



An
Bord
Pleanála

Inspector's Report

ABP-318679-23

Development	Extension of public house and retention of outdoor dining areas structure for one year
Location	Keevers Pub, Newtown, Lower Faugheen, Carrick-on-Suir, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	2360383
Applicant(s)	Mandy Keevers
Type of Application	Retention Permission and permission
Planning Authority Decision	Split decision – retention permission refused
Type of Appeal	First Party
Appellant(s)	Mandy Keevers
Observer(s)	None
Date of Site Inspection	27th March 2024
Inspector	Bernard Dee

1.0 Site Location and Description

- 1.1. The appeal site is located in the village of Faugheen which is a small rural village located approximately 6.5km north of Carrick-on Suir town. The village is built along a bend in the road adjacent to a church and Keevers Pub is located to the north of the main road and east of the Church and Graveyard at the centre of the village.
- 1.2. The appeal site is currently operating as a public house and this appeal relates to an outdoor seating area to the rear of Keevers Pub. The site, 0.29ha in area is bordered to the east (Newton Manor estate) and west by housing and to the south by the road (R698) running through the village and a line of houses on the opposite side of the road. The northern site boundary faces onto a field.
- 1.3. To the rear of Keevers Pub is a covered seating area which is adjacent to 3 no. covered outdoor booths, which are planned to be retained. There is also a kitchen extension to the original rectangular plan building for which retention permission is also sought. Parking and access to same is proposed through an existing breach in a stone boundary wall to the east of the public house.

2.0 Proposed Development

Retention permission is sought and permission was sought for the following works:

- Retention permission sought for –
 - the storage/kitchen area (137m²) constructed to the rear of the public house.
 - the temporary outdoor covered dining area (85m²), 3 no. temporary dining pods and hard landscaping (112m²) and
 - the existing carpark (410m²) as constructed and associated entrance onto the R698.
- Planning Permission sought for -
 - the removal of the storage area and temporary structures referred to above and their replacement with a permanent extension of 577m² including a restaurant (110m²), a kitchen (139m²) a function room

(192m²), an outdoor covered dining area (111m²), toilets and ancillary circulation space.

- associated internal alterations to public house and first floor apartment.
- upgrade works to the carparking area (including re-surface, line markings, etc.), and erection of a timber boundary fence to the eastern boundary.
- decommissioning of existing on-site effluent treatment system and replacement with connection to public mains via proposed on- site pumping station.
- all associated ancillary site works.

3.0 Planning Authority Decision

3.1. Decision

The planning Authority issued a split decision on 15th November 2023 as follows:

- Permission was granted for the new permanent extensions to the rear of the pub and to the completion and use of the car park to the east of the pub and retention permission was granted for works carried out to date on the car park and for the storage/kitchen area, all subject to 14 no. conditions.
- Retention permission for the covered outdoor dining area and the 3 no. temporary dining pods was refused for one reason as follows:
 - *Having regard to the nature of use of the covered outdoor dining area and dining pods, the location and the overall design of the development, and its proximity to residential properties, together with the intensity of use that is involved and the late opening hours, it is considered that this element of the development would seriously injure the residential amenities of property in the vicinity by reason of noise and general disturbance. The retention of the covered outdoor dining area and dining pods would, therefore, be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Report

This application was the subject of a Further Information request issued on 28th July 2023 and responded to on 19th October 2023. The Further Information request was in relation to car park details, sightlines, surface water collection, wastewater treatment, proposed staff numbers, the requirement for a CEMP, details of a connection to the public water and sewer systems, bin storage details, a lighting impact study and pre-connection details received from Irish Water.

- The Planner's Report notes that with respect to the principle of development, given the village centre location and given the nature of the existing land use, there is no land use objection in principle to the extension of the existing commercial premises on site subject to normal planning considerations.
- The scale of the proposed extension is substantial extending back 37 metres from the rear of the original public house but, given the existing screening around the application site, the proposed extension should not have an adverse visual impact on the overall character of the area.
- The proposal to create an apartment at first floor level above the public house is considered acceptable notwithstanding that there is no private space proposed.
- The Planning Authority as advised by the Environment Section are broadly satisfied with the details submitted in the noise assessment and do not consider that the works will have a significant impact on the residential amenity of the area having regard to the noise mitigation measures proposed.
- The report notes that under the current application, the applicant is proposing to remove covered outdoor areas and construct a permanent, albeit larger extension to the rear. The extension is arranged so that the majority of the public spaces are to the west of the site, with the kitchen and storage space to the east in the interests of residential amenity.

- The current outdoor dining area and 3 no. pods have been the subject of several complaints regarding noise levels and also that the car park for which retention permission and permission to complete works is sought, also causes noise disturbance.
- The report received from the Environment Section recommends that permission is refused for the retention of the outdoor covered dining area and dining pods. I note that the submitted Noise Impact Assessment does not consider the impacts arising from the covered seating and pods for which retention is sought and I am not satisfied that the applicant has demonstrated that this element of the development will not have negative impacts on the amenities of the adjoining properties by reason of noise nuisance.

3.2.2. Other Technical Reports

- Fire Officer – no submission received.
- District Engineer - report dated the 19th of July 2023 requested Further information was sought in respect of several issues but was supportive of the extension after the receipt of Further Information details.
- Environment – report dated the 27th of July 2023 requested Further information but was supportive of the extension after the receipt of Further Information details but not of the retention of the existing outdoor dining area and 3 no. dining pods.
- Water Services - no submission received.

3.2.3. Prescribed Bodies

- Irish Water - no observations received.

3.2.4. Observations

- An Observation in relation to the original application and to the response to the Further Information request was received from Susan and Eddie O'Shea who stated that there is constant noise and music coming from the outdoor area with excessive noise from patrons after hours. In addition, the location of the staff carpark results in excessive noise generation.

4.0 Planning History

4.1. On the Appeal Site

- Ref 21/1763 - Refusal of permission for the retention of works carried out at the property comprising of the construction of a covered outdoor dining space, extension to rear of property for storage and staff circulation associated with the kitchen space, storage unit to rear of property, vehicular entrance opening to the south road facing boundary wall, on-site parking and all associated site works.

Permission was refused for the following reason - Having regard to the nature of use for which permission for retention is sought, the location and the overall design of the development, and its proximity to residential properties, together with the intensity of use that is involved and the late opening hours, it is considered that the development for which retention is sought would seriously injure the residential amenities of property in the vicinity by reason of noise and general disturbance. Furthermore, the Planning Authority is not satisfied that the measures proposed to mitigate noise nuisance would be sufficient or effective. The development for which retention is sought would therefore, be contrary to the proper planning and sustainable development of the area.

4.2. In the Vicinity of the Site

- None relevant in close proximity to the appeal site.

5.0 Policy and Context

5.1. The relevant Development plan is the Tipperary County Development Plan 2022-2028.

The site is located within a Zone of Archaeological Potential associated with a national monument (TS03146 - Settlement deserted – medieval).

Volume 2 Settlement Guide and Settlement Plans

GO1: To facilitate low density development proposals to meet local housing demands together with the provision of local and community services / facilities within the settlement boundary in accordance with the principles of proper planning

and sustainable development, and the Council's 'Design and Best Practice Guidelines for Cluster Housing Schemes in Rural Villages'.

- SO1: To ensure adequate access is provided to all lands proposed for development. The scale, design and layout of any development shall enhance the individual rural character of the village and not seriously detract from existing views.
- SO2: To facilitate the carrying out of streetscape enhancement works subject to resources being available.
- SO3: Support the preparation of an Enhancement Scheme for Faugheen, which includes a focus on enhancement of entry points to the village subject to resources being available.
- SO4: To ensure the protection of protected structures, historic buildings and buildings/structures of archaeological significance.
- SO5: To require the submission of Flood Impact Statements, as appropriate, in respect of lands which are liable to flood.

Volume 3 Appendix 6 Development Management Standards

6.1 Road Design & Visibility at a Direct Access

Any direct access to a rural national primary or rural national secondary road shall comply with the visibility parameters contained in Section 5.6.3 of TII Publication DN-GEO-03060, Geometric Design of Junctions, which is available for download from the TII Publications website (<https://www.tiipublications.ie/>).

5.2. Natural Heritage Designations

There are three natural heritage designations located in the vicinity of the appeal site:

- Lower River Suir SAC 002137 – located approximately 670m from the appeal site.
- River Barrow and River Nore SAC 002162 – located approximately 12km from the appeal site.

- Hugginstown Fen SAC 000404 – located approximately 12km from the appeal site.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, 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. The First Party grounds of appeal are, in summary, as follows:

- The outdoor dining area and dining pods were a response to the Covid restrictions and were an attempt to balance commercial reality with the health and safety of customers.
- When the pub reopened when Covid restrictions were lifted noise limiting equipment was installed and monitored and the outdoor areas were restricted to dining use only.
- A 12 month retention period is necessary to ensure the financial viability of the proposed extension. It is imperative that trading continues in these outdoor areas right up to demolition and redevelopment in order to finance said redevelopment.
- The Warning Letter regarding noise emissions from the outdoor dining areas, a Noise Impact report was submitted to the Planning Authority on foot of a Further Information request and this report was not adequately taken into consideration in the determination of the planning application by the Planning Authority.
- The report from the Environment Section was unscientific regarding noise pollution potential associated with the outdoor dining areas and was a 'desktop study' only.

6.2. Planning Authority Response

- The Planning Authority notes that the application submitted included a Noise Assessment report. It is important to note that the report focused specifically on the noise impacts associated with the proposed development on sensitive receptors including residential properties in the vicinity. Upon assessing the application, the Planning Authority referred the application to the Environment and Climate Action Section of Tipperary County Council to consider the noise assessment submitted. In its report dated the 15th of November 2023, the Environment Section determined that the potential for noise pollution from the temporary structures remained.
- The Environment Section recommended the granting of permission for the works proposed subject to two conditions. Having considered the reports presented, the Planning Authority arrived at a split decision, to refuse the works to be retained, which are the subject of separate enforcement proceedings and to grant permission, subject to conditions, for the works proposed.
- Tipperary County Council respectfully submit that An Bord Pleanála should uphold the decision of Tipperary County Council to refuse permission for the works to be retained as it is considered that this element of the development would seriously injure the residential amenities of property in the vicinity by reason of noise and general disturbance.

6.3. Observations

- No Observations have been received in relation to this appeal.

7.0 Assessment

- 7.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The assessment below therefore addresses whether or not retention permission should be granted for the outdoor dining area and 3 no. dining pods for a 12 month period having regard to the impact on the residential amenity of the area within which these temporary structures are located.
- 7.2. I have assessed all other aspects of the proposed development which was granted retention permission and permission by the Planning Authority and would concur with their positive assessment of same.
- 7.2.1. The issue of AA Screening is also addressed in this assessment.
- 7.3. Residential Amenity
- 7.3.1. The proposal is for the retention (for one year) of an outdoor dining area and 3 no. dining pods to the rear of Keevers public house was refused by the Planning Authority on the basis that the subject site is located within close proximity of several dwellings and the use of the outdoor dining areas gives rise to noise disturbance especially when a late licence is in place. Disturbance is also associated with the late night use of the ancillary car parking area to the east of the public house and directly to the rear of the houses on Newton Manor estate 6 no. houses.
- 7.3.2. The First Party states that noise mitigation measures have been implemented which reduces any perceived disturbance due to noise emissions and that the one year retention period for the outdoor dining area and pods is essential for financial reasons.
- 7.3.3. At the time of the site visit the pub was closed so there were no noise emissions to note. However, regard must be had to the omission of the outdoor dining area and 3 no. dining pods in the Noise Impact Report so there is no objective data concerning current noise emission levels from the areas where retention permission is sought and associated potential impacts on the residential amenity of the area.

- 7.3.4. I note Section 2.8.1 'Potential for Noise Nuisance' of the report dated 15th November 2023 from the Environment Officer which states that: *"Noise emissions from this site are likely, the structure for which planning retention is sought has been highlighted as an area used for outdoor music and has been the subject of complaints from the public"* and that *"Based on the information submitted and the desktop study performed regarding the overall plan while considering the location in relation to sensitive receptors in the form of private dwellings, the potential for noise pollution from the current temporary structure remains"*.
- 7.3.5. There are several letters of support for the proposed development of Keevers pub from local residents on file to which I draw the Board's attention. These letters do not specifically state that they are in favour of the retention of the outdoor dining area and 3 no. dining pods but rather are submitted in support of the overall redevelopment proposed at this site.
- 7.3.6. I note also that the outdoor dining area and pods have been the subject of a Warning Letter (Ref. TUD-21-085) in response to complaints from members of the public – *'The extension of the public house through development of external covered seating areas and a bar area at the rear of the public house and erection of new walls, fencing and gates to enclose this area'*.
- 7.3.7. Having regard to the above, and to the need to protect the residential amenity of the area, in the absence of objective proof that noise emissions associated with the outdoor dining areas do not have an adverse impact on neighbouring residential area, and, adopting a precautionary approach in this case, I am of the opinion that the retention of the outdoor dining area and 3 no. dining pods cannot be permitted in this instance.
- 7.3.8. Accordingly, I would support the reason for refusal cited by the Planning Authority in their decision and recommend that retention permission be refused for the outdoor dining area and 3 no. dining pods.

7.4. AA Screening

Having regard to the relatively minor development proposed within an existing urban area and the distance from the nearest European site, 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

I recommend that retention permission be refused for the outdoor dining areas for the reasons and considerations set out below and that retention permission and permission be granted for the remainder of the works for the reasons and considerations below and subject to the conditions set out below.

9.0 Reasons and Considerations

9.1. Outdoor dining area and 3 no. dining pods.

Having regard to the nature of use of the covered outdoor dining area and dining pods, the location and the overall design of the development, and its proximity to residential properties, together with the intensity of use that is involved and the late opening hours, it is considered that this element of the development would seriously injure the residential amenities of property in the vicinity by reason of noise and general disturbance. The items for which retention is sought would therefore, be contrary to the proper planning and sustainable development of the area.

9.2. Remainder of development for which retention permission and permission was sought.

Having regard to the provisions of the Tipperary County Development Plan 2022-2028, it is considered that the proposed development would, subject to compliance with the conditions set out below, not seriously injure the visual or residential amenity of the area or have an adverse impact on the receiving environment. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 19th day of October 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Permission for the retention of the outdoor dining area and 3 no. outdoor dining pods and their use for the purpose of dining is hereby refused and these structures shall be deconstructed and removed from the site within 8 weeks of the date of issue of the Board's Order.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and</p> <p>(b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.</p> <p>The assessment shall address the following issues:</p> <p>(i) the nature and location of archaeological material on the site, and</p> <p>(ii) the impact of the proposed development on such archaeological material.</p> <p>A report, containing the results of the assessment, shall be submitted to</p>

	<p>the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
4.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise, dust and vibration management measures, rock breaking/excavation methodologies and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
	<p>The noise level shall not exceed 55 dB(A) rated sound level (that is, corrected sound level for a tonal or impulsive component) at the nearest noise sensitive locations as per the Noise Assessment Report submitted with the planning application, between 0800 and 2000 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A) at any other time. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To protect the residential amenities of property in the vicinity of the site.</p>

5.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
6.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
7.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
8.	<p>Prior to commencement of development, the developer shall enter into a water and sewage connection agreement with Irish Water.</p> <p>Reason: In the interest of public health.</p>
9.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <ul style="list-style-type: none"> (a) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment (b) Proposals for the protection of all existing and new planting for the duration of construction works on site, together with proposals for adequate protection of new planting from damage until established (c) A timescale for implementation, including details of phasing, which shall provide for the planting to be completed before the dwelling is first made available for occupation. <p>Reason: In order to screen the development and assimilate it into the</p>

	surrounding rural landscape, in the interest of visual amenity.
10.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

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.

Bernard Dee
Planning Inspector

28th March 2024