



An
Bord
Pleanála

Inspector's Report

ABP-306244-19

Development	Retention of vents and ventilation system which services permitted development (planning reference number 15/1069), and (b) extension of existing vent to roof level.
Location	Townparks, Co Galway
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	191550
Applicant(s)	Ted Larkin
Type of Application	Retention and Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	John Kenny
Observer(s)	None
Date of Site Inspection	23 rd March 2020
Inspector	Irené McCormack

1.0 Site Location and Description

- 1.1. The appeal site is in the village of Eyrecourt. Eyrecourt is approximately 70 km east of Galway and 150 km from Dublin.
- 1.2. Eyrecourt is a small settlement comprising of two public houses, a post office, library, shop, garage and fast food outlet, pharmacy, tractor dealership, medical centre, primary school, several small enterprises. A footpath and public lighting connect the site to the village centre. The site is located on the south western edge of the village within the 50kph speed limit.
- 1.3. The site reflects a large industrial type units and forecourt and comprises a number of commercial units including car sales, mechanics and take away facility.

2.0 Proposed Development

- 2.1. The development comprises:
 - Retention of existing vents and ventilation system which services permitted development (planning reference member 15/1069)
 - Permission for extension of existing vent to roof level and associated works.
- 2.2. The works relate to the takeaway facility operating on site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority granted permission subject to five conditions. The following conditions are of note:

Condition No 2 stipulated:

Prior to the commencement of development, the applicant shall submit revised plans and particulars which demonstrate the re-orientation of the extended vent such that it is cowled to face in a southern direction, for the written agreement of the Planning Authority.

Reason: In the interest of protection of the amenities of property in the vicinity of the site.

Condition No 3 stipulated:

Prior to the commencement of development, the applicant shall submit to, and agree in writing with the planning authority for the effective control of fumes and odours from the premises.

Reason: In the interest of the amenities of both the immediate neighbours and the general surroundings.

Condition no. 4 refers to Noise Levels

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

3.2.2. The Area Planners report (22nd November 2019) reflects the decision to grant permission and notes the planning history on the site and the location within the village settlement. It is set out that subject to the conditions attached the proposed development is acceptable.

3.2.3. **Other Technical Reports**

None

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

The planning officer notes the following submissions/observations were made in relation to the development. A brief summary of the issues raised are set out below:

- Concerns is expressed regarding the negative impact on residential amenity
- Reference is made to the unauthorised ventilation system on site for a number of years and on-going enforcement.

4.0 **Planning History**

Site

GCC Reg. Ref. 15/1069 – Permission granted in 2015 for (a) extension to garage and (b) provision of 3 commercial units (one comprising relocated takeaway) within existing commercial building, and associated works (gross floor space garage 43.8sqm; unit 1 - 31.85sqm; unit 2 - 77.3sqm; unit 3 - 39.14sqm).

The grant of planning permission included five standard conditions. No details regarding ventilation conditioned.

GCC Reg. Ref. 09/1404 – Permission granted in 2009 for the retention of change of use from retail unit to fast food take away and associated works (gross floor space 41.48sqm).

5.0 Policy Context

5.1. Development Plan

5.1.1. Galway County Development Plan 2015-2021

The site is located in the settlement of Eyrecourt on un-zoned lands

5.1.2. Section 2.6.1 Settlement Hierarchy

In the context of the settlement hierarchy the village of Eyrecourt is identified in the category of *Other Settlements & the Countryside* in Chapter 2 of the Development Plan. These smaller settlements provide basic services to their community, such as convenience goods and primary education and religious services. They are distinguished from rural housing by the presence of these services which provide an important community purpose and the basis for further future development.

5.1.3. Chapter 4 - Economic, Tourism & Retail Development of the Development Plan sets out the following:

Section 4.18 Retail Diversity

Variety in the services on offer is required in order to achieve and maintain a vibrant town or village centre. A proliferation of one particular use above all others can jeopardise this vibrancy.

Section 4.19 Local Shops and Services

Demand can occur for the provision of essential day-to-day services beyond the retail core. It is important therefore to cater for the localised needs of people within close proximity to schools, places of work and concentrated residential areas.

Section 4.20 Evening and Late Night Uses

Town centres that are all inclusive and truly vibrant are those with an adequate provision of evening and late night activities in the form of thriving restaurants, pubs, clubs, takeaways and associated uses. In order to achieve this type of environment,

it is important to instil confidence in people that these are safe and exciting places to frequent at all times, while simultaneously being respectful of those who live there on a permanent basis.

5.2. Natural Heritage Designations

The site is not located within or directly adjacent to any Natura 2000 sites. The Middle Shannon Callows SPA (Site Code 004096) is located 3.3km south of the site.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The third-party appeal was made by John Kenny, River Street, Eyrecourt, Ballinasloe, Co. Galway. The appellants dwelling house is located to the immediate southwest of the appeal site. The principal grounds of appeal can be summarised as follows:

- It is set out that planning application GCC Reg. Ref. 15/1069 did not display external vents and external ventilation.
- It is set out that two Enforcement Notices were served on the applicant to remove the unauthorised apparatus.
- It is set out that the vent pipe causes distress, ill health and odours throughout the appellants home. In addition to the non-stop noise from the fan fitted to the vent pipe.
- It is stated that even with the conditions attached by the planning authority the vent will still fill the house with fumes and smells because of its position between the two properties causing a tunnel effect and a down draft of air

from the vent. This would not be the case if the vent was located to the rear of the property where it was located originally.

- It is set out that the location of the vent in close proximity to a live connection of butane gas cylinders is a fire hazard.
- It is set out that the vent pipe is a visual eyesore.

6.2. Applicant Response

- It is set out that the relocation of the takeaway was granted under GCC Reg. Ref. 15/1069 and the ventilation system is required under the Building Regulations and required for the operation of the facility.
- It is set out notwithstanding previous enforcement on the site Galway County Council have granted permission for the development and on receiving the enforcement notice the applicant responded in an appropriate manner by making a planning application.
- It is stated that the planning assessment notes the concerns raised by the appellant but that the planning authority have not raised any issues as to the compliance of the vents with building regulation, despite ample opportunities.
- The location of gas cylinder is separate to the proposed works. It is stated that the applicant is actively engaging with Galway County Council to ensure these cylinders are stored in accordance with all regulations.
- It is set out that the vents are located in an environment where they are not unexpected visually.
- It is set out that the location of the vents is in accordance with planning permission and building regulations and that the location is largely immaterial once these regulations have been adhered to.

6.3. Planning Authority Response

None

7.0 Assessment

7.1.1. It is considered that the main issues arising from the appeal are as follows:-

- Principle of development.
- Residential Amenity impact in terms of noise and odour
- Other Matters

7.2. Principle of development

- 7.2.1. The works relate to the retention of existing vents and ventilation system and permission for the extension of existing vent to roof level associated with an established takeaway facility on site, permitted under GCC Reg. Ref 15/1069. The requirement for appropriate ventilation is necessary for the operation of a takeaway facility, and as such the works are appropriate in principle
- 7.2.2. The site forms part of an established mixed-use commercial site 50m west of Main Street. A footpath and public lighting connect the site to the village centre. The village of Eyrecourt is small with a limited number of services and amenities, there is a car sales premises on site and the site also houses a bottle bank and clothes bank collection point. The provision of such mixed-use services and amenities is important to the vitality and viability of the village as set out in Chapter 4- Economic, Tourism & Retail Development of the Development Plan.
- 7.2.3. Given the mixed-use nature of the site and the adjoining residential property, it is considered important that the provision of such equipment does not result in a nuisance or serious injury to the residential amenities of nearby residential units, of malodours, fumes, gases, dust or other deleterious materials which would cause a nuisance. These matters will be addressed in the following section.

7.3. Residential Amenity

- 7.3.1. The vent and ventilation system are located on the southwestern elevation of the building, the southwestern site boundary is shared with the objectors dwelling house. The vent and air handling unit that is proposed to be retained are located approx. 3.85m from the shared site boundary and approx. 7m from the appellants dwelling house.
- 7.3.2. The appellant has expressed concern regarding the odours emanating from the vent and the associated noise. The location of the vent is based on the proximal location to the cooking area served and the associated equipment. I note no specifications have been submitted for the vent or air handling unit and the planning authority

justify the grant of planning permission on the basis of the permitted use GCC Reg. Ref 15/1069. The planning authority included a condition requiring the applicant to submit details for the effective control of fumes and odours from the premises and revised plans and particulars which demonstrate the re-orientation of the extended vent such that it is cowled to face in a southern direction. Whilst, I agree that the cowl should be redirected away from the appellants property, I also consider, a noise impact assessment is required to determine the most appropriate ventilation system for the site. A noise assessment would appropriately inform the detail specification of the ventilation system to include additional filters and noise abatement measures to reduce the noise and odour emissions from the vent and air handling unit. I consider this matter can be addressed by way of an appropriately worded condition whereby all details can be agreed with the planning authority, should the Board be minded to grant planning permission.

- 7.3.3. It is considered that the location of the vent is reasonable and that it is unlikely that the relocation of same would make any material difference to the emissions in terms of the location of the permitted takeaway. The installation of additional modified filters and noise mitigation measures is likely to be the most effective solution in terms of reduction of noise and odour emissions.

7.4. Other Matters

- 7.4.1. The appellant has expressed concern about the location of the vent in close proximity to a live connection of butane gas cylinders is a fire hazard. In this regard I note the location and storage of gas cylinders is not a planning issue Gas cylinders must be handled and stored in accordance with the Safety, Health and Welfare at Work (General Applications) Regulations.

7.5. Appropriate Assessment

Having regard to the nature and scale of the proposed development within a serviced area and separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on the conservation objectives of any European site.

8.0 Recommendation

I recommend that permission should be granted, subject to conditions, as set out below.

9.0 Reasons and Considerations

Having regard to the established use of the site at this location, and the policies of the current Galway County Development Plan 2015-2021, it is considered that the proposed development would not seriously injure the residential or visual amenity of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained in accordance with the plans and particulars lodged with the application, 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.

Reason: In the interest of clarity

2. Within three months of this grant of permission the developer shall submit for the written agreement of the Planning Authority:
 - a) An Noise Impact Assessment
 - b) Revised detail specifications of the ventilation system to include additional filters and noise abatement measures to reduce the noise and odour emissions from the vent and air handling unit based on the results of the Noise Impact Assessment.

Reason: In the interest of residential amenity.

Irené McCormack
Planning Inspector

31st March 2020