed residential zoned lands having regard to the established use on the site and therefore does not contravene development plan objective ZU 18-19. There have been no issues with regard to litter or anti-social behaviour. The proposed temporary permission would allow the planning authority to monitor compliance with conditions regarding noise, hours of use, etc.
- The development site does not have any hydrological connection to the River Blackwater SAC, therefore no issues arise in relation to AA. The only potential ecological issue that arises is in relation to Mallow WWTP, which operates subject to an EPA licence. The proposed use does not represent an intensification of the use at the site or intensification of wastewater discharged from the site or additional PE loading to the WWTP. The capacity of the WWTP will be upgraded by the Mallow Sewerage Network Upgrade Project. The appellant is willing to submit a Waste Management Report by way of further information if required to do so by the Board.
- The applicant/appellant suggests conditions that could be imposed if retention permission is granted, relating to noise monitoring and limiting the use of the structure.

## **6.2. Applicant Response**

- 6.2.1. Not applicable.

## **6.3. Planning Authority Response**

- 6.3.1. The planning authority has submitted a response dated 3<sup>rd</sup> February 2023. The following points of same are noted:
- The structure in question is determined to be temporary in nature in that it is a pre-made metal structure with a retractable roof that is moveable (albeit large in scale) and which is located to the rear of and separate to the established premises (also visible on the application elevations).

- It is considered by the planning authority that such a temporary structure with a retractable roof, which can essentially act as a self-contained bar/venue, and which is used for purposes including late night entertainment within a wider residential setting has the potential to adversely impact on the residential amenity of the area and is therefore contrary to the relevant zoning objective ZU 18-9 and is unsuitable on this basis. Furthermore, and having regard to the foregoing, it is not considered appropriate in this instance to seek to control potential issues in relation to nuisance, noise and traffic by condition.

#### **6.4. Observations**

6.4.1. There is one observation on file from a resident of Castlepark, Mallow. The following points of same are noted:

- The observer is a senior EHS advisor.
- The applicant has held live music events many times in the past in a marquee at the development site, with very little noise reduction measures and resulting in adverse impacts on the observer and his family. This was tolerated as it was only a few days of disruption per year and presumably controlled by the County Council events licencing system. Details of such events are submitted.
- The current proposal will result in a permanent structure. This is unfair to local residents, who will be exposed to continual and excessive noise on multiple days of the week and late into the night.
- The structure to be retained functions as an events centre with large crowds and performances in both the main premises and at the structure to be retained on the same nights. This contradicts the point made by the applicant that the structure will not result in additional customers at the overall premises. The structure will increase the maximum capacity of the main building. The main building was never used for ticketed events for touring artists such as those now frequently performing at the structure to be retained.
- The observer submits details of advertisements for events at the pavilion indicating live music events Friday to Sunday and some Wednesday and Thursday events.

- The observer submits photographs of the pavilion with the roof retracted and windows open during amplified music.
- It is submitted that the area of the pavilion minus the sanitary accommodation will allow for a maximum occupancy of 96.5 people to include staff. The pavilion is currently selling ticket events of maximum 100 tickets. This exceeds the capacity of the main building and is in breach of fire regulations.
- The observer carried out noise monitoring at the premises on December 3<sup>rd</sup> and 11<sup>th</sup> 2022. Loud live music was in progress and peak noise values of 89 dB and 91 dB were recorded over a 2-3 minute timeframe using an app developed by NIOSH. Monitoring at 11.15 pm on December 11<sup>th</sup> across a 2-3 minute timeframe, using a calibrated noise monitor, measured peak values ranging from 81-84 dB at a point 62m from the pavilion. No immediate background noise was evident.
- Noise monitoring was also carried out at a third point external to Castlepark Avenue on December 11<sup>th</sup> 2022 at c. 11.30 pm using a calibrated noise monitor. The measured peak values ranged from 54-57 dB across c. 5 minutes. No immediate background noise was evident.
- The location of the pavilion at the edge of the River Blackwater exacerbates the noise impacts as water speeds up sound movement and causes refraction of sound and due to local topography. The acoustic attenuation is not sufficient to prevent nuisance noise towards the town direction, including Castlepark.
- The HAS document entitled 'Noise of Music' details that sound levels from rock bands and DJs could record decibel levels from 95 to 110 dB at source. This is consistent with the noise measurements recorded at the site.
- It is submitted that noise impacts from the development would have serious detrimental health impacts including impacts on sleep.
- The pavilion structure does not lend itself to noise reduction, due to the retractable roof and large areas of the glazed walls able to slide open. The structure is not suitable for live music events.
- There has been an increase in litter in the area since the live music events commenced. This issue has, however, decreased in recent weeks.

- There are potential ecological impacts associated with noise pollution including impacts on bats at the River Blackwater SAC and impacts on other nesting or hibernating animals including Otter.

## 6.5. Further Responses

6.5.1. None on file.

## 7.0 Assessment

7.1. I have read through the file documentation and the relevant provisions of the County Development Plan and have carried out a site inspection. The main issues are those raised in the planning reports on file and in the grounds of appeal. Overall, I am satisfied that no other substantive issues arise. In note in this regard that the development is connected to the public sewer and water supply and that the site is located in Flood Zone C as per the Strategic Flood Risk Assessment of the current development plan. The relevant issues can be dealt with under the following headings:

- Consistency with the ER Zoning Objective
- Impacts on Residential and Visual Amenities
- Traffic and Car Parking
- Appropriate Assessment and Ecological Issues

These issues may be considered separately as follows. I note that the third party submissions on file refer to issues relating to compliance with non-planning regulations, including inter alia Building Regulations, Fire Safety Certificate, etc., which will be evaluated under separate legal codes, and as such in my opinion on these matters need not concern the Board for the purposes of this appeal.

## 7.2. Consistency with the ER Zoning Objective

7.2.1. The ER zoning objective primarily relates to the development of existing residential areas and to the retention / preservation of the existing residential amenities of such areas, ref. Objective ZU 18-9: Existing Residential/Mixed Residential and Other Uses, which states:

*... Other uses/non-residential uses should protect and/or improve residential amenity and uses that do not support, or threatens the vitality or integrity of, the primary use of these existing residential/mixed residential and other uses areas will not be encouraged.*

The uses 'public house' and 'music venue', or similar, are not listed as permitted in principle under the ER zoning objective. As noted above, development plan section 18.2.3 states in relation to non-conforming uses that reasonable intensification of extensions to and improvement of premises accommodating such uses will generally be permitted subject to normal planning criteria. Development plan section 18.2.4 also states that developments which are ancillary to the parent use, i.e. they rely on the permitted parent use for their existence and rationale, should be considered on their merits irrespective of what category the ancillary development is listed in the land use zoning categories. In addition, related development plan Objective ZU 18-7: Ancillary Uses is to ensure that developments ancillary to the parent use of a site are considered on their merits.

The extent to which the structure and use to be retained are ancillary to the existing bar/restaurant premises at the site is questioned in the documentation on file. The planning authority considers that the structure can operate as a standalone premises. I note in this regard that the structure includes a bar and separate toilet facilities. However, given that the structure is clearly part of the overall complex at The Arches and that events held at the structure are advertised as such, I do not consider that it is a standalone operation and I am therefore satisfied that it is ancillary to the existing premises.

The extent to which the development will result in an intensification of the existing use at the premises is also questioned. The applicant/appellant submits that the development allows for improved social distancing and meets modern customer requirements but will not result in an increase in the overall amount of patrons at the premises. The observer submits that the pavilion is used for late night entertainment and events, which would not otherwise take place at The Arches, and that the development will therefore result in a more intense use. I consider that, given that the development increases the overall floor area of the premises and includes additional bar facilities, it does create the potential for a greater number of patrons attending the overall venue and therefore a more intensive use of the premises.



However, I would also accept that the use of suburban licensed premises such as this has changed since its original construction in the early 1990s and that the original premises is probably used less intensively now than when it was originally permitted.

It is considered on this basis that (i) the structure to be retained is ancillary to the main premises at The Arches; (ii) the structure does result in some intensification of use of the existing premises, albeit likely limited in scale and (iii) the development to be retained is acceptable in principle and may be considered on its merits on lands subject to the ER zoning objective, with regard to relevant development plan policies on extension/ intensification of non-conforming uses and ancillary uses.

### **7.3. Impacts on Residential and Visual Amenities**

#### **7.3.1. Visual Amenities**

The existing complex at The Arches is visible from the public road and the structure to be retained is partially visible to the rear. It has a low roof profile, lower than the single story bar/restaurant building. The Arches is within a large site which has mature trees at site boundaries. Therefore it has limited visibility in the surrounding area. There is no intervisibility with the protected structure at Bellevue House to the west and limited visibility from the Church of the Resurrection protected structure across the road. Given its limited visibility and relatively small scale, the development is not considered to have any significant adverse impacts on this mixed residential area, or on the settings of adjacent protected structures.

#### **7.3.2. Noise**

The primary issue of concern raised by the observer is in relation to noise impacts. While the refusal reason does not specifically refer to noise impacts, the planning reports and comments on file also state concerns in relation to noise impacts on residential amenities.

I would note at the outset that there is only one observer on this issue and that the applicant/appellant has submitted letters of support from adjoining landowners, including a nursing home and the owner of Bellevue House. The development to be retained therefore does not appear to have resulted in widespread concern amongst the local community. However, I accept that the use of a temporary pavilion structure

for public events with amplified music is likely to result in some noise impacts in a primarily residential area. There are particular concerns in relation to this issue given the retractable roof, which would result in greater noise impacts. While I note the anecdotal evidence and limited noise recordings submitted by the observer, given the lack of a site-specific Noise Risk Assessment, there is limited evidence to assess potential noise impacts. There is also some dispute around the frequency of the use of the structure for public events, with the applicant/appellant stating that it is used for public events between 8.00pm – 12.00am every Saturday night and on one Friday night per month, also occasional daytime use for sporting events. The observer submits that the structure is used for public events more frequently than this and has submitted copies of advertisements for events at the venue.

Given the limited information on file in relation to existing noise impacts and the disputed hours of operation of the premises, it is not possible to reach a conclusion that the development does not result in significant adverse impacts on residential amenities due to noise impacts. I note that the report on file of the CCC Environment Officer recommends a further information request for a site specific Noise Risk Assessment including proposed noise mitigation measures and details of days and hours of operation. It is open to the Board to seek a submission from the applicant on this matter under section 131 of the Planning and Development Act 2000 (as amended). However, given the limited timeframe for response to a section 131 request, I consider that the applicant is unlikely to be in a position to furnish the Board with the requisite level of detail to permit adequate further consideration of these issues. I therefore recommend refusal on the basis of adverse impacts on residential amenities due to noise impacts.

### 7.3.3. Other Impacts on Residential Amenities

The observer raises concerns about potential adverse impacts on the amenities of the area due to general disturbance, litter, etc. I note that there are no other third party comments on file in relation to this matter. I consider that the general management of the premises and surrounding area is a matter which could be addressed by condition if permission is granted. I note in this regard that the CCC Environment Officer has recommended the submission of a Waste Management Plan.

#### **7.4. Traffic and Car Parking**

7.4.1. The report on file of CCC Area Engineer recommends a further information request for details of car parking provision. The existing complex at The Arches includes extensive car parking. The structure to be retained is located in part of the original car park and therefore has resulted in a reduced overall parking provision at the premises. However, I accept the submission of the applicant that the use to be retained is unlikely to result in significant demand for additional car parking at the premises. I also note that there is a large car park at the Church of the Resurrection immediately across the road from the site, which could be used for occasional overflow car parking. I therefore do not consider that the development is likely to result in significant additional traffic or car parking demand, which would warrant a refusal of permission on the matter.

#### **7.5. Appropriate Assessment and Ecological Issues**

7.5.1. The structure to be retained is c. 60m from the main channel of the River Blackwater, which forms part of the Blackwater River SAC (site code 002170). The report on file of the CCC Ecologist, dated 8<sup>th</sup> December 2022, gives detailed consideration to potential interactions with the designated site, with regard to its conservation objectives. The following points of same are noted:

- The risk of potential impacts on coastal habitats listed as QIs of the SAC is ruled out due to the distance from the development site, > 75km.
- The risk of potential impacts on woodland habitats and species listed as QIs of the SAC is ruled out based on the lack of any physical connectivity between the development site and known locations of occurrence of these QIs.
- The risk of potential impacts on the Thwaite Shad QI is ruled out based on the distance to the nearest known location of occurrence of this species to the development site.
- There is a risk of potential impacts on the freshwater habitats and species listed as QIs of the SAC, which rely on a stable hydrological regime and protection of a high standard of water quality in order to ensure compatibility with the achievement of their conservation objectives. The risk is associated with release of silt and/or toxic contaminants to surface water during construction and a

significant risk to water quality post construction arising from the disposal of wastewater, which is discharged to Mallow WWTP. The CCC Ecologist is satisfied that the risks associated with construction are imperceptible given the lack of a direct hydrological connection, the limited scale of the works, the materials used in construction and the presence of a buffer of treeline habitats and open grassland between the development and the SAC. The Ecologist also considers the issue of potential surface water contamination from the completed development to be negligible given that the location of the structure was previously an area of hardstanding used for car parking. The potential for increased loading of the Mallow WWTP from the completed development and associated water quality issues is unclear, noting that the WWTP is currently overloaded, however an upgrade project is scheduled to be completed by 2023 (which may be subject to change). Development plan Objective WM 11-1 (g) states that development may only proceed where appropriate wastewater treatment is available which meets the requirements of environmental legislation, the WFD and the requirements of the Habitats Directive.

- There is also a significant risk of disturbance/displacement of the QI species Otter due to the potential generation of anthropological stimuli. The CCC Ecologist considers that the construction phase of the development is unlikely to have resulted in noise impacts above already occurring background noise levels and therefore is unlikely to have presented a significant risk to the levels of occurrence, population density and habitats of this QI species. However, further assessment of noise impacts associated with the completed development is necessary to consider potential disturbance/ displacement effects.

The report concludes that there is insufficient information on file to allow for a complete AA screening of the development and recommends a further information request for clarification of the extent of additional P.E. loading, if any, generated by the development to be retained which would be directed to Mallow WWTP. I accept that a detailed AA Screening Report would be necessary to allow for full consideration of this issue. However, as discussed above, I am recommending refusal for other reasons relating to potential adverse noise impacts on residential amenities.

- 7.5.2. The site is c. 12.5 km from the Kilcolman Bog SPA (site code 004095). As per the report of CCC Ecologist, there is no physical, hydrological or other ecological connectivity between the development site and the SPA and potential direct effects are therefore screened out. Potential effects relating to disturbance/displacement are also screened out due to the intervening distance and to the limited scale of the development.
- 7.5.3. The Observer on file has raised the issue of potential disturbance impacts on Bats due to the development. Bat species are not listed as a QI of the Blackwater River SAC but are subject to protection under other Irish environmental legislation. There are mature treelines in the vicinity of the pavilion, which provide potential roosting and foraging habitats for bats. The development does not result in the removal of any trees but there is potential for disturbance/ displacement impacts. I note that the report of CCC Ecologist does not state any concerns in relation to this matter.

## **8.0 Recommendation**

- 8.1. Having regard to the above assessment, I recommend refusal for the reasons and considerations stated below.

## **9.0 Reasons and Considerations**

- 9.1. On the basis of the information provided with the application for retention and first party appeal, The Board is not satisfied that the development to be retained would not have significant adverse impacts on residential amenities by way of noise. The development is therefore considered to contravene development plan Objective ZU 18-9: Existing Residential/Mixed Residential and Other Uses, which states that non-residential uses in areas subject to the ER zoning objective should protect and/or improve residential amenity. The development is therefore 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.

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Sarah Moran  
Senior Planning Inspector

18<sup>th</sup> June 2023