



An
Bord
Pleanála

Inspector's Report

PL11. 246823.

Development

Retain concrete yard, toilet, tea room and raising of a section of roof to warehouse. Permission for shed with raised floor level to match height of warehouse and ancillary works at Lord Edward Street, Mountmellick, Co. Laois.

Planning Authority

Laois County Council.

Planning Authority Reg. Ref.

15/336.

Applicant(s)

Noel Delaney.

Type of Application

Retention permission and permission.

Planning Authority Decision

Grant Permission.

Appellant(s)

Ann and Eddie Harvey (3rd Party vs. Grant).

Observer(s)

None.

Date of Site Inspection

31st August 2016.

Inspector

C. Kellett.

1.0 **Site Location and Description**

- 1.1. The site is located on Lord Edward Street in Mountmellick. Lord Edward Street is a residential street to the south-east of the town with housing on either side of the street. The street comprises a mix of housing types – along the eastern boundary the houses are mainly double fronted two storey Victorian style terraced houses, and on the opposite side the houses are two storey, part gable-fronted, red bricked terraced houses. A relatively new housing estate of semi-detached houses, ‘Grange Hall’, is located to the south-east and to the rear of the site. There are two Protected Structures to the north of the street on the eastern side. The Owenass River runs c. 100m to the west of the site. This is part of the River Barrow and River Nore Special Area of Conservation (Site Code 002162).
- 1.2. The subject site is located to the rear of no.’s 6-8 Lord Edward Street. There is laneway access to the site to the north of no.8. There is a double fronted, two storey Victorian style dwelling to the front of the site which was damaged by a fire. Based on planning history, this house appears to have been a Protected Structure but is no longer listed on the Record of Protected Structures in the current County Development Plan. House numbers 5-8 form a terrace and are more modest in scale. The appellants live in no.5 Lord Edward Street which is located south-west of the subject site. The site currently comprises a large warehouse (stated as being 225sq.m, plus 91sq.m to be retained, and 6.44m high), concrete yard and an office and toilet. The warehouse has two roller shutter doors to the front, both accessing separate parts of the building – one to the permitted unit, and the other to the area where retention is being sought. The warehouse is located at the rear of the site, adjoining the boundary of no.’s 7-10 Grange Hall.
- 1.3. Appendix A includes maps and photos of the site.

2.0 **Proposed Development**

- 2.1. This is an application, as described in the statutory notices, for:
- Retention of the concrete yard, tea room and toilet,

- Retention permission to raise a section of the roof of the warehouse to match the existing, and
- Permission for a shed with raised floor level to match the height of the warehouse and ancillary works.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 9 conditions, including condition no.2 which states:

*All of the areas in the development for which a designated use has been shown on the submitted drawings shall be used for that use alone and shall not be changed to another use or subdivided without a separate grant of planning permission. **Reason:** To restrict the uses of the areas of the development to that applied for and to prevent the amalgamation of areas into other uses in the interests of amenity and the proper planning and development of the area.*

3.2. Planning Authority Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Warehouse (wholesale) is not permitted on lands zoned Residential.
- Subject site was granted permission for storage of furniture and the proposed use for the storage and maintenance of bouncy castles is considered to be in line with the warehousing nature of the original permission.
- Building is not visited by customers as it is not a point of sale.
- Satisfied that the proposal will not impact residential amenities subject to appropriate conditions.
- Design of proposed works considered acceptable.
- Parking provision is acceptable.

- Recommends that Further Information is requested with respect to surface water collection, and that a Flood Risk Assessment is submitted because the site is located in Flood Zone A in the Mountmellick Local Area Plan 2012 – 2018.
- Response is summarised in the Planner’s Report stating: the proposed soak pit can cater for a non-permeable area of 1,125sq.m in addition to capacity for future development; that surplus capacity in the soak pit will act as a safeguard from the risk of stormwater from the site or into the combined drainage network, therefore, minimising flood risk to the property as well as the neighbours; and stating that all the storm water is disposed of on-site.
- The Planner states that the response to the request for Further Information is satisfactory and recommends a grant of permission with conditions.

3.3. Other Technical Reports

The application was referred to:

- Roads Section – no objection
- Environment Section – no objection subject to conditions
- Planning Enforcement Section – warning letter issued but no further action pending planning application
- Inland Fisheries Ireland (Further Information only sent) – No objection subject to conditions

3.4. Third Party Observations

One representation was made and two submissions were made by the one third party on the original application and the response to Further Information.

The main planning points raised by the objector include:

- A business is being run from this site.
- References previous decisions of An Bord Pleanála, summarised as: The proposed development would contribute to intensification of an unauthorised

use, is not related to the enjoyment of the use of the house, unacceptable under zoning objectives, contrary to proper planning and sustainable development.

- Injure residential amenities.

4.0 Planning History

4.1. The original planning permission for the construction of a domestic storage unit was granted in 1987 (Reg. Ref. 49/87) with a condition that the structure should only be used as a warehouse and no retail use should be carried out on the site. A planning application with respect to the house to the front of the site was submitted in 2010 (Reg. Ref. 10/134) which was stated as being a Protected Structure, ref. RPS691. The Planner's Report notes that the structure had been damaged by fire. This was granted in September 2010.

4.2. There are three appeal cases associated with this site. All three cases included the house fronting on to Lord Edward Street within the redline. The subject application does not. The three appeal cases are:

- PL11. 212361: *Change of use of domestic storage shed to a commercial tyre depot.*
 - Application refused permission due to its location in an area zoned for residential, noting that car repair outlets are not acceptable under this zoning.
- PL11. 225951: *Retain a domestic store, office and raise a section of existing warehouse within the curtilage of a protected structure.*
 - A split decision was issued. Permission was granted for the retention of a domestic store to the rear of the house and permission was refused for the retention of the office and raising of section of roof on existing warehouse. The Board was not satisfied that the existing building proposed to be extended by raising of the roof was authorised, and the office to be retained and its relationship with the use of the site as an unauthorised tyre repair business would contribute to the intensification

of an unauthorised use of the site. Noted the site is zoned residential and while office use is 'open for consideration', it is considered by reason of its relationship with the tyre repair business would contravene a development objective.

- PL11. 234425: *Retention of replacement shed with raised roof level to match existing building and also to retain storage shed within the curtilage of protected structure.*
 - Application refused because under the zoning 'residential', motor repairs, workshop and industry are not normally permitted and the Board was not satisfied that the development proposed would be used for purposes ancillary to the enjoyment of the existing house, and considered the development would contribute to the intensification of an unauthorised use, or would be used for another purpose unrelated to the enjoyment of the house equally unacceptable under the zoning objective.
- There have been a number of Warning Letters issued, namely UD05-110 and UD08-128 for unauthorised use to the rear of the house.

5.0 Policy Context

The site is subject to the policies and objectives of the Laois County Development Plan 2011 – 2017, and the Mountmellick Local Area Plan 2012 – 2018.

5.1. Mountmellick Local Area Plan 2012 – 2018.

The site is zoned '*Residential 1. Established*' in the Local Area Plan (LAP) and is just within Flood Zone 'A'. There are two Protected Structures to the north of the site – the reference in earlier planning applications to a Protected Structure on the site no longer applies. RPS 691 is no longer listed on the RPS within the Laois County Development Plan.

Chapter 11 considers *Urban Design & Development Management Standards*. The section on *Small-Scale Businesses in Residential Areas* states that the scale and nature of the operations will be taken into account. The level of customers/callers will

also be taken into account. The Planning Authority will consider small scale business where:

- The use of the house for business purposes is secondary to its use as a dwelling and the floor area of the business should reflect this.
- Adequate parking should be provided.
- No loss of residential amenity to the adjoining residences in terms of general disturbance, noise, traffic etc.

The LAP states that *“any subsequent change or proposed expansion of the business will need to be reconsidered by the Planning Authority to assess whether the premises are still acceptable”*.

Chapter 12 of the LAP considers Land Use Zoning. The objective for Residential 1 zoning is *“To protect and enhance the amenity of developed residential communities”*.

Table 11 is the General Zoning Matrix. Within the Residential 1 zoning, Industry (Light), Warehouse (Wholesale), or Workshops are under the classification ‘N – Will Not Normally be Acceptable’. Under the ‘N’ classification, *“Development which is classified as not normally being acceptable in a particular zone, is one, which will not be entertained by the Local Authority except in exceptional circumstances”* and, *“The expansion of established and approved uses not conforming to land use zone objectives will be considered on their merits”*.

5.2. Natural Heritage Designations

The Owenass River is a tributary of the River Barrow and is part of the River Barrow and River Nore Special Area of Conservation (Site Code 002162). It is located c.100m to the west of the site.

6.0 The Appeal

6.1. Grounds of Appeal

One third party appeal against the decision to grant permission has been lodged by Anne and Edward Harvey, who live in no.5 Lord Edward Street, just to the south of the site. The grounds of appeal can be summarised as follows:

- There is a long history of unauthorised development and activity on this site in an area zoned residential.
- Residential amenities impacted due to traffic, noise, spray from jet washing, and inflated structures overlooking their property.

6.2. Planning Authority Response

The Planning Authority has not responded to the grounds of appeal.

6.3. Applicant's Response

The First Party response to the appeal includes:

- The current use for the storage and maintenance of bouncy castles is the same as the original planning application for 'a warehouse and storage only'.
- Neither the warehouse nor the office are points of sale, and no manufacturing takes place on the premises.
- The previous owner used the site as a commercial tyre depot, the subject of the previous refusals, and there is a discernible difference between both activities.
- Photographs submitted by the appellant with respect to overlooking were taken on the same day - the largest bouncy castle was inflated for a one-off party for the applicant's child.
- All water is disposed of onsite and is not allowed flow into neighbouring properties - the proposed soak pit will ensure this outcome.
- The site will not pose a flood risk.
- The applicant intends to live in the house and states that plans have been lodged to restore the fire damaged house.

- The response is accompanied by 4 supporting letters from neighbours.

6.4. **Observations**

None

7.0 **Assessment**

7.1. I consider the key issues in determining this appeal are as follows:

- Principle of Development
- Residential Amenities
- Appropriate Assessment

Principle of Development

The site is located in an area zoned **Residential 1** in the Mountmellick Local Area Plan 2012 – 2018. The objective for this zoning is “*To protect and enhance the amenity of developed residential communities*”. The zoning matrix table indicates that Land Uses described as Warehouse (Wholesale) or Workshops are not normally accepted unless in exceptional circumstances.

It is noted that the original 1987 permission provided for the construction of a domestic storage unit, with a condition that the structure should only be used as a warehouse and no retail use should be carried out on the site. The applicant states that the units are being used for the storage of bouncy castles, and that the pit is used for maintenance only on the bouncy castles.

Whilst I accept that there are no visiting members of the public and no point of sale, there is clearly a business operating on the premises. During my site visit, there were 5 vans parked – two vans advertising ‘Megabounce’, two ice-cream vans and one camper van.

I draw the Board’s attention to the Planning History (see section 4.2 above). Requests for a change of use from a domestic storage shed to a commercial tyre depot, retention of the raised roof and retention of an office have been refused permission by the Board on three occasions (*albeit each request was slightly*

different and related to the use of the warehouse as a tyre depot). Whilst the subject use is discernibly different to a commercial tyre depot, it is nonetheless being used for business purposes, a use that has never previously been authorised, and I note that a change of use for permission for the current activity has not been requested in this instance.

The LAP states that “*The expansion of established and approved uses not conforming to land use zone objectives will be considered on their merits*”. I am not satisfied that the current use is an approved use and accordingly cannot be considered on its merits.

The LAP states that the Planning Authority will consider *Small-Scale Businesses in Residential Areas* where “*The use of the house for business purposes is secondary to its use as a dwelling and the floor area of the business should reflect this*”. The dwelling does not form part of this planning application and is currently not fit for habitable purposes – it was damaged in a fire and has not been repaired or renovated since.

In conclusion, I am satisfied that the principle of the development in lands zoned for residential use is not acceptable in this instance.

Residential Amenities

The appellant notes that they are badly affected due to traffic and noise, spray from jet washing the bouncy castles, and overlooking.

The site is located on the Regional Road R422 which is the main road coming in from the M7 motorway to Mountmellick. The speed limit on this section of the road is 30km/hr. There are no visiting members of the public and it is not a point of sale, therefore the increased scale of traffic would be negligible along this section of the road. I am satisfied that the additional traffic as a result of the activities on the site would not cause serious injuries to residential amenities at this location.

With respect to noise, the appellant has not elaborated on the source of the noise but refers to business continuing late into the night. With respect to overlooking, the applicant has explained that the largest bouncy castle was inflated on the site only

once for his child's birthday party, and is rarely inflated or washed down due to it being too large for most domestic gardens, and therefore rarely hired out.

I am of the opinion that the additional traffic as a result of this use, the noise generated, and the limited potential for overlooking would not give rise to significant impact on amenities. In conclusion, I am satisfied that the activities on the site would not cause serious injuries to residential amenities at this location.

7.2. Appropriate Assessment

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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.

8.0 Recommendation

8.1. I recommend that planning permission should be **refused** for the reasons and considerations as set out below.

9.0 Reasons and Considerations/ Reasons

On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a site, the use of which is unauthorised for the carrying on of commercial activity, in an area zoned residential, and that the proposed development would facilitate that consolidation and intensification of this unauthorised use. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.

Ciara Kellett
Senior Planning Inspector

14th September 2016