



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306577-20

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<b>Development</b>	Construction of cafe, WC and canopy & alterations to entrance to the Rock Quarter.
<b>Location</b>	Cannaboe , Ballinamore , Co. Leitrim
<b>Planning Authority</b>	Leitrim County Council
<b>Planning Authority Reg. Ref.</b>	19254
<b>Applicant(s)</b>	Remcoll 2 Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Ciaran Smyth.
<b>Observer(s)</b>	Frank Maxwell.
<b>Date of Site Inspection</b>	15 <sup>th</sup> May 2020.
<b>Inspector</b>	Sarah Lynch

## **1.0 Site Location and Description**

- 1.1. The site is located to the south east of Ballinamore town centre directly adjacent to the Ballinamore Bypass. The development site forms part of a partially complete 2/3 storey mixed use development with retail uses at ground floor and residential above.
- 1.2. A number of retail/commercial units at ground floor are vacant at present. A large surface car parking is located to the side and rear of the building and a basement carpark has been developed underneath the partially complete single storey units. The proposed development will be located within an existing open canopy area which is currently used to store Tesco shopping trolleys and is open to the public footpath.

## **2.0 Proposed Development**

- 2.1. It is proposed to construct a café, WC and canopy and alterations to the entrance to the Rock quarter.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.2. Sligo County Council determined to approve permission for the proposed development subject to conditions.

### **3.3. Planning Authority Reports**

#### **3.3.1. Planning Reports**

- The planners report was consistent with the decision of the planning authority.

#### **3.3.2. Other Technical Reports**

- District Engineer – no objection.
- Building Control – no objection subject to compliance with Building Control.
- Fire Officer – no objection subject to provision of hydrants, and water supply capable of providing 20 litres per second.

- Water Services, Waste – There is an existing wastewater connection, conditions are specified for new waste water pipe work.
- Water Services, Water supply – no comment as there is an existing connection.
- Environmental Health – No objection subject to compliance with food hygiene regulations.

### 3.4. **Prescribed Bodies**

None

### 3.5. **Third Party Observations**

9 no. submission were received, the issues raised are outlined in the grounds of appeal.

## 4.0 **Planning History**

P04/1546 A 10 year permission was granted for a mixed use development as follows:

- Supermarket with service yard
- 5 retail units
- 2 office units
- 21 residential units
- Creche and play area
- 141 parking spaces
- Car showroom

P05/544 Permission was granted for the revision of P04/1546 and comprise the increase in office floor space through the decrease in circulation space. Overall floor area remained the same as originally permitted. Conversion of 2 storey office block to a 1 bed two storey duplex and minor elevational alterations.

P07/544 Permission was granted for the revisions to the above permission to include:

- Increase of floor area by 401sqm, change of use of creche to residential, provision of an additional retail unit.
- Changes will provide for a total of 25 no. residential units
- Extension to provide 6 no. retail units and 4 office units at first floor.

## 5.0 Policy Context

### 5.1. Development Plan

#### **Leitrim County Development Plan 2015-2021**

The lands are designated within the development plan as 'Mixed Use' within which a mix of residential and commercial activity takes place. The plan requires that buildings are designed and located so as to be capable of adaptation to a range of other uses. In determining the suitability of development within this zone regard shall be given to the environmental impact of the proposed development on neighbouring uses.

Ballinamore is identified as a 2A tier centre and it is envisaged that it will become one of the County's key towns, becoming the centres for and drivers of economic growth.

- OBJ 7 - To seek the development of lands zoned 'Mixed Use' for commercial residential, health, community, educational, cultural, retail and related uses.

### 5.2. Natural Heritage Designations

5.3. The nearest Natura 2000 site to the proposed development is Cuilcagh - Anierin Uplands SAC which is located c. 6.9km north west of the development site.

### 5.4. EIA Screening

5.5. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

This is a third-party appeal which has been prepared by Liam Madden Architect on behalf of Ciaran Smyth. The issues raised can be summaries as follows:

- Proposed scheme is a re-hash of previous schemes
- The original development ceased in 2007 and has been abandoned since.
- Concerns regarding the commercial track record of the applicant.
- The availability of commercial space must be independently assessed by ABP.
- The proposed development will be commenced and left abandoned.
- The development contravenes the parent permission.
- ABP should consider whether any permission should issue until the existing
- No AA screening was carried out.
- Cumulative impact of all applications at this location has not been considered.
- The developer stated that the relief road was a private road, concerns are raised in relation to the ownership and maintenance of this road.
- How will access be provided if relief road is private.
- The provision of a unisex toilet is not acceptable.
- There is no planning for a refugee direct provision centre.

### 6.2. Applicant Response

Meitheal Architects have prepared a response to the grounds of appeal which can be summarised as follows:

- The appellant is a frequent objector and the appeal should be considered vexatious.

- High court proceedings have been submitted which detail protests in relation to the use of existing apartments for people in emergency accommodation and refugees.
- The developer is proposing to invest significantly in the development and the surrounding area.

### 6.3. Planning Authority Response

Leitrim County Council have issued a response to the grounds of appeal which can be summarised as follows:

- The building is authorised and compliance has been submitted. A slight variation which resulted in a minor increase in floor area was noted and was not considered to be a material change to the development, retention permission was therefore not required.
- The planning authority carried out an AA screening.
- The proposed development would result in a deficit in 5 spaces but due to overlap and duplication of visits additional spaces are not required.
- The access road was required as a condition of planning and is currently the subject of a taking in charge application.
- The public have a right of access over the public road and all traffic laws are fully enforceable.
- The development is located on appropriately zoned lands and there is no requirement within the County Development Plan to submit a justification test for office accommodation.
- The status of the refugee direct provision centre was not a matter for consideration under this application.
- The provision of a unisex toilet is acceptable and not uncommon.
- The planning authority considers the proposed development to be in accordance with the requirements of the county development plan.

## 6.4. Observations

One observation has been received from Frank Maxwell and is summarised as follows:

- The investment to finish the development is welcome.
- The development is complete and there is no noncompliance.
- ABP should consider the track record of the appellant.

## 7.0 Assessment

7.1. This is a third-party appeal in relation to the decision of Leitrim County Council to permit a café development within an existing open canopy area of a partially complete commercial development in Ballinamore. The proposed development is located within an area zoned as mixed use in which cafes/restaurants are permissible. The principle of the proposed development is therefore considered to be acceptable subject to compliance with the relevant policies and objectives of the Leitrim County Development Plan. I have reviewed the plans and particulars submitted and am satisfied that the issues for consideration before the board relate solely to the grounds of appeal, no other substantive issues arise. The issues can be summarised as follows:

- Principle of development
- Access & car parking
- Appropriate Assessment
- Other Matters

### **Principle of development**

7.2. It is proposed to construct a café within the existing open canopy area at the front entrance to the development. This area is currently used for the storage of Tesco trolleys. The developer proposes to enclose this area with glazing and elevational treatments similar to existing and provide a café facility within it.

7.3. It is contended by the appellant that there is no need for additional cafe within Ballinamore. It is stated within the grounds of appeal that the Board should undertake

an assessment of existing vacancy levels in commercial units within Ballinamore in order to justify the proposed development.

- 7.4. As mentioned above the lands are zoned mixed use within the Leitrim County Development Plan within which café/ restaurant developments are permissible. No policies or objectives are contained within the Leitrim development plan which seek to restrict such uses, furthermore there is no requirement for applicants to submit a justification for such uses within the town. Therefore, having regard to the foregoing I consider the principle of the proposed development within this neighbourhood centre to be acceptable.
- 7.5. Ballinamore is identified as a 2A tier settlement within the Leitrim County Development Plan 2015-2021, it is envisaged within the County Development Plan that the settlement will develop into a key town for the county and become a centre for and driver of economic growth. It is therefore the policy of the Council to promote the commercial growth of these settlements and ensure that there is a sufficient variety of services available to improve the attractiveness of such settlements for investment. The provision of a café will provide additional vitality to this development and serve both customers of the existing stores and residents within the existing first floor apartments.
- 7.6. However, notwithstanding this, the future viability of such uses are not a matter that the Board can adjudicate on and therefore are not relevant to the assessment of this appeal.
- 7.7. Whilst I note that the overall design of the proposed development is not a concern of the appellant, I nonetheless consider it important to note that the proposed design and layout of the proposal which effectively encloses the existing canopy area used by Tesco, is modern in appearance and the proposed high quality materials will tie into the existing development in an acceptable manner.
- 7.8. Having regard to the foregoing I consider the principle and design of the proposed development to be acceptable in this instance.

#### **Access and carparking**

- 7.9. Concerns have been raised within the grounds of appeal in relation to the ownership and right of access over the adjacent road. The Council have responded to these

concerns stating that whilst the existing road is privately owned it is subject to a current application to be taken in charge by the Council. It is further stated that public access is permissible and as such access to the proposed development will not be restricted or impacted upon. I have reviewed the access arrangements both within the plans submitted and whilst on site and note that the road is operating as a public road with unrestricted access. Having regard to the details submitted and the observations made by the Council I do not have concerns in relation to the proposed access arrangements to the development.

- 7.10. I note that the proposed café will give rise to the requirement of an additional 5 no. spaces, however having regard to the significant level of car parking provided within the development and that many visits to this development will have a duplicate function I consider that additional car parking is not required in this instance. It is important to note that there is on street car parking also available to the front of the development which is free of charge and can also be availed of by customers of the café.

### **Appropriate Assessment**

- 7.11. I note from the grounds of appeal that the appellant has raised concerns in relation to the failure of Leitrim County Council to request an AA screening from the applicant. I further note the Council's response to the grounds of appeal in which it is stated that an appropriate assessment screening was carried out and screened out any likely significant effects.
- 7.12. The nearest Natura 2000 site from the development is the Cuilcagh - Anierin Uplands SAC which is located c. 6.9km north west of the development site. In the absence of any hydrological links to this site and having regard to the nature of the development which is an infill development on a brownfield site, its location in a serviced urban area, and the separation distance to any 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 a European site.

### **Other Matters**

- 7.13. Concerns have been raised by the appellant within the grounds of appeal in relation to the provision of a unisex toilet. The provision of a toilet within the proposed café is acceptable, there is no policy requirement for separate toilets to be provided for both

genders. A number of other matters are raised within the grounds of appeal in relation to the use of the existing apartments adjacent to the appeal site to accommodate refugees and reference is made to the use of these units as a direct provision centre. These issues are not relevant to the consideration of this appeal.

## 8.0 Recommendation

8.1. I recommend that permission is granted subject to the following conditions.

## 9.0 Reasons and Considerations

9.1. Having regard to the zoning objective of the site, the provisions of the Leitrim County Development Plan 2015-2021, the existing pattern of development in the area, and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, or create a traffic hazard for road users. 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 carried out and completed 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. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the visual amenities of the area

3. Water supply and drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health

4. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste and removal methods and offsite disposal of hazardous materials.

**Reason:** In the interests of public safety and residential amenity

5. No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.

**Reason:** To protect the visual amenities of the area.

6. Opening hours of the proposed café shall be limited to the hours of operation of the existing retail units on site and shall be submitted to an approved in writing with the planning authority. The café shall not provide for the sale of hot food for consumption off premises without the written agreement and permission of the planning authority and shall not become a late night facility without a separate grant of planning permission.

**Reason:** In the interests of residential amenity.

7. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400

hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

8. No additional development shall take place above roof level including the incorporation of additional plant and equipment such as lift motors, air handling equipment, storage tanks or any other external plant other than those shown on the drawings which are the subject of the current approval or unless authorised by a prior grant of planning permission.

**Reason:** In the interest of visual amenities of the area.

9. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. All existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Sarah Lynch  
Planning Inspector

19<sup>th</sup> May 2020