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James Sweeney

From: Frank Coffey Engineers <info@frankcoffeyengineers.ie>
Sent: Wednesday 5 March 2025 12:31
To: Appeals2
Cc: Tom Crowley
Subject: Submission in Relation to APB-321791-25
Attachments: Response to APB-321791-25.pdf; Circuit Court Order.pdf

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Sir/Madam,

Please find submission in relation to the case described below.

Ref: Case No. ABP – 321791-25

Planning Authority Ref No. EX1313

Ref: Whether the change of use from use as a rear yard or from unauthorised beer garden to a smoking area is or is not development and is or is not exempted development

Sheila Bun's Public House, Upper Bridge Street, Killorglin, Co. Kerry

Please acknowledge that this mail has reached you inside the time deadline of the 5th instant.

Yours Faithfully,

Frank Coffey

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5th March 2025

Ref: Case No. ABP – 321791-25
Planning Authority Ref No. EX1313

Ref: Whether the change of use from use as a rear yard or from unauthorised beer garden to a smoking area is or is not development and is or is not exempted development
- Sheila Bun's Public House, Upper Bridge Street, Killorglin, Co. Kerry

Dear Sir/Madam,

I act for Tom Crowley, the owner of the premises Sheila Buns Public House, Upper Bridge Street, Killorglin, Co. Kerry.

I am instructed to respond to the Referral Report submitted by Kathleen and Patrick Finnegan, who were unhappy with the response of Kerry County Council to their Section 5 enquiry, in relation to a perceived change of use of the yard at the rear of Sheila Buns Public House.

I submit the following observations to the Board.

- (i) The bar is now closed and has been since the 13th August 2024 and no development has taken place since – nor has the back yard been used for any purpose
- (ii) I would like to draw the Board's attention to the Circuit Court Order dated the 26th Day of June 2024 and in particular to paragraph 5 as follows:
"AND THE COURT DOTH FURTHER ORDER" 5.
"That the premises can trade using only the external passage and the smoking area to the rear."

It is implicit in the court order that the Smoking Area PRE-EXISTED – and notwithstanding that the use of the yard as a beer garden and music venue required was deemed to be "intensification of use", the Court allowed the premises to trade using only the external passageway and **Smoking Area**.

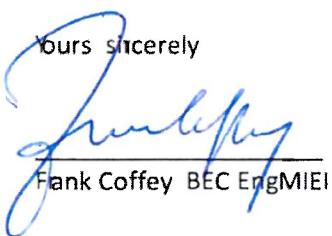
The smoking area was not defined by the court but is included part in the yard, which is lined in red on the appellant "Figure 2 - Area of Site the subject of Declaration.
The Court Order is attached to this response letter.

(iii) The appellants in this case have engaged in a persistent campaign to undermine the re-development of a traditional pub business. They objected to the redevelopment at planning stage and appealed the decision of Kerry County Council to the Board. Even when the Board upheld the decision of Kerry County Council and granted permission but with a condition limiting the level of the amplified music the appellants saw fit to take a case to the Circuit Court in relation to Planning Compliance. The result of their actions is that the premises cannot now operate a viable beer garden without reasonable music levels allowed – and this has predicated the closure of the business with the loss of jobs, commerce and a social outlet to the Town of Killorglin.

Conclusion

The appeal in this case is vexatious in the extreme - but clearly, the appellants have overlooked the implicit acceptance of the legality of retaining a smoking area, as evidenced by the declaration contained in Paragraph 5 of the Court Order.

Notwithstanding, that the premises is now closed and, on the market, (for sale) the owner is entitled to retain the smoking area usage as part of the intrinsic value and for future use of the premises. The smoking area is after all, an established and permitted usage. Mr. Crowley now asks the Board to give the appellants the clarity they seek and confirm that there is a legal acceptance of the smoking area and that it is an established use and as such, a compliant element of the premises.

Yours sincerely

Frank Coffey BEC EngMIEI

Attachment : Circuit Court Order

Figure 4 – Order of the Circuit Court issued June 26th 2024

Document Type: Decree / Order

Filed By:

Copy
2023/00423

Record No:

**AN CHUIRT CHUARDHA
(THE CIRCUIT COURT)**

**SOUTH WESTERN CIRCUIT
COUNTY OF KERRY KILLARNEY**

BEFORE JUDGE CALLAN

THE 26th DAY OF June 2024

BETWEEN

PATRICK FINNEGAN AND KATHLEEN FINNEGAN

APPLICANTS

-AND-

TOM CROWLEY

RESPONDENT

The Respondent having been duly served with the Notice of Motion for Relief under Section 160 of the Planning and Development Act, 2000 to 2021 as amended and the same coming on for hearing before the Court on 2nd May 2024 and on this day on Notice of Motion dated 5th December 2023 on behalf of the Applicants, WHEREUPON and on reading the pleadings and documents filed and on hearing what was urged by Mr. A. Cush B.L. of Counsel for the Applicants (instructed by Geaney Solicitors) and Ms. E. Kelleher B.L. of Counsel for the Respondent (instructed by Harrison O'Dwyer Solicitors)

THE COURT DOTH ORDER

1. A Declaration that the use of the premises in particular the beer garden and live music venue to the rear by the Respondent since May 2023 is an intensification of use and therefore a material change of use requiring planning permission.
2. A Declaration that the works carried out at Sheila Buns licensed premises belonging to the Respondent at Upper Bridge Street, Killorglin, County Kerry since May 2023 is and was an unauthorized development by virtue of the provisions of Article 9 of the Planning and Development Regulations 2001.
3. An injunction pursuant to section 160(3) of the Act aforesaid restraining the Respondent from making use of the unauthorized development at the rear of his premises namely the beer garden and live music venue (to include also the projection of music or sound from external speakers) otherwise than in accordance with a planning permission regulating the use of the beer garden and live music venue.
4. That the Applicants do recover from the Respondent the costs of the proceedings to include the costs of Mr. Hersey Planning Consultant to be taxed in default of agreement.

AND THE COURT DOTH FURTHER ORDER

5. That the premises can trade using only the external passageway and smoking area to

the rear.

6. That there is a Stay on the said Order until 13th August 2024 to be lifted only in the event of an Appeal being filed by the Respondent.
7. Liberty to Apply

BY THE COURT

COMBINED OFFICEMANAGER

