



An
Bord
Pleanála

Inspector's Report

ABP-320840-24

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| Development | Retention for outdoor seating area, ground floor entrance, toilets, laundry room, with ancillary development and associated site works. |
| Location | Flannery's Public House, 15/16 Glasheen Road, Cork |
| Planning Authority | Cork City Council |
| Planning Authority Reg. Ref. | 2443105 |
| Applicant(s) | Flannery's Bar Glasheen Limited. |
| Type of Application | Retention & Permission. |
| Planning Authority Decision | Refuse |
| Type of Appeal | First & Third Party |
| Appellant(s) | Flannery's Bar Glasheen Limited. Harry O'Mahony |
| Observer(s) | Chris Moloney & Others Jane Appleby Marie Calnan Kieran Shanahan |

Adrian O'Mahony

Date of Site Inspection

16th January 2025.

Inspector

Jennifer McQuaid

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1.0 Site Location and Description

- 1.1. The subject site (0.1558ha) consists of a one and half storey public house, with extensive covered outdoor seating area (the majority of which is subject of this retention application) and associated car park. The site is located on the southern side of the Glasheen Road. There are a mix of hedges and variety of trees along northwest corner of site and along the southwest boundary with Glasheen River.
- 1.2. There is a black painted metal shipping container inside the access on right hand side. There is a further metal container (corrugated iron sheeting) on the opposite side of the car parking area from the access. There is a further container within the outdoor area adjacent to the eastern boundary of site. The extensive outdoor siting area is constructed of corrugated metal sheeting, plastic windows, plastic roofing and two sets of wooden double doors.
- 1.3. The immediate surrounding area is predominantly residential. A protected structure and NIAH 18th Century building Peterborough House (reference CO074-076 and 20866215) are directly opposite the public house and lounge and set back from Glasheen Road.

2.0 Proposed Development

- 2.1. The retention development consists of:
 - Covered outdoor seating area (83.33m²) to the side and rear of the existing Flannery's Bar Glasheen.
 - Ground floor entrance and ground floor and first floor toilets and laundry room.
 - Retractable canopy/roof in the existing beer garden
 - Storage container, provision of a number of small structures for storing glass, refuse, fuel etc.
- 2.2. Planning permission development consists of:
 - Rationalisation of on-site activities and operations
 - All ancillary site works.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority refused for the following 2 reasons:

1. The subject site zoned as ZO 1 Sustainable Residential Neighbourhoods within Map 08 South-Western Suburbs of the Cork City Development Plan 2022-2028 is located within an established residential area. The retention of the intensification of use on site would if permitted, seriously injure the amenities of existing residents, both in terms of cumulative noise impact and anti-social behaviour. It is considered that the cumulative noise pollution from activities on site would be significantly intrusive upon these nearby dwellings and would, therefore, seriously injure the residential amenities of adjoining properties, contrary to the proper planning and sustainable development of the area.
2. The development to be retained constitutes overdevelopment of the site, is visually obstructive and be out of character with the established residential area. The development to be retained would, if permitted, seriously injure the visual amenities of the area and be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The site is zoned as ZO 1 Sustainable Residential neighbourhoods and the proposal is acceptable in principle provided the residential amenity of existing adjoining properties is protected.
- The choice of material is noted as not sufficient for a permanent structure visible from the public road.
- Queries relating to the storage area and shipping containers, no landscaping proposed and no details regarding waste storage which appears to be in various locations.

- Section 11.188 of the CDP, criteria 1 generally does not support late night venues in predominantly residential areas.
- Noise Impact Assessment submitted; however, Environment question the assessment as it indicates that noise levels are less when the pub and lounge are in operation, compared to when they are closed.
- Numerous complaints regarding noise and anti-social behaviour.
- No Operational Waste Management Plan submitted.

3.2.2. Other Technical Reports

- Environment: Refusal recommended. No details provided regarding waste management. Noise assessment states noise levels are lower when the bar is closed, concerns regarding the noise survey methodology. Noise complaints have been received from residents, as well as anti-social behaviour.
- Drainage: No objection subject to conditions.
- Contributions: Contributions are applicable.
- Traffic Regulation and Safety: Further information requested to clarify drawings outlining pedestrian/cycle and vehicle paths, clarification on car parking provision, bicycle parking/lockable bicycle shelter.

3.3. Prescribed Bodies

- Uisce Eireann: No response received.

3.4. Third Party Observations

A number of third-party submissions were received. The following concerns were raised:

- Detrimental impact on residents
- Excessive noise pollution
- Anti-social behaviour
- Negative impact on privacy and enjoyment of rear garden.
- Adverse impact on the safety and quality of life of residents

- Adverse visual impact
- Raised culvert getting blocked and structural integrity due to weight of shipping container.
- Parking and traffic problems
- No sound proofing in the building
- Floor plans submitted are incorrect.
- Noise assessment does not reflect the noise levels experienced by residents.
- Description is inadequate.
- Reduced car parking on site.
- Glasheen River flows through the site and is covered by the car park. Not clearly indicated on drawings. Previous flooding is not recorded.
- Storage containers us used for catering or food serving area.
- Questions over applicant/landowner
- Unauthorised parking
- Compliance with Fire Safety Certificate, insurance, extent of alcohol licence and disability access requirements.

4.0 Planning History

2342093: Retention permission refused for covered outdoor area and all associated site works for the following reason:

1. The site is located within a predominantly residential area and in close proximity to existing dwellings. It is considered that, in the absence of satisfactory mitigation or screening, noise from activities on the site would be significantly intrusive within these nearby dwellings and would, therefore, seriously injure the residential amenities of these properties. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

0630506: Permission granted for 4 signs on front of public house.

0529725: Retention granted for banner signs and notice board on north (front) elevation and patio area with retractable canopy and signs of western elevation.

0428816: Permission granted to construct a single storey toilet extension.

0125397: Retention granted for alterations to north & west elevation.

0125086: Permission granted to alter north & south elevations from that approved under TP23540/99 and construct two storey extension to provide off-licence & office.

ABP: PL28.118294 (PA ref: 9923540): Permission granted to demolish stores, toilets and bar and construct new roof, signs and all ancillary site works.

9923026: Permission refused to demolish stores, toilets & lounge bar, construct extensions, alterations, roof signage & accommodation.

Enforcement Cases:

Ref: E8444: Unauthorised extension, marquee and covered smoking area – Ongoing.

Adjacent sites:

1235274: Permission granted for construction of two storey rear extension.

1235273: Permission granted to demolish single storey rear annex and construct two storey extension.

0125276: Permission granted to convert garage and construct 1st floor extension.

5.0 Policy Context

5.1. Development Plan

Cork City Development Plan 2022-2028

Volume 2, Mapped Objectives, Map 08 South-Western suburbs.

The site is zoned as Z01 Sustainable Residential Neighbourhood.

ZO 1: Sustainable Residential Neighbourhoods. To protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.

ZO 1.1: The provision and protection of residential uses and residential amenity is a central objective of this zoning. This zone covers large areas of Cork City's built-up area, including inner-city and outer suburban neighbourhoods. While they are predominantly residential in character these areas are not homogeneous in terms of land uses and include a mix of uses. The vision for sustainable residential development in Cork City is one of sustainable residential neighbourhoods where a range of residential accommodation, open space, local services and community facilities are available within easy reach of residents.

ZO 1.2: Development in this zone should generally respect the character and scale of the neighbourhood in which it is situated. Development that does not support the primary objective of this zone will be restricted.

ZO 1.3: Primary uses in this zone include residential uses, creches, schools, home-based economic activity, open space and places of public worship.

ZO 1.4: Uses that contribute to sustainable residential neighbourhoods are also acceptable in principle in this zone provided they do not detract from the primary objective of protecting residential amenity and do not conflict with other objectives of this Development Plan. Such uses include but are not limited to small-scale local services including local convenience shops; community facilities; cultural facilities; hotels and hostels; live-work units; service stations (petrol filling stations); local medical services; third level education institutes; community-based enterprise or social enterprises, health facilities including hospitals.

ZO 1.5: Where it can be suitable, the expansion of zoned Neighbourhood and Local Centres is open for consideration in this zone provided they meet the criteria for such centres set out in Chapter 7 Economy and Employment.

ZO 1.6: The employment policies in Chapter Economy and Employment designate particular locations for offices, office-based industry and major retailing development, and these uses are not generally permitted in this zone, unless they are community-based enterprises or social enterprises.

ZO 1.7: Many green areas of open space in residential estates in Cork City are included in this zone. There will be a presumption against development on all open space in residential estates including any green area or public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation or amenity open space, including land which has been

habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes.

Chapter 9, Section 9.13 relates to Flooding.

Chapter 11, Section 11.187 – 11.188 Public Houses/Licensed Premises/Night Clubs

11.187 Public Houses and other types of licenced premises play an important role in the nighttime economy of the city providing a night-time uses which adds to the attractiveness, particularly of the City Centre as a place to visit. Cork City Council will encourage entertainment/cultural/music uses which help create an attraction for residents and tourists and add to the vibrancy of the City Centre. However, there is a need to strike an appropriate balance between the role of these entertainment uses in the economy of the city, while ensuring a balanced mix of uses is maintained and the need to protect the amenities of residents from an over-concentration of late-night venues.

11.188 Applications for new or extensions to existing uses such as public houses and other licensed premises will be assessed having regard to the following:

1. The need to ensure a balanced mix of uses in designated centres and prevent an inappropriate, over-concentration of late-night venues. Such uses will generally not be permitted in predominantly residential areas.
2. The amenity of neighbouring residents and occupiers including hours of operation, environmental quality and impact on the streetscape. Noise emanating from and at the boundaries of these establishments are issues which will need to be addressed in planning applications for such establishments. Noise insulation and reduction measures, especially relating to any mechanical ventilation or air-conditioning, will be required to be submitted with any such planning application.
3. Traffic management and deliveries.
4. Shopfront treatment, signage and lighting.

Section 11.193 relates to Shopfronts & Commercial Facades.

5.2. National Policy

- Planning Framework – Project Ireland 2040

5.3. Regional Policy

- Regional Spatial and Economic Strategy for the Southern Region
- Cork Metropolitan Area Strategic Plan
- Cork Metropolitan Area Transport Strategy

5.4. **Natural Heritage Designations**

The subject site is not located within a designated area. The most relevant are:

- Cork Lough pNHA (site code: 001081) located c.0.8km east.
- Lee Valley pNHA (site code: 000094) located c. 1.9km northwest.
- Cork Harbour SPA (site code: 004030) located c. 4.5km east.
- Douglas River pNHA (site code: 001046) located c. 4.5km east.
- Great Island Channel cSAC (site code: 001058) located c. 11km east.

5.5. **EIA Screening**

- 5.5.1. The proposal relates to the retention of an outdoor terrace area and various storage units within the development boundary of Cork City. The site is located on zoned lands and not within a designated area. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Please refer to Form 1 and Form 2 as per Appendix 1 below.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of appeal have been received from a 1st party (applicant) and 3rd party (local resident). The following comments were received from the 3rd party:

- No Environmental Impact Assessment submitted and subsequently no Environmental Impact Assessment determination. Negative impact on flooding and population and human health.

- No appropriate assessment.
- Query if substitute consent should have been applied for.
- Cork County Council have not complied with The Planning System and Flood Risk Management Guidelines (OPW, 2009) as amended by Circular P12/2014 together with Technical Appendices (the 2009 Guidelines).
- Email from OPW (21st May 2024) states Cork County Council are responsible for the culvert underneath Flannery's Car Park as it is part of Mill Race from the Two Pot River to maintain and protect it.
- Refusal reason should include the main Glasheen River runs underneath the site and residents' concerns due to flooding in the areas, and the integrity and maintenance of the culvert built in the 18th Century, where construction development took place directly above it.
- Videos submitted showing flooding in the Glendale area and River View areas. Videos submitted of the 18th century tunnel made of bricks and mortar.
- Location of the river was not submitted on the drawings submitted by the applicant.
- Retention application 2342093 ignored residents' concerns.
- Drainage Section has no objection subject to conditions.
- No response from Uisce Eireann.
- Planning granted by Cork City Council 23540/99 and Condition 12a states any reductant water services shall be traced back to the public main by the developer and shall be blanked off by Cork Corporation at the developer's expense. Condition 13a states full details of drainage to be submitted to the drainage section prior to commencement of development. 13b states buildings to be a minimum of 5m clear of existing public culvert on site. (Flannery's Bar built over the culvert and the river). This has not been done and was requested by the residents.
- An Bord Pleanála reference PL28.118294 condition 4b a structural survey of the existing river wall to the west shall be submitted to the Planning Authority for agreement prior to the commencement of development. This hasn't been

done to date. Condition 5 states water supply and drainage arrangements, including the disposal of surface water shall comply with the requirements of the Planning Authority for such works and services. No details submitted.

- Cork County Council commissioned ARUP to assess the impact of the proposed culvert alterations of flood risk on the Glasheen River southwest of Cork City Centre. It indicates that the main Glasheen River runs underneath the Flannery's Bar car park. Map attached indicating Minister for OPW confirmed the river runs underneath the car park. Discussed at Oireachtas Committee meeting on environment and climate action.
- Residents request an Asset Sign on the Glasheen Road bridge to be replaced to prevent flooding.
- No Disability Access Certificate or Fire Safety Certificate
- Unauthorised parking at a bus stop and crates on the road to prevent bus from pulling into the stop. Letters attached from Bus Eireann and the Minister for Disabilities and the Minister for the Elderly in relation to the safety hazard for pedestrians, passengers and school children as their national school is across the road, trying to get on and off the local bus.
- Noise levels impacting on residents and their mental health. One family have left their home due to noise and antisocial behaviour.
- The applicant is only part owner of the site and does not have authority to make any application for site development works.
- Planning permission cannot be sought within a retention application and should be made invalid.
- Significant changes to the design of the building have not been identified. Safe access and egress have been compromised from the original external doors to the rear which are now internal doors.
- Sound mitigation measures are not suitable, blocking of vents compromises the ventilation system. And introduction of a "management policy" to mitigate sound is not a tenable solution.
- Noncompliance with the following conditions from planning reference 23540/99. Condition 1: site map does not show the main Glasheen River

underneath the car park. Condition 3 a, b & c no waste management plan submitted. Condition 5: no amplification equipment in connection with planning music after midnight. Condition 7: no landscaping plan submitted. Condition 9: No canopy.

- Reference to LRD application and details to be submitted.
- The proposed retention is not acceptable in principle under the ZO 1 “Sustainable Residential Neighbourhoods” zoning.
- No mention on site visit dated 10th September 2024 of the main Glasheen River which runs underneath Flannery’s car park, no mention of Glasheen Road bridge opposite the car park and the missing Asset sign.
- Visual impact
- Impact on quality of life and property

The first party grounds of appeal comments are as follows:

- The 83m² structure to the rear of Flannery’s Bar was constructed as a response to Covid-19 and was presumed exempted development.
- Retention application submitted under reference 2342093 was refused. A new application was submitted (current application) and addressed the previous concerns raised.
- Sound Mitigation Measures implemented include:
 - a. 2 number “sound lobbies” have been built within the principal bar structure. This prevents noise leakage and has had a significant impact on reducing the noise levels emanating from the bar particularly during times of live music.
 - b. 45no. open vents have been closed up with Rockwool and sound proofing material has significantly reduced sound leakages. The ventilation system has been redundant since the introduction of the smoking ban.
 - c. Increased sound insulation.
 - d. A noise limiting sound insulation has been installed.

- e. As part of the Operational Management Plan (OMP) drums will no longer form part of the live music act.
 - f. All openings have been blocked and all side walls have been engaged all side so that the terrace area is fully enclosed.
 - g. Removal of all outdoor seating along the boundary wall with the residential dwellings to the south.
 - h. Removal of all audio sound systems from the enclosed terrace area.
 - i. Permanent muting of the TV located in the enclosed terrace area.
 - j. Provision of sound absorptive material (e.g. Rockwool) along the top of the perimeter wall area of the enclosed terrace area.
 - k. Permanent closure of a number of windows.
 - l. Insulation of two old fireplaces.
 - m. Adoption of a management policy whereas bottle bins and keg replacement now only take place during daytime periods.
- A waste management plan was not submitted as the entire pub is not seeking retention just the enclosed terrace.
 - The public house has been in operation for over 120 years, it predates many other developments in the area and key part of social infrastructure of the western suburbs referred to in the plan “south west corridor” – an expansive area which encompasses University College Cork, Togher, Wilton, Glasheen Road and Magazine Road and Cork University Hospital of Cork City.
 - Chapter 11, paragraph 11.188 of the Cork City Development Plan 2022 refers to public houses and extensions. Each of the 4 criteria have been considered for the retention application.
 - The outdoor seating area and canopy/tent to the rear of the neighbour’s garden has been removed.
 - Condition 5 & 6 of planning reference 99/23540 cannot be complied with as the LA95 is an unusual quantity that is not referenced in modern day planning conditions or best practice criteria. The use of this quantity in this instance is an issue given that the existing soundscape in the vicinity of the bar already

surpasses this condition (due to the significant presence of traffic noise). The LA95 is already exceeded by 5dB(a). A new planning application and condition is required to reflect the current background noise levels. The applicant suggests the following conditions:

1. No part of the premises shall be used as a disco or nightclub. No amplification equipment shall be used in connection with the playing of any live or recorded music from the premises between the hours of midnight and 09.00 hrs daily and the ambient sound level shall not be increased by more than 5dB(a), 15 minutes Leq at any stage throughout the day. i.e., no change to existing condition number 5.
 2. Amplified music or other specific entertainment noise from the premises shall not exceed the ambient noise level by more than 5 dB(A) during the period 0800 to 2200 hours and by more than 3dB(A) at any other time, when measured at any external position at an occupied house in the vicinity of the licensed premises. The ambient noise level shall take as the 15-minute Leq.
- Significant misunderstanding of the Noise Impact Assessment Report submitted. The findings illustrate that there is no issue with noise emanating from the structure particularly when taking account of the measures employed since the first refusal. And confirmed by independent acoustic consultant AWN Consultants. Further information should have been sought.
 - The choice of materials/aesthetic of the extension is cited as the only other reason for refusal. This could have been addressed through further information.
 - The owners have submitted an additional letters outlining the same response as above. They also highlight the pub is used as it was prior to Covid 19. It is not a late bar. It is not a student pub and holds charity student event once a year in November for Student Christmas day from 11am until 5pm with crowds cleared by 6pm.
 - No issues with flooding from the Glasheen River
 - The storage container has never been used to store food.
 - They have a full Fire Certificate.

- No issues with Disability Access, Insurance or Alcohol Licence.
- Separate Noise Report submitted by AWN Consulting which reviewed CLV Consulting Report. The assessment has provided an alternative assessment with a view to try and establish the likely impact of the enclosed terrace area. The predicted noise level, based on the outlined assumptions in this assessment from the enclosed terrace is in the order of 32dB(A). based on this level of noise it would not be expected that the enclosed terrace area is having any significant impact on the noise environment in the vicinity of nearby residences. And it is considered, the CLV conclusion that the enclosed terrace area is not giving rise to a significant noise impact is a reasonable and robust one.
- CLV Consulting have provided a Technical Note to the planner's assessment.

6.2. Applicant Response

- As part first party appeal response.

6.3. Planning Authority Response

- None

6.4. Observations

Observations have been received from local residents. The following comments were made:

- "Beer Garden" is an admission of the noise and anti-social behaviour that emanated from the structure and seating outdoor area. Patrons have climbed the rear wall and entered private gardens. The applicant and gardai are aware of this.
- Noise complaints made to gardai, contrary to what the applicant says.
- Self-serving now using the outdoor area to increase capacity. The applicant should revert to indoors only.
- Photos attached showing music played.

- Noise levels impacting residents and affecting sleep for young and old.
- Neighbours cannot enjoy their private garden space.
- Permission for “rationalisation” of work is not development works.
- Query unauthorised works described for the main building.
- Applicant is only offering one solution with sound mitigation measures and changing original noise condition.
- Request Board to change planning “permission” with “retention permission”.
- Unauthorised development is causing the noise.
- Acoustic Report is refuted.
- Applicant is blaming residents. There were 9 objections and one petition with 68 households for the 2023 application and 12 for the 2024 application.
- Change of use required for the car park. Planning Conditions attached to car park. The car park lost 5 car parking spaces for the outdoor area.
- Change of planning conditions has not been requested in the planning application.
- The shipping containers have been used as serving areas, as off the 30th October 2024, the shipping container is still on site.
- No fire certification has been issued on 20th November 2023 and can't without planning compliance.
- The indoor area is suitable for wheelchair access and the outside area is not required for disabled persons.
- A public licence was only granted on condition that the tables were removed from the car park, and TV removed. Also conditioned to close the enclosed terrace at 10.30pm. But people still congregate and smoke.
- Loud music is targeted at younger people, the pub is no longer suitable for older residents.
- The noise assessment was based on outdoor terrace area with glazing, insulated panels and plasterboard; however, the wall elements are detachable and removable and completely expose the interior.

- During the court hearing for the licence, it emerged that a device for sound limiting has only been installed in the upstairs bar for DJs but not downstairs. The music can be heard inside the living room of neighbouring properties.
- An Bord Pleanála (planning reference 99/23540) imposed a condition stating that “no signs, canopies or devices of any kind shall be erected on these premises without the prior written agreement of the Planning Authority”. Since then, a permanent shelter and a retractable canopy have been installed in the beer garden to the rear of the premises, the retractable canopy was installed in August 2021.
- The development is within 5m of public culvert.

6.5. Further Responses

- None

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Development/Zoning
- Residential Amenity – Noise
- Visual Impact
- Drainage and Flooding.
- Procedural Issues.
- Appropriate Assessment

7.2. Principle of Development/Zoning

7.3. The retention development works are located to the rear and side of an existing public house. The public house has been established for over 100 years and is located in a predominantly residential area. The site is zoned as ZO 1 Sustainable Residential Neighbourhoods. The objective is to protect and provide for residential

uses and amenities, local services and community, institutional, educational and civic uses.

- 7.4. The third party appeal state the proposed retention is not acceptable in principle under the ZO 1 “Sustainable Residential Neighbourhoods” zoning. The applicant has refuted this claim and states the development falls under Chapter 11, paragraph 11.188 of the Cork City Development Plan 2022 which refers to public houses and extensions. And that each of the 4 criteria have been considered for the retention application.
- 7.5. I have reviewed the Cork City Development Plan 2022 -2028; the site is zoned as ZO 1 Sustainable Residential Neighbourhoods. And the objective is to protect and provide for residential uses. Development in these areas should generally respect the character and scale of the neighbourhood. Uses that contribute to sustainable residential neighbourhoods are acceptable in principle provided they do not detract from the primary objective of protecting residential amenities and do not conflict with other objectives of the CDP. I note the development relates to the retention of an outdoor terrace to the rear of a public house which has been in existence for over 100 years and the proposal could enhance the amenities of the residential area.
- 7.6. Chapter 11, section 11.187 relates to public houses. The CDP acknowledges that licenced premises play an important role in the nighttime economy but an appropriate balance needs to be maintained to protect the amenities of residents. Section 11.188 of the CDP states the development shall have regard to the amenity of neighbouring residents and occupiers including hours of operation, environmental quality and impact on the streetscape. Noise will need to be addressed in any new planning application.
- 7.7. I accept that an extension to a public house may be permitted in principle on land zoned as ZO 1, however, the residential amenity of the neighbouring properties needs to be considered in respect of noise and general disturbance to residents.
- 7.8. Therefore, having regard to the CDP and zoning objective for the area, the extension to a public house may be acceptable in principle but any new application needs to consider the impact on residential amenity including noise. Noise and impact on residential amenity will be considered in the next section.
- 7.9. **Impact on residential amenity – noise**

- 7.10. The subject site is located along Glasheen Road in a predominantly residential area. The site is an existing public house, and it is located at the end of a terrace of residential units. Glendale Avenue estate is located directly to the rear of the public house, a separation distance of less than 10 metres between the nearest dwelling and the public house building exists. The separation distance is less between the dwelling and the covered terrace area.
- 7.11. The first refusal reason relates to the intensification of the use would seriously injure the amenities of the existing residents in terms of cumulative noise impact and anti-social behaviour.
- 7.12. The grounds of appeal and the observations received state the excessive noise levels and anti-social behaviour from the outdoor terrace area is impacting on residential amenity and the mental health of the residents. The sound mitigation measures proposed are not suitable. The proposed blocking of vents compromises the ventilation system, and introduction of a “management policy” to mitigate sound is not a tenable solution.
- 7.13. The applicant has responded and outlined a number of sound mitigation measures that have been implemented to reduce noise levels which include: increased insulation, two sound lobbies, blocking of vents, openings and side wall engaged, removal of outdoor seating area, removal of audio in the terrace, muting of TV in the terrace and adoption of Operational Management Plan.
- 7.14. The applicant has also outlined that condition 5 and 6 of planning reference 99/23540 cannot be complied with, as the LA95 is an unusual quantity that is not referenced in modern day planning conditions or best practice criteria. The existing soundscape in the vicinity of the public house exceeds LA 95 by 5dB(A) due to traffic noise. The applicant states there was significant misunderstanding of the Noise Impact Assessment Report submitted with the planning application, and the noise assessment was confirmed by an independent acoustic consultant AWN Consultants.
- 7.15. I note the public house has been in existence for a number of years and has been operating in a predominately residential area over this time. The proposal relates to the retention of an outdoor seating area of 83.33sqm. The retention of this area will intensify the use of the public house and given the nature of an outdoor terrace area; it will inevitably lead to increase noise from patrons. Having regard to the location of

the nearest dwelling at less than 10 metres from the terrace area and the close proximity of adjacent dwellings, residential amenity and in particular noise is a major concern.

- 7.16. Section 11.188 of the CDP states applications for new or extension to existing uses such as public houses and other licensed premises will be assessed having regard to a balanced mix of uses in designated centres and prevent an inappropriate, over-concentration of late-night venues. Such uses will generally not be permitted in predominantly residential area. It is also highlighted that the amenity of neighbouring residents and occupiers will need to be addressed in planning application for such establishments.
- 7.17. The applicant has carried out a noise impact assessment and I have reviewed same. The noise assessment was carried out for eleven days during December 2023. The noise survey location was located along the western and southern boundary of the site. The average noise level at NML 1 (Noise Monitoring Location 1) was 60dB L_{Aeq} when the bar was open and 61dB L_{Aeq} when the bar was closed. At NML 2 the average noise was measured at 56dB L_{Aeq} when the bar was open and 53 dB L_{Aeq} when the bar was closed. Therefore, the assessment concluded that a ≤ 3 dB increase in noise level would be considered to have a negligible noise impact. And also states a 56-60dB L_{Aeq} average ambient noise level range would be considered subjectively to be moderately quiet. The assessment also highlights the noise levels are mainly attributable to traffic.
- 7.18. The applicant submitted a revised noise report with the appeal which reviewed the initial noise assessment. The noise report review agreed that the location of the pub along a busy road and the fact the public house has been in operation for years poses a difficulty in isolating the noise associated with the enclosed terrace area. The reviewed assessment offered an alternative and included comments on the likely levels of noise associated with the enclosed terrace area based on prediction and commented on the likely impact of noise levels associated with the enclosed terrace area based on the existing noise environment. The predicted noise level, based on mitigation measures implemented and that the terrace is enclosed at all times is in the order of 32dB(A), therefore, the retention application would not give rise to a significant noise impact.

- 7.19. I have concerns regarding the noise assessment carried out, I do not consider the assessment adequately assessed the potential noise impact of the outdoor terrace during times of when the terrace will be open i.e. warmer & busier days. The assessment was carried out over 11 days during the month of December in 2023. I note the appellant submitted details of the events throughout the survey period as part of the appeal, however it is not known if the outdoor terrace area was in use during this period or if any music was played during this time. I have serious concerns regarding the lack of noise data & clarity provided for such events. In my opinion, a noise assessment should include monitoring during the summer months to comprehensively understand the potential noise from the premises.
- 7.20. In addition, I note the concerns raised by Environment Section of Cork City Council in relation to higher noise levels recorded when the bar is closed compared to when the bar is open. I understand the public house is located on a busy road where ambient noise levels are high due to traffic; however, it is unclear as to how noise levels decrease when the bar is open. I also note the numerous complaints not only received by Environment Section but also the concerns raised in the third-party appeal and the observations submitted. The Noise Impact Assessment report submitted is insufficient to fully determine if the outdoor terrace area is contributing to noise levels in the area and therefore, I cannot conclude that noise will not be an issue.
- 7.21. The applicant has stated that the proposal cannot comply with the previous conditions of planning reference PL28.118294, (PA ref: 99/23540). If this is the case, the applicant needs to apply for permission to amend the noise condition in order to comply with the new noise limits for any new extension to the public house.
- 7.22. Having regard to the insufficient Noise Impact Assessment submitted, the proximity of the residential dwellings, the numerous concerns raised regarding noise levels, the outdoor, open nature of the terrace area, it is my opinion that the proposal does not comply with section 11.187 and 11.188 of the CDP which outlines “that there is a need to strike an appropriate balance between the role of these entertainment uses in the economy of the city, while ensuring a balanced mix of uses is maintained and the need to protect the amenities of residents from an over-concentration of late-night venues”. The Noise Impact Assessment submitted does not adequately or sufficiently conclude, in my opinion that the amenities of the local residents will be protected.

7.23. **Visual Amenity**

- 7.24. The retention works are located to the southwestern corner elevation of the existing public house. The enclosed terrace consists of corrugated metal sheeting, plastic sheeting and wooden doors. The structure is visible from the public road. A glass bottle storage structure is located to the rear of the site, and this consists of corrugated metal sheeting's, which is rusted and unsightly and located on car parking spaces. A shipping container is located to the front of the site beside the front boundary and partially visible from the public road.
- 7.25. The grounds of appeal note visual impact as an issue. The applicant has acknowledged the second refusal reason which states "The development to be retained constitutes overdevelopment of the site, is visually obtrusive and be out of character with the established residential area. The development to be retained would, if permitted, seriously injure the visual amenities of the area and be contrary to the proper planning and sustainable development of the area" and has outlined how this issue could have been addressed through further information request.
- 7.26. I consider the choice of materials for the outdoor terrace extension of corrugated metal sheeting, plastic sheeting and wooden doors is poor quality and has already started to deteriorate, rust was evident during my site visit. The materials used are unsuitable as a permanent structure and inadequate for sound proofing. The various storage areas are also unacceptable due to the materials proposed and the condition at various locations which are unsightly and rusted. In addition, I have concerns regarding the intended use of the shipping container to the front of the site. Evidence was submitted as part of the submissions, indicating the container was used for sale of food and or drink.
- 7.27. I consider the choice of finishes do not comply with section 11.193 Shopfronts and Commercial facades of the CDP. Shop front and facades are considered an important element in determining the character, quality and image of commercial streets. This section also highlights that contemporary shop/pub front will be considered when materials and proportions are appropriate to the scale and fabric of the building and/or street, the design should complement the design of the upper floors, it also states canopies of traditional design and retractable materials will be favoured. The finishes implemented, do not reflect the character of the area, it does not add to the quality and is not of traditional design or appropriate to the building or

streetscape. The material finishes are temporary in nature and do not offer any aesthetic value and the numerous storage areas are unsightly and add to a visual clutter of the site.

7.28. Having regard to section 11.188, criteria 4 which relates to Shopfronts of the CDP, the finishes are not considered acceptable or in accordance with section 11.193 Shop Fronts and Commercial Facades of the CDP.

7.29. **Drainage/Flooding**

7.30. Glasheen river appears to flow to the southwestern boundary of the subject site between Flannery's car park and Clashduv Estate. A bridge crosses the river along the Glasheen Road, and the river is evident on either side of the bridge.

7.31. The grounds of appeal state the main Glasheen River runs underneath the site and the applicant has not included the river on the drawings submitted. The appellant and the residents' have concerns about flooding in the areas, and that Cork County Council have not complied with The Planning System and Flood Risk Management Guidelines (OPW, 2009) as amended by Circular P12/2014 together with Technical Appendices (the 2009 Guidelines). The appellant also states an email from OPW (21st May 2024) states Cork County Council are responsible for the culvert underneath Flannery's Car Park as it is part of Mill Race from the Two Pot River to maintain and protect it. The appellant also raised concerns in relation to non-compliance with planning conditions from planning reference 23540/99.

7.32. I have assessed the OPW flood risk maps, and the area surrounding the subject site is prone to low probability of fluvial flooding. Section 9.13 Assessment of Development in Areas of Flood Risk of the CDP states the Justification Test should only be applied where the development is within a flood risk area and a Site-Specific Flood Risk Assessment will only be required where flood risk is an issue and may not be required for minor developments. I have reviewed the drawings submitted and the Glasheen River is noted on the site layout plan and is located outside the development boundary of the subject site. The flood risk area is outside the subject site; therefore, I do not consider that the site should have been subject to a Flood Risk Assessment.

7.33. In relation to non-compliance with previous conditions, the appellants shall raise these issues with the Enforcement Section of Cork City Council, this is not a matter for the Board.

- 7.34. I note Drainage Section of Cork City Council has no objection to the drainage proposals and I note no response was received from Uisce Eireann and Cork County Council had commissioned ARUP to assess the impact on the proposed culvert alterations. Therefore, I do not consider that drainage is an issue, and that public drainage connection currently exists on site. The retention of the outdoor terrace area and associated storage sheds will not impact on the current drainage system in place.
- 7.35. Having regard to the location of the subject site outside of a flood risk area and that no issues were raised by the Drainage Section of Cork City Council and having regard to Section 9.13 of the CDP, I do not consider flooding or drainage to be an issue at this site.
- 7.36. **Procedural Issues**
- 7.37. In terms of procedural matters, the applicant followed the correct protocol in applying for retention permission, the application does not relate to an LRD which is the process for Large Scale Residential Developments. I do not consider that the application should have followed the Substitute Consent route, as the development does not relate to the retention of works subject to an AA (Appropriate Assessment) or EIA (Environmental Impact Assessment).
- 7.38. In terms of landownership, I note the landownership and applicant were considered acceptable by the Planning Authority. In addition, the applicant has indicated on the application form that he is the legal owner and there is no evidence to suggest otherwise.
- 7.39. I am satisfied that the above issues did not prevent the concerned party from making representations. The above assessment represents my de novo consideration of all planning issues material to the proposed development.

8.0 **AA Screening**

- 8.1. Having regard to the retention development of outdoor terrace and storage units with existing connection to public sewer and public water and discharge of surface water to the existing public storm water network and within the development boundary for Cork City. The nearest European site is Cork Harbour SPA (site code: 004030) located c. 4.5km east of the subject site. Having reviewed the location of the site

adjacent to the Glasheen River which flows into the River Lee and subsequently to Cork Harbour SPA, I do not consider there to be any likely impact, given that all surface water drainage is connected to public drains. It is considered that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant impact individually or in combination with other plans or projects on a European site.

9.0 Recommendation

I recommend that retention permission & permission should be refused for the reasons and considerations as set out below.

10.0 Reasons and Considerations

1. Having regard to the zoning of the site as ZO 1 Sustainable Residential Neighbourhoods. The objective is to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses as per Cork City Development Plan 2022-2028, the outdoor nature of the terrace, the concerns from the local residents and the Environment Section of Cork County Council indicating excessive noise generated from the use of the proposal and the lack of sufficient information in the Noise Impact Assessment. It is considered the proposal would have a negative impact on the residential amenity of the area. Therefore, the retention development, would contravene the said zoning objective and would be contrary to the proper planning and sustainable development of the area.
2. By reason of its substandard materials used including corrugated metal sheeting, plastic sheeting and wooden doors and the general layout of substandard metal sheeting storage units, it is considered that the retention development would be visually unsatisfactory and inappropriate in the context of its location which is visible from the Glasheen Road. The retention development would conflict with the provisions of the Cork City Development Plan for the area, and in particular section 11.193 Shop Fronts and Commercial Facades and would, therefore, be 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.

Jennifer McQuaid
Planning Inspector

27th January 2025

Form 1

EIA Pre-Screening

| | | | |
|--|---|--|----------------|
| An Bord Pleanála | ABP-320840-24 | | |
| Case Reference | | | |
| Proposed Development Summary | Retention for outdoor seating area, ground floor entrance, toilets, laundry room, with ancillary development and associated site works. | | |
| Development Address | Flannery's Public House, 15/16 Glasheen Road, Cork | | |
| 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 | X |
| | | No | |
| 2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)? | | | |
| Yes | X | Class 10(b)(iv) Infrastructure projects, Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. | Proceed to Q3. |
| No | | | |
| 3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class? | | | |
| Yes | | | |
| No | X | | Proceed to Q4 |

| 4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]? | | | |
|--|---|--|---|
| Yes | X | Class 10(b)(iv) Infrastructure projects states Urban development which would involve an area greater than 2 hectares. The subject site has an area of 0.1558ha and is located within zoned lands within the development boundary of Cork City. | Preliminary examination required (Form 2) |

| 5. Has Schedule 7A information been submitted? | | |
|---|---|---|
| No | | |
| Yes | X | Screening Determination required |

Inspector: _____ **Date:** _____

Form 2

EIA Preliminary Examination

| | |
|---|--|
| An Bord Pleanála Case Reference | ABP-320840-24 |
| Proposed Development Summary | Retention for outdoor seating area, ground floor entrance, toilets, laundry room, with ancillary development and associated site works |
| Development Address | Flannery's Public House, 15/16 Glasheen Road, Cork |
| <p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p> | |
| <p>Characteristics of proposed development</p> <p>(In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p> | <ul style="list-style-type: none"> • The retention development relates to an outdoor terrace seating area to the rear of a public house. • The outdoor terrace area is 83.33m² on a site area of 0.1558ha. • The site is located on zoned lands within the development boundary of Cork City. • The public house has been in existence for a number of years, the surrounding area is predominately residential. • The site is currently connected to public water, sewer and public drains. |
| <p>Location of development</p> <p>(The environmental sensitivity of geographical areas likely to be affected by the development in</p> | <ul style="list-style-type: none"> • The site is not located within a designated area. The nearest designated areas are: |

| | |
|---|--|
| <p>particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p> | <ul style="list-style-type: none"> - Cork Lough pNHA (site code: 001081) located c.0.8km east. - Lee Valley pNHA (site code: 000094) located c. 1.9km northwest. - Cork Harbour SPA (site code: 004030) located c. 4.5km east. - Douglas River pNHA (site code: 001046) located c. 4.5km east. - Great Island Channel cSAC (site code: 001058) located c. 11km east. <ul style="list-style-type: none"> • My Appropriate Assessment Screening undertaken concludes that the retention development would not likely have a significant effect on any European Site. • The site is not located within a Flood Zone. • The site is not located within an ACA or adjacent a Protected Structure. |
| <p>Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p> | <p>Given the location of the site in an urban setting, there is no potential for cumulative effects and no additional environmental parameters of significant for potential impacts.</p> |

| | | |
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| | | |
| Conclusion | | |
| Likelihood of Significant Effects | Conclusion in respect of EIA | Yes or No |
| There is no real likelihood of significant effects on the environment. | EIA is not required. | |

Inspector:

Date:

DP/ADP: _____

Date: _____

(only where Schedule 7A information or EIAR required)