



An  
Bord  
Pleanála

## Inspector's Report ABP-319819-24

<b>Development</b>	Three cooling units to the rear of the premises along with all associated site works.		
<b>Location</b>	The Corner Bar, The Square, Ennis Road, Kildysart, Co. Clare		
<b>Planning Authority Ref.</b>	2360153		
<b>Applicant(s)</b>	Caitriona Finn		
<b>Type of Application</b>	Retention	<b>PA Decision</b>	Grant
<b>Type of Appeal</b>	Third Party	<b>Appellant</b>	Eileen O'Grady
<b>Observer(s)</b>	None		
<b>Date of Site Inspection</b>	09/10/2024	<b>Inspector</b>	Lorraine Dockery

**1. Site Location/ and Description.** The subject site, which has a stated area of 0.013 hectares and is roughly rectangular in shape, is located within the village of Kildysart, Co. Clare with frontage onto both the LP2160 local primary road and R473 regional road. The site contains a two-storey property, occupied by 'The Corner Bar' with residential accommodation overhead.

**2. Proposed development.** Retention of three cooling units to the rear of the premises along with all associated site works. A Technical Sheet of the proposed 'EMBRACO' colling units was submitted with the application documents.

Cooling units are located at first floor level attached to the SE elevation over a flat roofed area.

**3. PA's Decision-** Grant permission, subject to 4 conditions.

Condition No. 2 (a) relates to provision of acoustic barrier around the 3 existing cooling units, which shall achieve the acoustic attenuation requirements set out in the FI response (b) relocation of wall mounted cigarette butt bin adjacent to main corner entrance of premises

Condition No. 3- door onto public footpath beneath cooling units shall be managed by self-closing mechanism

Condition No. 4- rear portion of first-floor external deck area shall be kept clear at all times

Further Information was requested by the planning authority in relation to (i) projected noise level report with internal noise levels (when measured at the windows of adjacent dwelling) not exceeding 35 dB(A) LAeq during the period 0700 to 2300 hrs and 30 dB(A) LAeq at any other time (ii) provision of self-closing door mechanism on door beneath cooler units (iii) removal of garden furniture from external deck area

Internal Reports

West Clare Municipal District- No observation to make

Prescribed Bodies

None

**4. Planning History.**

98-251- Permission GRANTED for alterations to bar/toilet areas at GF level and alterations to private house at first floor level

UD22-101 Warning Letter issued relating to three cooling units the subject of this planning application

**5.1. National/Regional/Local Planning Policy**

- Clare County Development Plan 2023-2029 applies
- Zoning: 'Mixed Use'- On lands that have been zoned 'mixed-use' in or near town or village centres, a diverse range of day and evening uses is encouraged and an over-concentration of any one use will not normally be permitted
- Located within Kildysart Architectural Conservation Area- Objective CDP16.5

## **5.2 Natural Heritage Designations**

- 540m approximately from the Lower River Shannon SAC (Site Code: 002165) and the River Shannon and River Fergus Estuaries SPA (Site Code: 004077)

## **6. The Appeal**

### **6.1 Third Party Appeal. Grounds:**

- Sets out background to appeal
- Residential amenity concerns- noise, acceptability of submitted acoustic report, cumulative/in combination impacts
- Impacts on ACA- visual impacts of cooler unit and picket fencing
- Other Matters- Use of flat-roofed area for recreational purposes/stockroom door; compliance with conditions of previous grant of permission and alleged unauthorised development
- Requests removal of cooler units and proper use of emergency exit/storeroom door
- Photographs submitted in support of appeal

### **6.2 P.A. Response**

- Issues pertaining to noise emissions, privacy were comprehensively assessed, notes Planner's Report and Conditions 2, 3 & 4 of grant of permission. Architectural Heritage and visual amenity concerns-refer to Planner's report
- Subject to compliance with conditions set out in permission, the proposed development would not seriously injure the amenities of the area or of property in the vicinity

### **6.3 Further Responses**

- None

### **6.4 Observations**

- None

### **7. EIA Screening:**

See completed Form 1 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

### **8. AA Screening:**

I have considered the proposed development in light of the requirements of S177U the Planning and Development Act 2000 as amended.

The subject site is not located within or adjacent to any European Site. The closest European Sites, part of the Natura 2000 Network, are the Lower River Shannon SAC (Site Code: 002165) and the River Shannon and River Fergus Estuaries SPA (Site Code: 004077), approximately 540 m from the proposed development.

The proposed development is located within a zoned, urban area (primarily mixed-use in nature) and comprises the retention of three cooler units and associated site works on a serviced site.

Having considered the nature, scale and location of the proposed development I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.

The reason for this conclusion is as follows:

- Small scale nature of the development

- The location of the development in a serviced area, distance from European Sites, together with absence of ecological pathways to any European Site.
- The report of the planning authority

I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

## 9.0 Assessment

9.1 I have read all the documentation attached to this file including the appeal submission, the report of the Planning Authority, in addition to having visited the site. The proposed works involve the retention of three cooler units at first floor level on the SE elevation of an existing public house premises. I note the positioning of the appellant's window relative to the adjoining property and the cooler units. This window would appear to be positioned on the boundary wall of the two properties, facing directly onto the subject site.

9.2 I highlight to the Board that much of the appeal submission is concerned with issues not relating to this specific development. I must assess only the proposal before me (as set out in the submitted public notices), and in this instance, this relates to the retention of the three cooler units and associated site works. I do not consider the use of the first floor roofed area or storeroom door at ground floor level to fall within the parameters of 'associated site works'. The primary issues, as I consider them, are impacts on residential and visual amenity.

9.3 In terms of impacts on residential amenity, I note the contents of the appeal received. I am cognisant of the relationship of the proposed development to neighbouring properties. The somewhat unusual positioning of the appellant's window on the apparent shared boundary is noted, which directly overlooks/opens out onto the subject site. The appellant raises concerns with regards to noise from the subject cooler units and subsequent impacts on residential amenity. They also question the acceptability of the submitted acoustic report and possible cumulative/in-combination impacts when all three cooler units are operating simultaneously.

9.4 These concerns were raised at application stage by the appellant. The planning authority requested Further Information in relation to this and other matters. On foot of the FI request, the applicant submitted a Noise Impact Assessment, prepared by Allegro Acoustics, which had regard to the WHO, 'Guidelines for Community Noise' 1999. The qualifications of the assessor were set out and the submitted report details the assessment methodology including the development of a 3D Environmental Noise Model. The nearest noise sensitive receptor is acknowledged as being Window RCVR 1 (namely the appellant's property). I note that the sound power level for the cooler units is taken from a data sheet supplied by the manufacturer, not from an actual noise survey undertaken on site. Noise mitigation measures were outlined. Predicted noise levels post mitigation were detailed and the assessment concluded that noise mitigation measures are required to achieve the day and night-time noise limits imposed by the Planning Authority. The report acknowledges that in order to achieve noise limits outlined in the request for Further Information, the noise level from the 3 no. Embraco cooling units must be reduced by  $\geq 17\text{dB}$ . They state that this can be achieved by installing an acoustic barrier around each of the cooling units. These measures involve the installation of a noise barrier enclosure. The report further states that after applying these measures, the 3D environmental noise model indicates that the noise generated by the three cooler units on the first-floor terrace will stay below the most stringent  $30\text{dB LAeq}$  noise limit set for the facility inside the neighbour's bedroom. This prediction takes into account a  $15\text{dB}$  noise reduction from outside to inside, assuming the window is partially open, as recommended by the WHO Guidelines for Community Noise. Having regard to the above, I would concur with the opinion of the planning authority with regards the acceptability of this report. Exact details relating to the acoustic barriers were not submitted and the planning authority dealt with this matter by means of condition. I consider this to be reasonable and recommend that if the Board is disposed towards a grant of permission, that a similarly worded condition be attached to any such grant.

9.5 Having examined the information before me I am of the opinion that unmitigated the proposed cooler units could have a moderate adverse impact on the adjoining residential property in terms of noise over and above a situation whereby there were no such units. Notwithstanding this, I consider that the potential impact on

neighbouring residents will not be so significantly adverse as to warrant a refusal of permission and is proposed to be mitigated insofar as is reasonable and practical. An acoustic barrier is proposed to mitigate any such impacts. I refer the Board to Appendix B and C of the submitted Acoustic Report in this regard. I note the village centre location of the site and acknowledge that a balance needs to be achieved between protecting residential amenity of existing properties, whilst at the same time ensuring existing commercial premises can also continue to operate. I would anticipate that any impacts are in line with what might be expected in an area such as this. I am of the opinion that the proposed works are of a use, scale and design appropriate to its location and context. I am generally satisfied in this regard.

- 9.6 In terms of impacts on visual amenity, I note that the site is located within the Kildysart Architectural Conservation Area. I note Objective CDP16.5 in relation to Architectural Conservation Areas, in particular (c) which seeks to ensure that all new signage, lighting, advertising and utilities to buildings within an ACA are designed, constructed and located in a manner that does not detract from and is complementary to the character of the ACA. I consider the proposal would not detract from the character of the ACA and is in accordance with Objective CDP16.5 Architectural Conservation Areas (ACAs). The proposed cooler units for retention are not unduly visible on the streetscape due to their location, positioning and scale and impacts would not be so great as to warrant a refusal of permission or alteration to the design proposed. The planning authority has not raised concerns in this regard.
- 9.7 With regards to other matters, I note that alleged unauthorised development is a matter for the enforcement section of the planning authority, as is compliance with conditions of previous grants of permission. I can only assess the proposal before me and I highlight to the Board that the use of the first-floor terrace nor door to storeroom does not form part of this application (as per the submitted public notices), notwithstanding Condition No.s 3 and 4 of the planning authority decision to grant permission.
- 9.8 Having regard to the above, I am satisfied that the proposed development is in accordance with the provisions of the operative County Development Plan, is in keeping with the pattern of development in the area and is in accordance with the proper planning and sustainable development of the area.

## 10. Recommendation

I recommend that permission for the development be GRANTED.

## 11. Reasons & Considerations

Having regard to the location of the site; the design, layout and scale of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the visual or residential amenities of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 12. Conditions

1.	<p>The development shall be retained in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 02nd day of April 2024, 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><b>Reason:</b> In the interest of clarity.</p>
2.	<p>Within three months of the date of this permission, the applicant shall submit exact details (drawings and associated particulars) including materials, design and finishes of the proposed acoustic barrier to be provided around the three existing cooler units for the written agreement of the planning authority. These barriers shall permanently achieve internal noise levels (when measured at the windows of adjacent dwelling) not exceeding 35 dB(A) LAeq during the period 0700 to 2300 hrs and 30 dB(A) LAeq at any other time. Certification from an acoustic engineer or other</p>

	<p>suitably qualified professional, with professional indemnity insurance, that the acoustic attenuation barrier shall achieve these requirements shall also be submitted.</p> <p><b>Reason:</b> In the interests of clarity and to protect the residential amenity of adjoining property</p>
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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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Lorraine Dockery  
Senior Planning Inspector  
27<sup>th</sup> November 2024

# Form 1

## EIA Pre-Screening

<b>An Bord Pleanála Case Reference</b>	ABP-319819-24		
<b>Proposed Development Summary</b>	Retention of three cooling units to the rear of the premises along with all associated site works.		
<b>Development Address</b>	The Corner Bar, The Square, Ennis Road, Kildysart, Co. Clare		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	x
		<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>		Class.....	EIA Mandatory EIAR required
<b>No</b>	x		Proceed to Q.3
<b>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]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>	x	N/A	No EIAR or Preliminary Examination required
<b>Yes</b>		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	x	Preliminary Examination required
Yes		Screening Determination required

**Inspector:** Lorraine Dockery

**Date:** 27<sup>th</sup> November 2024