



An
Bord
Pleanála

Inspector's Report

ABP-317282-23

Development	Retention of partial change of use of car parking to outdoor seating area with kitchen and servery building and retention of bar and servery building to the front of the main building.
Location	The Summit Inn, Thormanby Road, Howth, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F23A/0106
Applicant(s)	The Gaffney Group
Type of Application	Retention Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	The Gaffney Group
Observer(s)	Michele Sweeney, Derek & Ellen Herbert, Eric & Yvonne Chow and Deirdre Markham.
Date of Site Inspection	17 th February 2024
Inspector	Tony Ewbanks

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1.0 Site Location and Description.

- 1.1. The Summit Inn is located at the junction between the Thormanby Road (R105) and the Bailey Green Road to the south Howth town centre and north-west of the Howth Hill summit. The site comprises of the main, two storey public house and a single storey, lean-to style metal, glass and canvas structure attached to the pub's front elevation, two and single storey rear extensions and ancillary buildings next to the rear car park. The car park that is accessible off a cul-de-sac'd road serving adjoining dwellings. In the eastern corner of the car park is located the raised decking/seating area which is also used as a stage for music. Immediately adjacent and along the site's rear (south-eastern) boundary is the 16m² timber 'Tramline' kitchen and servery structure. Its front elevation contains 2no. large chalkboard signs advertising alcoholic drinks and hot food and several serving hatches which open out to customers in the seated/standing area to the front. The area in between the 'Tramline' building and raised decking/stage area accommodates more picnic benches. Several protective timber planters are positioned in front the decking/stage area and 'Tramline' building to separate it from the car park. During the site inspection thee picnic benches were observed to be stored closely together rather than being in use by customers. The appeal site is on a south-easterly incline resulting in the decking/stage area and the 'Tramline' building sitting at a higher level than the min pub building.
- 1.2. At the front of the public house in the western corner of the appeal site next to the junction between the Thormanby and Bailey Green Roads is the 8m² 'Summit Inn BBQ Shack'. The timber shed structure includes several chalkboard signs attached to its front and side advertising what coffee, soft and alcoholic drinks, burgers, baps and paninis.

2.0 Proposed Development.

- 2.1 Retention permission for a partial change of use of car parking to outdoor seating area with a kitchen and servery building of 16m² and a bar and servery building of 8m² to the front of the main public house. The trapezoidal shaped timber

decking/stage area and adjoining L-shaped area to the side and front of the 'Tramline' building measures approx. 163m². The timber 'Summit Inn BBQ Shack' measures 4m wide x 2.1m deep x 3.184m at its tallest.

3.0 Planning Authority Decision.

3.1 Decision.

3.1.1 A Notification of Decision to refuse was issued on the 11th May 2023 citing the following two reasons:

1. The development to be retained by reason of its proposed scale, design and location located in a transitional zone in close proximity to noise sensitive residential uses would, if permitted, result in a substantial intensification and overdevelopment of the site which would have a detrimental impact on the amenities of residential properties located in close proximity by way of increased levels of late night activity and associated disturbance. The development as proposed would be contrary to the provisions of Objective DMSO96 and Objective Z02 of the Fingal Development Plan 2023-2029 which seeks to ensure that all applications for new or extensions of existing uses such as hot food takeaways, and other licensed premises, do not have a negative effect on the existing mix of land uses and activities in an area. It is considered that the proposed development would be contrary to the foregoing Objectives and would seriously injure the amenities of properties in the vicinity of the site. The development as proposed would therefore be contrary to the proper planning and sustainable development of the area.

2. The subject development will further reduce the car parking on site to an unacceptable degree within the overall site and a deficit in car parking provision as per the standards within the Fingal Development Plan 2023-2029 resulting in on-street car parking which would lead to a conflict between pedestrian and road users.

3.2 Planning Authority Reports.

3.2.1 Planning Reports.

- The Planning Authority's (PA) report recommended refusal as set out in Chief Executive Officer's (CEO) Decision Order No. PF/0965/23. No difference in recommendations or reasons for refusal between the planner's and CEO decisions.

3.2.2 Other Technical Reports.

- Water Services – No objections subject to conditions.
- Transportation – Did not support the application.

3.3 Prescribed Bodies.

3.3.1 Uisce Eireann (Irish Water) – No objection subject to conditions.

3.4 Third Party Observations.

3.4.1 A number of third party submissions were received raising the following concerns:

- The application significantly intensifies the use on site which is surrounded by residential properties.
- The site is in the Howth SAAO Buffer Zone.
- The unauthorised structures have increased the site of the outdoor seating capacity whilst reducing the number of parking spaces.
- The surrounding roads are often cluttered with the overflow of customer cars.
- No toilet facilities are provided for this outdoor area.
- The car park adjoins a residential property and garden and the noise from the outdoor bar/food shack and seating area has a negative impact.
- No regard for the adjacent residential amenities.
- The permission granted under F20A/0492 resulted in a capacity increase for the site.

- There are advertisements for outdoor music events at this location for August 2023.
- No drainage drawings have been provided.

4.0 Planning History.

- 4.1 **F04A/1204** – Granted 17.11.04 - Retention permission of a taxi booking office to rear of The Summit Inn.
- 4.2 **F05A/0039** – Granted 27.09.05 – Permission for construction of 20no. two-bed apartments in 2no. three storey blocks over basement car park, replace existing two storey building containing bar kitchen. disco, office and hotel rooms with two storey/part three storey building over part basement containing bar lounge and restaurant, office and 8no. apartments, site development works, landscaping, roadways and footpaths and 24no. parking spaces.
- 4.3 **F06A/0722 / PL 06F.219087** – Granted on appeal 08.03.07 – Permission for (a) demolition of 3no. existing dwellings; (b) construction of 30no. two-bed apartments in 2no. three storey blocks, removal of derelict snooker hall, basement car parking for 54no. cars, 4no. visitor surface parking spaces; (c) replace existing two storey building containing bar, kitchen, storage, discotheque at ground floor, office and hotel rooms at first floor, with two storey building over part basement containing, storage area at basement level, bar lounge and restaurant, stores, cold storage, kitchen, staff room, WCs, verandas at ground floor and office, 4no. two-bed and 2no. one-bed apartments at first floor, 1no. two level two-bed apartment at first floor, and (d) site development works, refuse area, fencing and hard and soft landscaping, roadways and footpaths and 24no. parking spaces.
- 4.3 **F06A/0722/E1** – Refused 14.10.11 - Extension of Duration of Permission F06A/0722.
- 4.5 **F20A/0492** – Granted 08.01.21 – Permission for a canopy (retractable) enclosure to the front terrace of The Summit Inn.

- 4.6 The Applicant has been served with an enforcement warning letter (Ref. No. 21/124B) in relation to the unauthorised works on site subject of this appeal.

5.0 Policy Context.

5.1 Development Plan.

Fingal Development Plan 2023-2029.

- 5.1.1 The appeal site is zoned LC – Local Centre where the principal objective is to ‘...*protect, provide for and/or improve local centre facilities*’. The zoning’s vision seeks to provide a mix of local community and commercial facilities at a scale commensurate to the needs of existing and developing communities at locations which minimise the need for use of the private car and which encourages pedestrians, cyclists and public transport. The appeal site is located within the Buffer Zone of the Howth Special Amenity Area. The surrounding landscape character is described as coastal and highly sensitive. A public house, restaurant/cafe and fast food outlet/take-away are uses considered permissible in principle.
- 5.1.2 I consider the following policies and objectives to be relevant to the assessment of this appeal:
- **Policy CMP1 Decarbonisation of Motorised Transport** - *Support the decarbonisation of motorised transport and facilitate modal shift to walking, cycling and public transport and taking account of National and Regional policy and guidance, while supporting an efficient and effective transport system.*
 - **Policy CSP22 Howth, Sutton and Baldoyle** - *Consolidate the development and protect the unique identity of Howth, Sutton and Baldoyle. This includes protection against overdevelopment.*
 - **Policy CSP23 Howth SAAO** - *Protect the Howth Special Amenity Area Orders (SAAO), including the Buffer zone, from residential and industrial development intended to meet urban generated demand.*

- **Objective DMSO12 Evaluation of Signage Proposals** - *Evaluate signage proposals in relation to the surroundings and features of the buildings and structures on which signs are to be displayed, the number and size of signs in the area (both existing and proposed) and the potential for the creation of undesirable visual clutter.*
- **Objective DMSO96 Fast Food / Takeaway outlets** - *Development proposals for fast food/takeaway outlets will be strictly controlled and all such proposals are required to address the following:*
 - *The cumulative effect of fast food outlets on the amenities of an area.*
 - *The effect of the proposed development on the existing mix of land uses and activities in an area.*
 - *Opening/operational hours of the facility.*
 - *The location of vents and other external services and their impact on adjoining amenities in terms of noise/smell/visual impact.*
- **Objective DMSO119 Car Parking at Places of Work and Education** - *Limit the number of car parking spaces at places of work and education so as to minimise carbon commuting. The number of car parking spaces at new developments shall be in accordance with the standards set out in Table 14.19 and the associated criteria for car-parking provision set out in this Plan.*
- **Objective IUO62 Noise Sensitive Developments** - *Consider the location, design and construction of noise sensitive developments, to ensure they are protected from major noise sources, where practical, and to support and facilitate the monitoring and enforcement by Fingal's Environmental Health Department of noise reduction measures in areas experiencing excess noise.*
- **Objective ZO2 Transitional Zonal Areas** - *Have regard to development in adjoining zones, in particular, more environmentally sensitive zones, in assessing development proposals for lands in the vicinity of zoning boundaries.*

5.2 Natural Heritage Designations.

5.2.1 The appeal site is located c.275m north-west and c.375m north-east of the Howth Head Special Area of Conservation (Site Code: 000202); c. 390m north-west of the Howth Head Coast Special Protection Area (Site Code: 004113); c. 720m north-west of the Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000); c. 940m north of the North-West Irish Sea Special Protection Area (Site Code: 004236).

5.3 EIA Screening.

5.3.1 The development is not class of development designated in Parts 1 or 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended) or fulfil the criteria set out in Schedule 7 of the foregoing Regulations. Therefore the requirement for submission of an EIAR and carrying out of an environmental impact assessment may be set aside at a preliminary stage”.

6.0 The Appeal.

6.1 Grounds of Appeal.

- Both structures are of equal importance to the viability and running of this very popular bar and restaurant. Both were constructed in response to the Covid epidemic. We request the Board treat and assess each elements of development separately as they function and impact upon the general amenities of the area quite differently and perform different functions for the Applicant. The 163m² outdoor seating area to the rear takes up 3no. parking spaces but in terms of standard manoeuvrability only one space would be useable. The decking was constructed by the local authority during Covid. The 8m² bar and servery building to the front of the main building serves walkers and daytime users who require coffees, light refreshments and small snacks.
- Regarding the first refusal reason there is no application for a fast food takeaway facility on site. All food and drink offers are for consumption on premises which includes the covered-in area and the open area to the front. We submit amended

Drawing No. P002 Rev 1 showing a noise screen around the rear outdoor seating area. This screen will add a further screen to the dense foliage of adjoining hedges and trees minimising noise pollution. We would also invite a noise standard condition and temporary planning permission for five years to allow the planning Authority to assess the impact of the development on the area over that period. We acknowledge the concerns of residents and the Planning Authority's refusal given the location and established use and reasonable extension of the premises and its commercial zoning and specific interventions to mitigate any impact on amenities must be a consideration when dealing with applications in this situation. The inclusion of a condition limiting the use of both structures to 7.30pm will significantly reduce any unacceptable levels of noise and disturbance. Additional conditions were proposed restricting the hours of use of the severy units; prohibiting music or other amplified sound from being attached to the severy buildings or to the sitting out area and prohibiting music being broadcast from the premises in such a manner as to cause nuisance to nearby properties. Such conditions would be in accordance with Objective IUO62.

- Regarding the second refusal reason the development is considered a small and ancillary use to the main and historic public house use on site. The site is located 50m from a bus stop serving the H3 and H6 buses to Dublin City and Howth town centre. Howth DART station is located over 2km from the site. The Summit public car park is located 220m and the Carrickbrack Road public car park is located 366m from the site. On site there are 15no. spaces. The requirement for additional parking is unnecessary given the proximity of alternative parking locations, nearby bus routes and the Howth DART station. Using the requirement of 1no space per 30sqm. the development would have a shortfall of 12no. spaces. Given Development Plan policies having regard to traffic and movement generation associated with the development a reduced parking provision may be acceptable were the Council is satisfied the good public transport links are already available. The bar/restaurant is a destination establishment particularly for walkers on the Cliff Walk Loop who use the premises as a refreshment stop. The structures also allow service of casual day time walkers without serving them from the existing kitchens which are both distant and more designed for customers who want the full dining experience. This type of unit is now very common in many restaurant

facilities allowing for different formats between cafe type snacks and full dinner services.

6.2 Planning Authority Response.

- Planning Authority (PA) confirms its decision and has no further comment to make. They request their decision to refuse be upheld but in the event permission is granted the Board is requested to be mindful of applying a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme (S48 Levy Open Space Shortfall and Bond/Cash Security).

6.3 Observations.

- Four observations were received and are summarised as follows:

Michele Sweeney

- Appeal submitted with photographs of the stage and outdoor seating/dining/drinking areas located in proximity to a number of residences and of the car park taken almost entirely up with table, chairs and customers.
- Over the past few years the outdoor seating area generates noise from customers drinking during the day and evening, particularly during good weather and from the stage during outdoor music events causing considerable noise disturbance. Residents of the cul-de-sac feel hemmed in on such occasions having either to close their windows or leave for the day.
- The typical customer patronising the premises are not predominately walkers as suggested in the appeal. The sustained drinking of alcohol is done by a different customer.
- The Inn has doubled their seating capacity by using the car park resulting in the loss of c.8no. spaces not the 3no. suggested in the appeal. This is inadequate for The Summit's needs as can be seen by ad hoc parking in the area on busy days. The Summit does not use the public car parks as has been suggested in the appeal. There is an additional raised outdoor seating area that hasn't been identified on the submitted Site Plan which reduces further available parking.

- The granting of a temporary, five year permission as proposed does not negate the impact on local residents in the short and long term. Such a condition would encourage an endless merry-go-round of applications for extension of permission.
- External noise sources are not acceptable in a residential area. Any noise measurement taken adjacent to Thormanby Road would be very different from back gardens. Boundary foliage is seasonal and therefore of varied effectiveness in mitigating noise throughout the year. No calculations have been provided to demonstrate how the proposed noise barrier will reduce the negative impact. No information has been provided as to how noise levels would be monitored or by whom. Parallels drawn with outdoor dining areas in Howth and Malahide do not apply to the appeal site as they are located in urban centres and do not involve the consumption of alcohol or regular outdoor music events. Loud music can be defined as a statutory and private nuisance.

Derek and Ellen Herbert & Eric and Yvonne Chow.

A template letter, raising identical points of objection, was submitted by both parties and is summarised as follows:

- This is totally inappropriate development in what is an almost exclusively residential area. The car parking adjoins our house and garden and it is a nightmare to have dozens of inebriated drinkers shouting and roaring in such proximity. The noise from live bands and music festivals is intolerable.
- The site is within the Howth SAAO Buffer Zone. The SAAO is located c.100m away and is designated as a highly sensitive coastal landscape character area. The interior of the bar has spaces for 15-20no. tables depending on the configuration and approx. 90+ persons. The front conservatory approved under F20A/0492 more than doubled the bar's capacity with approx. 20-25no. 6 seater tables and approx. 120no. persons.
- The current car park is insufficient for the increased numbers which the conservation extension to the pub and restaurant has attracted. The surrounding roads are cluttered with an overflow of parked cars. There is a need for additional rather than less parking provision. The parking chaos on the surrounding roads

and footpaths very often blocks access to residences. The development has reduced the car park's capacity to 12no.

- Appeal submitted with photographs of the stage and outdoor seating/dining/drinking areas which are used daily severely impacting our lives and neighbouring houses from a combination of loud music, noise pollution, anti-social behaviour and litter generation. We are deeply concerning regarding the changes to this very quiet, peaceful and special residential area.
- When assessing F20A/0492 the Council recognised the public house was located in a predominately residential area. Condition 4 of the permission stated no music or other amplified sound should be broadcast externally from the public house into the terrace area. It would therefore be inappropriate to allow this development as is happening thus far.
- The suggestion that a grant of temporary planning permission would determine if the development was a bad neighbour over time is redundant. The unauthorised development has been in use for two years with loud, intrusive and unacceptable noise pollution an already proven negative impact.
- The suggested noise abatement measures are outrageous. Acoustic panels are not an effective way of soundproofing a wall as they still allow sound to pass through to adjoining areas. They do not block noise.

Deirdre Markham.

- Historically The Summit Inn has not had adequate car parking for its customers. This has been exacerbated by the Applicant creating a restaurant area in the front terrace. The development has led to more cars parking and the reducing the adjoining Bailey Green Road which leads to the Summit car park to a single lane. The car park suggested by Applicant as an alternative parking area is not visible from The Summit Inn. I can confirm that patrons do not use this car park.
- The 8m² bar and severy area to the front has been used as a hot food takeaway and bar since Covid. This type of outlet is not in keeping with the amenities of the area. The existing restaurant could be converted to cater for this business. I am concerned that discarded takeaway food and litter could attract vermin.

- I take issue with the suggestion that thick hedging offers a solution to outdoor amplified music and loud animated conversation. The proposed acoustic wall would materially change the visual aspect of the area.

6.4 Further Responses.

- None.

7.0 Assessment.

7.1 Having carefully reviewed Fingal County Council's assessment of the original application, the Appellant's appeal statement and the Council's and third party observations I consider the following issues to be material to determining the appropriateness and acceptability of this development.

7.2 Impact on Residential Amenities.

7.2.1 I note that the Fingal Development Plan considers a public house, restaurant/cafe and fast food outlet/take-away uses are considered permissible under the appeal site's LC zoning. As such there is no objection in principle to the development however I am also cognisant of Objective ZO2 - Transitional Zonal Areas which requires development to have regard to adjoining zones, *particularly more environmentally sensitive zones such as residential. The RS – Residential zoned lands of adjoining properties along Thormanby and Bailey Green Roads seeks, in part, to protect and improve existing residential amenities.* I note the Appellant's argument that the development should be given consideration within context of the appeal site's LC – Local Centre zoning. However I am satisfied that the County Council was correct, under the provisions of Objective ZO2, to give material consideration to the development's potential impacts and effects upon the residential amenities of neighbouring dwellings.

7.2.2 Having reviewed third party observations to this appeal I consider the noise and general disturbance generated by use of the raised decking/stage area and 'Tramline' kitchen and severy building at the rear of the site to be the principal issue

of concern in this appeal. In this regard I do not believe the use of the 'Summit Inn BBQ Shack' to the front of the appeal site has a direct or indirect detrimental effect upon the amenities of adjoining residential properties. I agree with the County Council's opinion that both structures represent a clear intensification of use within the appeal site which is deliberately designed to facilitate serving an increased number of customers through various facilities and services e.g. increased seating/standing room, takeaway drinks and snacks, hot food and music events.

7.2.3 With regards to the 'Summit Inn BBQ Shack' I am satisfied that it carries out a distinct take-away function as defined in Article 5 of the Planning & Development Regulations 2001 (as amended) which is available to the passing general public and which is not exclusively for consumption on site. However within context of noise and general disturbance I do not consider the operation of the 'Summit Inn BBQ Shack' to be a source of material harm to the residential amenities of adjoining dwellings.

7.2.4 The raised decking/stage area, the Tramline building and area in between which are located at the rear of the appeal site are very close to several residential properties and their rear amenity spaces. The area outlined in red on Drawing Nos. P001 and P002 comprise of only a partial area of the car park that several third party observers' photographs clearly show being occupied by seated and standing customers. The number of picnic benches and seats observed during the site inspection in this area suggests they were being stored rather than set out in a configuration conducive for use by customers, reinforcing several third party Observers' comments that a significantly larger portion of the rear car park is set out with the aid of the timber planters for seated and standing customers particularly during a live music event.

7.2.5 The appeal has provided no quantifiable information that describes how the development has operated since its construction or how it would continue if approved. For example no information has been provided regarding how often the rear area is open to customers; how frequently music events occur or the regularity with which amplified music is in use. No indication has been provided as to what number of additional customers this area is capable of accommodating or have been attracted in past events. Most crucially no information has been provided that either estimates or establishes decibel levels during music events or ambient levels

generated by additional customers. Proposed mitigation measures are similarly vague and generic which frustrates a proper and robust interrogation of the efficacy of the measures proposed by the Appellant in mitigating and/or eliminating noise, disturbance, nuisance and harm to adjoining residential amenities.

7.2.6 The appeal submits that the '*... dense foliage on lands between the outdoor area and the nearest residence ...*' provides a degree of noise mitigation from what is generated by use of this rear outdoor area. However no evidence has been submitted with the appeal in support of such a claim. Several of the third party observations note that this boundary vegetation is not present year round. Regardless I am not satisfied the existing boundary planting, even when in full foliage, can or indeed does provide any meaningful amelioration of amplified or ambient noise levels given its limited height and depth and the proximity of adjoining residential properties.

7.2.7 The appeal proposes several mitigation measures which I will consider as follows:

a) Proposed Noise Screening.

The appeal proposes constructing a noise screen on two sides of the 16m² raised decking/stage area. Revised Drawing No. P002 Rev A illustrates 3.1m high panelling along the decking's northern and north-eastern sides running parallel with the appeal site's side and rear boundaries. The top 1m of the panelling would be angled inwards to the decking/stage area. The drawings are not supported with any additional information, detail or specification of the proposed screening's make-up, acoustic abatement qualities or an estimation of how many decibels this proposal would reduce noise by. In the absence of such information I cannot presume such a measure will be effective. In my opinion such a measure would fall short of providing any meaningful noise abatement as the panelling would only affix to two sides of the decking/stage. The decking/stage would still be open on its southern and western sides to the adjoining 'Tramline' building and car park area occupied by seated and standing customers. The decking stage area would remain open to the sky allowing noise to escape. The proposed mitigation measure would also have no effect upon ambient noise arising from customers in front of and around the 'Tramline' building. The Appellant proposes installing the proposed panelling within six months of a grant

of permission which would equate to another spring and summer season of music events, large congregations of outdoor customers and the continued diminution and deterioration of adjoining dwellings' amenities. It is a measure I believe would be of limited impact and benefit.

b) Temporary Five Year Permission.

The appeal proposes granting a temporary permission for up to five years during which time the local authority could assess the impact of either structure on the general area. Such a proposal is, in my opinion, contrary to Objective ZO2 and Section 13.2 of the Development Plan which seeks avoidance of development '*... that would be detrimental to the amenities of the more environmentally sensitive zone*' with particular attention being paid to the use, scale and density of development '*... in order to protect the amenities of residential property*'. Allowing for detrimental levels of loud music and ambient customer noise to continue for any period of time is, in my opinion, inappropriate and contrary to the principles of proper and sustainable development.

c) Restricted Times of Use.

The appeal proposes amplified music and other specific entertained noise emissions shall not exceed the background noise level by more than 5 dB(A) between 0800 and 2300hrs. I take this to mean amplified music arising from use of the decking/stage area by live bands and performers as well as background music played over a PA system. The suggested operational times contradicts an earlier reference to both structures operating until 7.30pm. The appeal casually refers to background noise levels being '*... taken as L₉₀*'. L₉₀ however is not a decibel level but an acoustic level descriptor or expression of the level by which background noise is exceeded for 90% of the time. Within context of suggesting amplified and live music does not exceed 5dB (A), L₉₀ is a meaningless point of reference. In the absence of any baseline acoustic data which establishes background/ambient decibel levels when the pub, and in particular, the decking/stage area and outdoor seating areas are in use the proposed mitigation measure provides no protection. Furthermore there is no reference in this suggested measure to days of the week

inferring a desire to allow the decking/stage area, 'Tramline' building and seating areas to be available for use for fifteen hours each day of the week which I do not consider to be acceptable or conducive to the protection and preservation of the amenities of adjoining noise sensitive properties.

d) Acoustic Survey.

The appeal proposes carrying out an acoustic survey to establish background noise levels during the presence and absence of on-site noise sources. Such baseline information should have, in my opinion, formed part of the application and suggesting that it be carried out post factum and after permission has been granted seems backwards. Establishing how loud background/ambient noise levels may be after retention permission has been granted has, in my opinion, no merit. If the collected data established that live and amplified music and ambient customer noise was indeed loud enough to be materially harmful to adjoining residential amenities no action could be taken by virtue of permission already having been issued.

e) Hours of Use.

The appeal also suggests the hours of use '*... of the garden and the temporary structures to the side and front of the bar/restaurant be limited to between 1000 hours and 1930 hours daily*'. It is unclear what the garden is referring to on site but if it is the decking/stage area and/or customer seating/standing area in front of the 'Tramline' building such a suggestion appears to conflict with the earlier proposed mitigation measure limiting amplified music and other specific entertained noise emissions to between 0800 and 2300hrs. The proposed condition does not allow for cessation of activities on Sundays and public holidays which is standard component of any noise/hours of use condition. Instead the appeal suggests allowing the unauthorised development to continue as before for 9½ hours each and every day which I consider to be excessive, unacceptable and contrary to Objective ZO2 and preserving and protecting the residential amenities of neighbouring dwellings or residents' reasonable expectation of enjoying the amenity spaces, gardens or patios without continued ill effect.

7.2.8 As such I am not satisfied that the proposed mitigation measures, alone or in combination, would be sufficient to adequately or substantially control noise being generated by the unauthorised raised decking/stage area, 'Tramline' building and outdoor seating area. Given the proximity of noise sensitive neighbouring dwellings to the area of the appeal site generating increased noise levels from live music events, amplified music and increased ambient noise from increased numbers of seated and standing customers I am satisfied that adjoining dwellings' amenities have been diminished and residents' reasonable enjoyment of their homes and external amenity spaces have been and would continue to be detrimentally affected. A grant of planning permission would be contrary to Section 13.2 and Objectives ZO2 and IUO62 of the Fingal Development Plan 2023-2029 and the proper and sustainable development of the area. I therefore recommend permission be refused on these grounds.

7.2.9 With regards to the 'Summit Inn BBQ Shack' I am satisfied that it carries out a take-away function that is, at least in part, separate from the services provided by the main pub/restaurant use on site. I saw no signs during the site inspection informing customers that food and drink had to be consumed on-site. The range of products on sale are of a take away nature e.g. burgers, wraps and coffee/tea served in disposable cups etc. I cannot see how such a supposed restriction could be practically enforced or conducive to the economic viability of this new business element.

7.3 Impact on Visual Character and Amenities.

7.3.1 The appeal site is located within the Howth Special Amenity Area Order (SAAO) Buffer Zone. At its closest SAAO is located 40m (approx.) from the appeal site on lands to the rear of Thormanby and Bailey Road dwellings. Table 9.3 of the Development Plan describes coastal landscape character areas as being of exceptional landscape value and high landscape sensitivity. .

7.3.2 The two unauthorised structures are visually prominent from the public domain and physically and visually excessive within an already substantially developed appeal site. For example the raised decking/stage area and 'Tramline' building sit on higher ground and are highly visible from the Thormanby Road more so if there are large

numbers of seated and standing customers. The 'Summit Inn BBQ Shack' whilst physically diminutive is in a highly exposed location clearly visible along the Thormanby and Bailey Green Roads. Its timber construction and large chalkboard signs visibly contrasts against the painted plaster finish of the main pub building and the metal frame and glass enclosure structure. I am satisfied that both structures constitute a degree of overdevelopment that is contrary to Policies CSP22 and CSP23 and Objective DMSO96. Neither structure integrates well with the character, setting or appearance of main public house building. The location, materials and in particular the extent of associated signage cumulatively make both structures visually conspicuous and prominent. The signage, in addition to the signage on the covered terrace structure that is in breach of Condition 3 of F20A/0492, results in my opinion in substantial and undesirable visual clutter to the detriment of the amenities and general appearance of the area that is also contrary to Objective DMSO12. I therefore recommend permission be refused on these grounds.

7.4 Vehicular and Bicycle Parking Provision.

- 7.4.1 The unauthorised development has created additional and active commercial floorspace which is subject to the requirement to provide bicycle and vehicular parking spaces under Objective DMSO119. The development has also had the effect of resulting in a nett loss of parking within the existing car park. There is disagreement between the local authority's planning assessment report and the appeal as to the number of existing parking spaces the development uses up and the number of additional parking space the development's area (including the space used for outdoor seating) requires under Table 14.19 of the Development Plan. The appeal argues however that the reduction in existing parking and the failure to provide extra spaces in response to the additional commercial space/area is acceptable under national and local planning policies aimed at reducing car dependency and promoting alternative modes of sustainable transport. The appeal points out the proximity of a local bus stop and the frequency of service, the Howth DART station and two large car parks nearby. The veracity of the Appellant's response to the Council's second refusal reason merits careful consideration.

7.4.2 I am cognisant of the poor parking practices described in third party observations when music events and festivals are hosted on site. The appeal makes no mention of how the Applicant would improve upon this situation, ensure/encourage customers to arrive on foot, bicycle or public transport or use the nearby car parks thereby minimising and/or eliminating vehicles allegedly parked along neighbouring roads, up on footpaths, congesting traffic flow and restricting access to adjoining properties. The appeal, in my opinion, has failed to make a convincing case that existing and/or future customers make use of alternative modes of transport in compliance with Policy CMP1. A public house would traditionally attract customers from the immediate local area on foot. The restaurant use and music events draw from a much larger catchment population in particular the music events. The Howth DART station is located 2.66km from the appeal site along the Thormanby Road and, in my opinion, is too far away and disconnected from it to be a convenient means of travel. I am not convinced that any substantial percentage of pub or restaurant customers frequently arrive by bus or bicycle. The two car parks referenced in the appeal are 'The Summit' car park which is located 220m (approx.) to the south-east at the top of Howth Hill and the Carrickbrack Road car park located 366m (approx.) to the south. Neither car park is under the Appellant's ownership or control and are, in my opinion located too far from the appeal site to be conveniently located and therefore attractive to pub/restaurant customers or music event attendees. If the outdoor seating area and its use as a stage for music events contributes to 'The Summit Inn' as '*... a destination establishment ...*' as described in Section 1.7 (3rd para.) of the appeal and attracts a customer base from a catchment area well in excess of the local area I would also question how compliant the development is against the appeal site's LC – Local Centre zoning. The zoning seeks to provide a mix of local community and commercial facilities '*... at a scale commensurate to the needs of existing and developing communities at locations which minimise the need for use of the private car and which encourages pedestrians, cyclists and public transport*'. If a high percentage of customers are still arriving by car the Board may also consider the development in excess of and contrary to the appeal site's LC zoning.

7.4.3 The appeal refers to Table 14.19's caveat that a reduced car parking requirement may be acceptable where the Council is satisfied that good public transport links are

already available. The appeal is however advocating for a nett loss of spaces rather than a reduction which Fingal County Council did not apply in the first instance. Furthermore a small public bicycle stand outside the appeal site was noted during my site inspection but none within. The development has made no provision for facilitating or encouraging alternative modes of transport for which the case for appeal is relying upon. It is, in my opinion, inappropriate that compliance with parking standards should be dependent upon third party parking facilities. I consider the nett loss of existing parking capacity and resulting detrimental impacts upon the surrounding road network to be contrary to Policy CMP1 and Objective DMSO119 and the principles of proper and sustainable planning. I therefore recommend refusal of planning permission.

7.5 Appropriate Assessment.

7.5.1 The appeal site's proximity to European sites comprising the Natura 2000 site network is specified in paragraph 5.2.1 above. The proposed development was screened out in the Council's assessment of the planning application. Given the location, nature and scale of development and the lack of any direct or indirect conduits/pathways I concur that no significant effect is likely to arise either alone or in combination with other plans or projects on any European sites. As such further Appropriate Assessment is unnecessary.

8.0 Recommendation.

8.1 I recommend planning permission be **refused**.

9.0 Reasons and Considerations.

1. The development by reason of its proposed scale, design and location in a transitional zone in close proximity to noise sensitive residential uses would, if permitted, result in a substantial intensification and overdevelopment of the existing use which would have a detrimental impact on the amenities of nearby residential properties by way of increased levels of associated amplified and ambient noise and associated disturbance and nuisance. The development is contrary to Objectives

IUO62 and Z02 of the Fingal Development Plan 2023-2029 in this regard. The physically and visually prominent development represents overdevelopment and visual clutter within an already extensively developed property detracting from and negatively impact upon the visual amenities and character of the area. The development is contrary to Policies CSP22 and CSP23 and Objective DMSO12 of the Development Plan and the proper planning and sustainable development of this area.

2. The development has resulted in the nett loss of existing parking spaces within the appeal site and fails to provide additional car parking in compliance with the standards set out in Table 14.19 and the provisions of Objective DMSO119 of the Fingal Development Plan 2023-2029. Such circumstances are contrary to the principles of planning and sustainable planning. If permitted the development will result in on-street car parking leading to congestion and conflict between pedestrians and other road users. As such this aspect of the development is not considered in keeping with 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.

Tony Ewbanks
Planning Inspector

02nd March 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary	Retention of partial change of use of car parking to outdoor seating area with kitchen and server building and retention of bar and server building to the front of the main building.		
Development Address	The Summit Inn, Thormanby Road, Howth, Co. Dublin		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
		No X	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X	n/a	Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
Conclusion			
No	X	n/a	No EIAR or Preliminary Examination required
Yes			Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____**Date:** _____