



An
Bord
Pleanála

Inspector's Report

ABP-321773-25

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| Development | Retention of Garden seating area and all ancillary site works. The works are in the curtilage of a protected structure (Ref. no. TRPS 711). |
| Location | The Old Barracks, Birdhill, Co. Tipperary. |
| Planning Authority | Tipperary County Council. |
| Planning Authority Reg. Ref. | 24/248. |
| Applicant(s) | Alan Andrews. |
| Type of Application | Retention Permission. |
| Planning Authority Decision | Grant Retention Permission. |
| Type of Appeal | Third Party |
| Appellant(s) | Jimmy Lyons. |
| Observer(s) | none. |
| Date of Site Inspection | 3 rd April 2025. |
| Inspector | Kathy Tuck |

1.0 Site Location and Description

- 1.1. The subject site which has a stated area of 0.291ha is situated at The Old Barracks, Birdhill, Co. Tipperary. The Old Barracks is a Protected Structure and currently in use as a coffee shop.
- 1.2. The site is located on the northern side of the R445 and access is shared with the adjoining public house/restaurant located to the east of the appeal site which is known as Matt the Thresher Inn. Parking is provided to the rear of the building.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of an outdoor seating area which is located to the side and rear of an existing café operating at the Old Barracks, Bird Hill, Co. Tipperary.
- 2.2. The outdoor seating comprises of 4 no. picnic benches located to the side (west) of the building and 2 no. picnic benches located to the rear (north) of the building.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a decision to grant retention permission on the 2nd January 2025 subject to 2 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Authority notes the site location, details of the proposed development, relevant planning history, relevant planning policy at local level and details of submissions received.

The report concluded that the works seeking retention permission were acceptable and recommended that permission be granted in line with the decision issued.

3.2.2. Other Technical Reports

None received.

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

The Planning Authority received 1 no. submission. Concerns raised can be summarised as follows:

- Ongoing operations without the benefit of planning permission on site causing disturbance to neighbouring commercial premises.
- The wastewater treatment plant does not have capacity to accommodate continued expansion – applicant does not contribute to upkeep.
- Discharging wastewater without a discharge licence.

4.0 Planning History

PA Ref 21/856 Retention permission sought for kitchen and store which are used as part of existing old barracks coffee bar, retention of garden seating area, permission for cycle and motorcycle parking spaces, accessible toilet, toilet in the existing store for employees, permission for proposed new water waste line to existing waste water treatment system and all associated site works. Application Withdrawn.

PA Ref 20/41 Retention permission for kitchen and store which are used as part of existing Old Barracks Coffee Bar, retention of garden seating area and PERMISSION for proposed new waste water line from Kitchen to existing waste water treatment system, proposed holding tank with pump on this line and all associated site works (Protected Structure Reference Number S711). Application Withdrawn.

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| PA Ref 5115124 | Permission GRANTED for craft shop and store. |
| PA Ref 5119420 | Permission granted for new entrance porch & signage to front & conservatory extension and carpark to rear. |
| PA Ref 5120111 | Retention Permission GRANTED for additional floor space to conservatory extension & changes to layout of carpark. |
| PA Ref 5120196 | Permission GRANTED for 1 sign. |

5.0 Policy Context

5.1. Tipperary County Development Plan 2022-2028

Birdhill is identified as a settlement node within the Settlement Strategy of the Tipperary County Development Plan 2022-2028. The subject site is located within the settlement boundary it is not zoned under any specific land use zoning objective.

Objective S02 seeks to promote the development of the village (Birdhill) for tourism, as part of Ireland's Ancient East, Ireland's Hidden Heartlands and the Lough Derg Lakelands area.

Objective S04 seeks to ensure the protection of protected structures, historic buildings and buildings/structures of archaeological significance.

Other relevant sections include:

Volume 1 – Written Statement:

- Section 13-1

Encourage and support the sympathetic restoration, re-use and maintenance of protected structures thereby ensuring their conservation and protection. In considering proposals for development, the Council will have regard to the Architectural Heritage Protection Guidelines for Planning Authorities, (DAHG 2011) or any amendment thereof, and proposals that will have an unacceptable impact on the character and integrity of a protected structure or adjoining protected structure will not be permitted.

Volume 3 – Development Management

- Section 5.5

The provision of street furniture will require either a licence under Section 254 of the Planning Acts or planning permission (including street furniture erected on private landings). In both instances, the Council will require details of the location, design, specification and quality of the proposed elements of street furniture.

Planning applications for canopies and awnings should be accompanied by full details of the canopy structure i.e. materials proposed, canopy size (open and closed), blind box location and arm design. The following basic standards will be applied to proposals for such features:

- a) Canopies of traditional design and materials will be favoured i.e. canvas canopy, wrought iron arms, timber blind box etc. Appropriate contemporary designs and finishes may be acceptable where they enhance the streetscape.
- b) The use of plastic and/or uPVC will not be permitted. Curved or Dutch canopies will not be permitted.
- c) Canopies and awnings shall not be used for advertising purposes other than the name of the premises.
- d) Canopies shall be positioned to avoid covering any distinctive architectural elements such as fascia or pilasters. They will not be permitted where they detract from the character of the shopfront or buildings of special architectural interest.

In considering applications for outdoor tables and chairs under Section 254, the Council shall have regard to the following:

- a) Size and location of the facility.
- b) Concentration of existing street furniture in the area.
- c) The visual impact of the structure, particularly in relation to the colour, nature and extent of advertising on all ancillary screens.
- d) Impact on the character of the streetscape.
- e) The effects on the amenities of adjoining premises, particularly in relation to hours of operation, noise and general disturbance.

- f) Impact on access and visibility.

5.2. Natural Heritage Designations

The site is not located within or directly adjacent to any Natura 2000 sites. The site is located c. 222.8m to the south of the Lower River Shannon SAC (site code 002165).

6.0 EIA Screening

The development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, (as amended), and therefore is not subject to EIA requirements (See Appendix 1).

7.0 The Appeal

7.1. Grounds of Appeal

This is a third-party appeal against the decision of Tipperary County Council to grant retention permission at The Old Barracks, Birdhill. The appeal was submitted by the neighbouring commercial landowner to the immediate east of the appeal site. The grounds can be summarised as follows:

1. Lack of Permission

- Redeveloped from craft/coffee shop to commercial roasting operation without the benefit of permission.
- Enforcement complaint lodged with the Local Authority.
- Objected to previous permission which was refused.

2. Right of Way

- Old Barracks has a limited right of way over the access route which is in the ownership of Matt the Threshers.
- Expansion of operations leading to regular breaching of the right of way agreement.

- The agreement states that the operations of the Old Barracks shall not impede/obstruct entrance by parking or leaving vehicles unattended.
- The limited right of way was put in place to protect safety of the staff and customer safety.

3. Traffic Hazard

- Continuous expansion of Old Barracks will lead to serious impacts on R445 -considering Tipperary County Council Part 8 application for the redevelopment of the R445 Junction.

4. Wastewater

- Discharging without a licence.
- Wastewater Treatment Plant (WWTP) is in the ownership of Matt the Threshers who hold the discharge licence - No onus to provide consent to use it.
- If WWTP is operating at capacity Old Barracks are financially responsible for any further expansion.
- WWTP now at full capacity and cannot deal with any further expansion.
- Matt the Threshers have spent a lot of money to date to keep operating within the licence.
- No idea of the quantum of discharge coming from the Old Barracks.

No further development should be allowed until they obtain full permission for the unauthorised use and obtain a waste licence.

7.2. **Applicant Response**

None received.

7.3. Planning Authority Response

The response received from the Planning Authority dated the 19th February 2025 notes no further comment and requests that the Board upholds the decision and grant retention permission.

7.4. Observations

None Received.

8.0 Assessment

Having examined the application details and all other documentation on file, including the reports of the local authority, and having inspected the site, and having regard to the relevant local and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Permitted Use.
- Traffic Issues.
- Public Health.

8.1. Permitted Use

- 8.1.1. The appellant contends that the current operations on site have expanded to include for a commercial coffee bean roasting operation without the benefit of planning permission. It is stated that a complaint has been made to the Planning Authority and an objection was lodged to a previous permission under PA Ref 21/856 which sought to regularise the use in site, which was subsequently withdrawn.
- 8.1.2. From undertaking a review of the planning history pertaining to the subject site I note that permission was granted under PA Ref 5115124 for a craft and coffee shop at the appeal site. This application is seeking the retention of outdoor seating area which is used as part of the café use on site. I consider that the concerns over the permitted use on site is a matter that should be dealt with through the enforcement process and is therefore a matter for the Planning Authority to pursue through the appropriate channels.

8.2. Traffic Issues

- 8.2.1. The appellant has raised concerns over the use of the established right of way and the expansion of the appeal site leading to a traffic hazard. The appellant notes that the right of way established over the access from the R445 to the parking area to the rear of the Old Barracks is in their ownership and that there is a limitation to the use of this right of way.
- 8.2.2. In the first instance I note that An Bord Pleanála is not an arbiter of title and the extent to which it is required to interrogate these issues is limited. Section 5.13 of the Development Management Guidelines for Planning Authorities states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land, these are ultimately matters for resolution in the Courts. As such, I do not consider this is a matter for the Board to assess as part of their assessment of this application.
- 8.2.3. The appellant further contends that the continuous expansion of the commercial operation at the Old Barracks will lead to serious impact upon the R445 and this together with the works proposed by Tipperary County Council will give rise to a Traffic Hazard.
- 8.2.4. The applicant is seeking retention permission for outdoor furniture which comprises of 6 no. picnic benches. I do not consider the works seeking retention permission constitutes an intensification of the permitted use on site (café). As such I consider that to permit retention permission at the appeal site for the outdoor seating area will not give rise to a traffic hazard.

8.3. Public Health

- 8.3.1. The appellant has raised concerns over the Wastewater Treatment Plant (WWTP) which is currently serving both commercial premises operating on the subject site – i.e. the appeal site and Matt the Threshers Restaurant. The appellant states that they are the owners of the WWTP and that the coffee shop is operating without a wastewater discharge licence. While it is stated that the applicant has a limited right to utilise the existing WWTP it is on the condition that in the event of such use bringing about a situation where the capacity of the system shall be exceeded or overloaded that the applicant should at their own expense take the necessary steps to either limit

the use of the WWTP or provide additional capacity at their own expense. The appellant contends that the WWTP is now at full capacity.

- 8.3.2. As stated in section 8.2.5 of my report above, I do not consider that the provision of the external seating areas constitutes an intensification of the permitted use on site and as such I do not consider it will add to the current loading of waste which is treated by the Wastewater Treatment Plant on site.
- 8.3.3. Furthermore, the agreement in place between the appellant and the applicant with regards to the use of the Wastewater Treatment Plant is a legal agreement and as such any issues arising with this agreement becomes one of a civil matter for which the Planning Process is not designed to deal with. Therefore, I consider that the Board in this instance are precluded from assessing the concerns raised with regard to the Wastewater Treatment Plant on site.

9.0 AA Screening

- 9.1. I have considered the project in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located at the Old Barracks, Birdhil, Co. Tipperary - c. 222.8m to the south of the Lower River Shannon SAC (site code 002165).
- 9.2. The proposed development consists of the retention of existing timber outdoor furniture to the rear and side of the Old Barracks.
- 9.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.
- 9.4. The reason for this conclusion is as follows:
- Nature of works and the limited scale of what is being proposed.
 - The location of the site from nearest European site and lack of connections
- 9.5. I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

10.0 Recommendation

10.1. Having regard to the above, I recommend that retention permission be granted for the development based on the following reasons and considerations.

11.0 Reasons and Considerations

The development which is seeking retention permission for outdoor dining furniture complies with the provisions of the Tipperary County Development Plan 2022-2028. It is considered that, subject to compliance with the conditions set out below, the proposed development would not be out of character with the surrounding area, would not be visually detrimental to the area and is in keeping with the proper planning and sustainable development of the area.

12.0 Conditions

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| 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 5th November 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>Reason: In the interest of clarity</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.

Kathy Tuck
Planning Inspector

29th April 2025

Appendix 1

EIA Pre-Screening

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| An Bord Pleanála Case Reference | ABP-321773-25 | | |
| Proposed Development Summary | The retention of an outdoor seating area. | | |
| Development Address | The Old Barracks, Birdhill, Co. Tipperary. | | |
| 1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings) | | Yes | |
| | | No | X |
| 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 | | | Proceed to Q3. |
| No | X | | Tick if relevant. No further action required |
| 3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class? | | | |
| Yes | | | EIA Mandatory EIAR required |
| No | X | | Proceed to Q4 |
| 4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]? | | | |
| Yes | | | Preliminary examination required (Form 2) |
| 5. Has Schedule 7A information been submitted? | | | |

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| No | X | Screening determination remains as above (Q1 to Q4) |
| Yes | | Screening Determination required |

Inspector: _____ **Date:** _____

Appendix 2

Screening the need for Appropriate Assessment: Screening Determination (Stage 1, Article 6(3) of Habitats Directive)

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

The subject site is located at the Old Barracks, Birdhil, Co. Tipperary - c. 222.8m to the south of the Lower River Shannon SAC (site code 002165). The proposed development consists of the retention of existing timber outdoor furniture to the rear and side of the Old Barracks.

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

The reason for this conclusion is as follows:

- Nature of works and the limited scale of what is being proposed.
- The location of the site from nearest European site and lack of connections

I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.