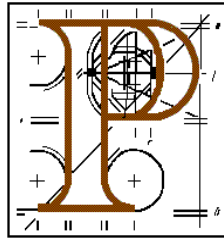


An Bord Pleanála



Inspector's Report

Development

Retention of bored well for car washing use, metal clad shed and open air car wash, and front boundary wall, and permission for timber cladding alterations to all elevations of the metal clad shed at Yellow Lane, Arklow, County Wicklow.

Planning Application

Planning Authority: Wicklow County Council

Planning Authority Register Reference: 15/1023

Applicant: Yellow Lane Business Park Ltd.

Type of Application: Permission

Planning Authority Decision: Refuse

Planning Appeal

Appellant(s): Kenneth Harris

Type of Appeal: Third Party

Observer(s): Joanne O'Toole-Byrne & Joseph O'Toole

Date of Site Inspection: 21st September, 2016

Inspector: Kevin Moore

1.0 APPLICATION DETAILS

1.1 There is a third party appeal by Kenneth Harris against a decision by Wicklow County Council to refuse permission to Yellow Lane Business Park Ltd. for the retention of a bored well for car washing use, a metal clad shed and open air car wash, and front boundary wall, and permission for timber cladding alterations to all elevations of the metal clad shed at Yellow Lane, Arklow, County Wicklow.

1.2 The proposal initially comprised:

- * the retention of a bored well for use for an existing car wash facility,
- * the retention of a metal clad shed and permission to clad it in timber to match the front elevation of the existing building,
- * the retention of the open air car wash facility, and
- * the retention of the front boundary wall.

The covering letter with the submitted application referred to the application being made to regularise outstanding matters on the site applying to enforcement proceedings and it is stated that the applicant is agreeable to a condition being inserted to any grant of permission retaining the shed and car wash for a period of five years. The floor area of the existing structure is stated to be 35m² and the development is located on a site with a stated area of 0.86 hectares. The application form states that the existing use of the land consists of a parking area.

1.3 Objections to the proposal were received from Joanne O'Toole Byrne and Joseph O'Toole. Concerns raised related to inadequacy and inaccuracy of information in the application, environmental impacts by way of waste water disposal, noise, traffic, etc., a dance studio use on the site, and advertising.

1.4 The reports received by the planning authority were as follows:

Irish Water had no objection to the application.

The Environmental Health Officer requested further information on proposals for a mains water supply point for use by staff and clarity on

sanitary facilities and requested that the well head be protected and not used as a potable water supply.

Iarnród Éireann set out details of the obligations on the developer due to proximity to an adjoining railway line and noted the potential effects of a functioning railway line on the development.

The Environmental Services Chemist requested further information on a silt trap and oil interceptor, connection to the foul sewer, provision of a drinking water supply, the protection of the well head, proposals to contain overspray, and noise rating of equipment used.

The Planner noted the planning history and zoning provisions for the site, the objection received and reports submitted. It was noted that the main building on the site was used as a dance studio at the front, with the sale of fuel/charity clothes to the rear. It was further noted that there was no record of permission for the range of uses on the site. Having regard to the site's zoning, it was considered the principle of the development was acceptable. Sightlines at the entrance to the site were regarded as insufficient, with the height of pillars restricting visibility. The metal clad shed was seen to be well assimilated into the site and the proposed timber cladding was seen to be acceptable. Unauthorised signage was also noted on the site. It was submitted that justification for use of the well had not been given and the information requested by the Environmental Health Officer was acknowledged. A request for further information was recommended.

The Senior Engineer considered the issue of consolidation of unauthorised development required to be dealt with, acknowledged the importance of restricting the well supply, and noted sightlines could be improved with the reduction in height of the pillars. The need for a footpath along the frontage and upgrading of the area between the front boundary wall and road carriageway was further cited.

- 1.5 On 27th November, 2015, the planning authority requested further information on matters relating to other uses and signage on the site, improving sightlines and unsurfaced area at the frontage, potable water supply and sanitary services, the protection of the well head, power rating of equipment and noise impact, and the provision of a footpath at the frontage. A response to the request was received by the planning authority

on 25th May, 2016. This expanded the application to include the retention of the use of part of the existing building as a dance studio. It was noted that the use of the fuel store had ceased. The response also referred to the water supply to the main building being from the bored well on the site. The response included additional drawings and support information. Revised public notices were also attached.

- 1.6 After the issuing of the further information request, Inland Fisheries Ireland requested details on drainage design detailing the treatment and final disposal of the car wash effluent to the foul sewer system.
- 1.7 Further public observations were made by Kenneth Harris, William Walker, William Kinch, and Jerry Freehill in support of the development on the site, notably with regard to the dance studio and the upgrading of the site. In addition, submissions were received from Martina Lynch, the occupier of the dance studio, and from Jacub Stachrya, the car wash facility operator.
- 1.8 The reports to the planning authority following the further information submission were as follows:

The Environmental Health Officer had no objection subject to a public mains potable water supply being provided for staff use.

The Area Engineer stated he had no comments to make on the further information.

The Environment Section's Chemist sought further details from the applicant.

The Planner noted the responses to the further information requested and the observations and reports made. The principle of the dance studio, the removal of signage and frontage improvements were viewed as acceptable. Clarification of further information was recommended on advertising and connection to water and sewer services. It was recommended that information requested by the Environment Section be sought also. In a note at the end of the report the Senior Engineer stated that he did not consider the application could be expanded using significant further information, considered it would involve a material alteration such that the application was no longer what was originally advertised, and submitted that a refusal should be drawn up.

In a second report, the Planner, in response to the note of the Senior Engineer, recommended a refusal of permission for four reasons.

- 1.9 On 20th June, 2016, Wicklow County Council decided to refuse permission for the development for four reasons relating to the expansion of the application to include the dance studio not being able to be considered due to it being a fundamental change to the original application, the lack of provision of a potable water supply and sanitary services, the substandard nature of the development in the context of waste water treatment and disposal, and consolidation of unauthorised development arising from existing advertising graffiti.

2.0 SITE DETAILS

2.1 Site Inspection

I inspected the appeal site on 21st September, 2016.

2.2 Site Location and Description

The site of the proposed development is located at the south end of the town of Arklow in County Wicklow. There is an existing commercial building on the site in use as a dance studio to the front with vacant units behind, a metal-clad structure used for car valeting, and an open air car wash facility adjoining the latter. The dance studio and car wash were in use at the time of my inspection. The front boundary of the site comprises a low block wall with higher concrete pillars. A house is located to the east of the front section of the site, while the Dublin-Rosslare railway line flanks the remainder of this boundary. There is a building suppliers' commercial unit to the west of the site and warehouse-type structures. The site fronts onto Yellow Lane off Regional Road No. R772, a local road serving a mix of uses. The frontage is at the junction of Yellow Lane with the Liam Mellows housing estate development opposite.

2.3 Arklow Town and Environs Development Plan 2011-2017

Zoning

The site is zoned 'NS – Neighbourhood Shops and Services' with the objective to provide for retail and non-retail services such as grocery

shops, news agents, hairdressers, dry cleaners etc. and local professional services.

2.4 Planning History

P.A. Ref. P090-2007

Permission was refused for a further education facility and childcare centre due to entrance design and proximity of the building to main sewer lines

P.A. Ref. P100-2005

Permission was refused for a development consisting of the demolition of all existing structures on site and construction of a mixed use development including a three-storey commercial block comprising 1613 square metres office floor area, creche facility, three no. four-storey residential blocks comprising 84 apartments all over a basement car park containing 189 spaces, surface parking for twelve spaces, connection to existing services and a vehicular entrance from Yellow Lane and all associated site works above and below ground level

P.A. Ref. P119-2004

Permission was refused for a development consisting of the demolition of all existing structures on site and construction of a mixed use development including 74 no. residential units in two no. three and four-storey residential blocks with balconies; retail/commercial; car parking for 83 cars with vehicular access from Yellow Lane and all other associated site development works

ABP Ref. PL 33.230439

Permission was granted by the Board in 2009 for the demolition of the existing building on the site and the erection of a further education building on behalf of Wicklow VEC, a family entertainment centre, the installation of a temporary sewage treatment plant, car parking and connection to existing services.

3.0 THIRD PARTY APPEAL

3.1 The appellant resides at No. 29 Liam Mellows Avenue, Arklow and contends the applicant was not given the opportunity to address the reasons for refusal. There is a further concern that the site will return to being derelict and antisocial behaviour will result. The existing uses on the site are considered to be appropriate. The grounds of the appeal may be summarised as follows:

Reason No. 1

- It is noted the planning authority requested details on the dance studio. It is queried why the planning authority did not give the applicant an opportunity to address noise and traffic concerns. The appellant contends traffic and noise are not significant issues.

Reason No. 2

- Given the applicant informed the planning authority that the building requiring potable water is connected to the mains, that it is turned off, and that they will request it to be turned back on, it is considered the reason for refusal on water supply is unfair.
- On sanitary services, the applicant addressed the issue with drawings showing services within the existing building.
- On the well head, the applicant submitted written confirmation and showed on a drawing that the well head was built in accordance with requirements.

Reason No. 3

- At no time in the application did the planning authority ask for evidence on a trade licence for waste water or a connection to the foul sewer. The building has been connected to the public sewer since it was built in 1978 and before licences existed. The applicant would have addressed this if clarification had been sought.
- The connection of the car wash via an interceptor drain to the storm water sewer shown in drawings was an error and could have been clarified.

- Nowhere in the application did the planning authority request information on the oil interceptor. This information could have been provided.
- Nowhere in the further information did the planning authority request details on containment of overspill and overspray.

Reason No. 4

- The applicant clearly states that they will remove graffiti and this could be conditioned.

The appellant notes that the site is zoned for neighbourhood services and considers a dance studio and car wash is appropriate on a neighbourhood services site.

4.0 APPLICANT'S RESPONSE TO APPEAL

- 4.1 The applicant's response to the third party appeal constituted a submission that sought to address the Council's planning decision. It included a noise monitoring report, traffic impact assessment, a copy of a water connection application, confirmation of the well head in accordance with Advice Note 14 of the EPA, a discharge to sewer application to Irish Water, an Arklow Jet and Drain Maintenance agreement and associated drawings. The response states that the applicant takes the opportunity to address the issues raised in the Planner's report of 17/06/16 to provide answers and solutions to the queries raised in that report relating to clarification. It did not directly address the appeal submission.

5.0 SUBMISSIONS FROM JOANNE O'TOOLE BYRNE & JOSEPH O'TOOLE

- 5.1 The Board invited a submission from the objectors Joanne O'Toole Byrne and Joseph O'Toole who made a submission to the planning authority prior to the making of the planning authority's decision. The substance of the submission in response to the reasons for refusal may be summarised as follows:

Reason No. 1

- Traffic is an issue due to the nature of the enterprises on the site. It is in the interest of proper planning and development that traffic considerations be investigated and this can only be done via a new application.

Reason No. 2

- The applicant made no attempt to have the water turned on again and the issue was not clarified when the opportunity was given.
- The planning authority deemed the information on sanitary services insufficient and it was their right to do so.
- It is not surprising the planning authority deemed the information on the well to be insufficient as the unregulated well was drilled through highly contaminated soils.

Reason no. 3

- While built in the 1970s, at no point did the building have a car wash. As it is a new and unauthorised development, it was within the planning authority's remit to request details on a trade discharge licence. These licences are essential to ensure contaminated substances are regulated.
- It is held that an interceptor does not exist and, if it does, no planning was sought for it. The applicant was well aware of the issues arising.
- The need for screens, filters, etc. are mandatory and should have been abided by the applicant.

Reason No. 4

- The planning authority is within its rights to claim signage is without permission as it formed part of an unauthorised development.
- It could be argued that neither a dance studio or car wash fits within the definition of "Neighbourhood Shops and Services". These

enterprises were entered into without the benefit of permission or consideration of proper planning and development of the area.

In concluding remarks, it is submitted that it could be held that it is the owner's responsibility to maintain the site. Finally, the observers submit that it is striking that the landowner, the dance studio owner and the car wash owner did not appeal the planning authority's decision.

- 5.2 In a response to the applicant's submission to the third party appeal, the observers reiterated noise concerns, considered the traffic impact assessment was inadequate, and further queried details relating to public water supply, the development and use of the well, the sewer licence application, and the provision of an interceptor.

6.0 ASSESSMENT

6.1 Introduction

6.1.1 I will consider the issues relating to this appeal under the following:

- Expansion of the application,
- The dance studio,
- The provision of sanitary services,
- Waste water and the car wash facility,
- Advertising
- The vehicular entrance, and
- The bored well

6.2 Expansion of the Application

6.2.1 The nature and extent of the proposed development on this site that is subject to an application for retention is clear. The proposal comprises the retention of the dance studio use within the existing commercial building, a car wash facility, a bored well used to serve the car wash and a front

boundary wall. There is also a proposal to provide timber cladding alterations to the shed associated with the car wash. The planning authority sought further information on the range of uses on the site and other details. The response to the further information request included new public notices which clearly described the nature and extent of the development proposed. There can be no reasonable conclusion drawn that the nature and extent of the development seeking permission was expanded to a significant degree such that the planning authority could not make an informed decision on the proposal. This is especially so where the planning authority had invited the applicant to provide such information by way of a further information request.

6.2.2 Substantial details on all facets of the application were provided throughout the application process with the planning authority to allow the authority to make an informed decision. The applicant has provided even further detail to the Board in response to the appeal to clarify matters more. I am satisfied that there is sufficient information on this application to make an informed recommendation to the Board. Finally, I consider it reasonable to conclude that the applicant has submitted plans, particulars and public notices in accordance with the requirements of Articles 18, 19, 22 and 23 of the Planning and Development Regulations.

6.3 The Dance Studio

6.3.1 I note the first reason for refusal by the planning authority relates to the expansion of the application to include the dance studio being viewed as a fundamental change to the original application. As noted above, the planning authority invited the applicant to bring in this use within the confines of the application. This the applicant did and provided the range of information that was requested. I further note in response to the appeal that the applicant has produced traffic and noise assessments and boundary fence proposals.

6.3.2 The existing dance use, within an existing commercial building, in an area where there is a wide mix of uses, where there are significant separation distances between the structure in which it is located and any sensitive receptors, and which is on lands that are zoned for neighbourhood services, is considered an acceptable use. It is compatible with the site's

zoning provisions. It has significant curtilage to accommodate traffic that would be generated. I would have no significant concerns about the volume of traffic generated by this use at this location. I note the conclusions of the traffic assessment submitted by the applicant in response to the appeal and I concur with these conclusions. With regard to potential noise impact, I again note the separation between this building and residential property in the vicinity. I further note the existing and proposed screening on the site, the existence of a busy road in this location, and the noise monitoring report submitted in response to the appeal. I am satisfied to conclude that the proposed development would not result in any significant adverse impact on the amenities of residents in the area.

- 6.3.3 In conclusion, the details provided in the application are sufficient to make an informed decision on the dance studio use and it is considered that the dance studio is an appropriate use within the established commercial building. It is further considered that it will not have significant adverse environmental impacts at this location.

6.4 The Provision of Sanitary Services

- 6.4.1 I first note that the applicant responded to the planning authority's request for further information, giving a substantial response to the queries raised. Further to this, it appears that the planning authority then foresaw the need for extra information and it was, following this, that the decision to refuse permission was taken. It is my submission that the applicant responded to issues as they were presented to it by the planning authority and it is evident by the response to the appeal that the applicant was in a position to explain any further concerns the planning authority had with the proposal.
- 6.4.2 It is my submission that the applicant has, through the application process with the planning authority and the response to the appeal, provided clear information as to how the developments on this site have a satisfactory water supply to serve the needs of staff, has explained how adequate sanitary services are now available on the site, and has demonstrated how the well head is protected on this site. I cannot anticipate that, with the provision of these facilities, the proposed development could now be

seen as being prejudicial to public health. It is acknowledged that the Environmental Health Officer, following receipt of the applicant's further information, had no objection subject to a potable water supply being provided for staff. I acknowledge from the applicant's response to the appeal that mains water has been turned on at the existing building following attendance by local authority and Irish Water representatives at the site. I further note that sanitary services are provided within the existing building to meet the needs of staff at this site and that the well head is provided with protection as detailed in the response. This well serves the needs of the car wash and staff are provided with a potable supply by way of public mains.

6.4.3 Having regard to the above, I consider that there are no environmental or planning concerns arising from the sanitary services provisions on this site and conclude that the second reason for refusal by the planning authority is not merited.

6.5 Waste Water and the Car Wash Facility

6.5.1 I note the planning authority's request for further information on matters pertaining to the car wash. These related to the noise rating of the power washing equipment and other equipment, the distance from the nearest dwelling to the north-east, and information to show how the noise impact on the adjacent dwelling is mitigated. The applicant responded to these matters. I note the Water and Environmental Services Chemist reported after receipt of this information. This report constituted a list of wholly new information to be requested and did not constitute any clarification of the further information that was requested. The further information request had been substantially responded to by the applicant. I further note that, notwithstanding this detailed response to address the concerns raised, the applicant, in response to the appeal, has proceeded to address the matters subsequently raised that culminated in the attachment of the third reason for refusal by the planning authority.

6.5.2 Having regard to the above, I first consider that the attachment of reason no. 2 in the planning authority's decision was not appropriate based upon how this application was being considered by the planning authority at the time. The matters raised in this reason for refusal were not raised as

matters of concern throughout the application process with the planning authority. There could not have been any understanding by the applicant that these matters needed to be addressed as it was not informed of any such concerns. Secondly, I note that the applicant, in response to the appeal, has proceeded to address the issues raised. Clarity has been provided on licensing, the interceptor, overspill provisions and maintenance arrangements.

- 6.5.3 In conclusion, it may reasonably be concluded that environmental concerns relating to this development have been addressed by the applicant. With the provision of mitigation measures as proposed, the car wash facility is not considered to constitute any significant adverse environmental or planning concern. Reason no. 3 of the planning authority's decision is not merited.

6.6 Advertising

- 6.6.1 The planning authority, in its fourth reason for refusal of the proposal, referred to the consolidation of unauthorised development with regard to existing advertising graffiti on the boundary wall and front elevation. I first note that all signage and graffiti has been removed from walls at this location. Furthermore, I consider that a reasonable response to providing adequate signage to advertise the uses on this site could be controlled by way of a condition in any grant of planning permission. This would permit the planning authority to regulate the nature and extent of advertising considered appropriate at this location. I do not foresee such provisions constituting any significant environmental impact for the local community.

6.7 The Vehicular Entrance

- 6.7.1 I have referred to the accommodation of associated vehicular traffic on the site and the volume of traffic generated in the first part of this assessment. It is repeated that the proposed development would not be likely to cause any significant traffic concerns. With regard to the vehicular access, I note the scale of the piers associated with the new front boundary wall and the concerns of the planning authority in relation to available sightlines. The applicant provided sightline details, proposals to reduce existing pillars

and provisions to surface the entrance. It is noted that the Area Engineer had no further comments to make on this issue. I consider that the proposals relating to the entrance and front boundary to be satisfactory and conclude that the proposal is not likely to raise significant traffic concerns.

6.8 The Bored Well

- 6.8.1 I first note from the initial application to the planning authority that the applicant submits that the existing bored well on the site has been in existence for many years and that the application is being made because the planning authority deemed its refurbishment constituted a fresh act of development resulting in the application for retention. I acknowledge that the planning authority, the Health Service Executive and Irish Water do not refute this position. It can reasonably be accepted that the well is established for some time and that the retention relates to the more recent works that have been done to it. It is further acknowledged that the planning authority, by the conclusion of its considerations on the application, was satisfied that the matters pertaining to the refurbishment of the well had been adequately addressed. It is now fully understood that the well is being used for the car wash facility and it is not a potable supply.
- 6.8.2 While the bored well on the site is used exclusively for the car wash facility, an alternative potable supply is provided for staff within the existing building on the site. It is noted that there are no objections in principle from the Water and Environment Services section of the planning authority, from Irish Water and from the Health Service Executive to the well and the use to which it is being put. While little has been provided on the well in terms of the quantity and quality of supply, it is evident that there are no express environmental concerns about the continued use of this well supply by the car wash facility. It is, thus, concluded that the arrangements to service the car wash facility by the well is regarded as satisfactory, that this supply is seen to pose no threat to potable water supplies or to any source protection zones, and that no significant environmental concerns are seen to arise by this water supply source. Given that the well has been established for some time and the relevant authorities are satisfied with its

usage as proposed, it is not considered necessary to seek further details, in the form of a hydrological impact assessment, that would otherwise arise if the well was a new commercial supply source.

6.9 Appropriate Assessment

6.9.1 Having regard to the nature and scale of the proposed development, inclusive of the low rate of abstraction relating to the well associated with the car wash facility, 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.

6.10 Conclusion

6.10.1 Overall, it may reasonably be concluded that there is adequate information included in this application to allow for an informed decision to be made. It is considered that the range of uses are compatible with the zoning provisions at this site and that the environmental and planning concerns arising have been addressed and any further concerns will be addressed by the mitigation measures proposed. I further consider that it would be reasonable to issue a temporary permission for the car wash facility for a period of five years from the date of the Board's order in the event of a grant of permission. This would allow for monitoring of the use at this location and permit the planning authority the opportunity to consider the planning and environmental impacts over a reasonable period. It is noted that the applicant is agreeable to a condition being inserted to any grant of permission retaining the shed and car wash for this period.

6.10.2 Finally, I note the Board's previous decision on this site for a development of a more substantial scale under Appeal Ref. PL. 33.230439. Having regard to the comparatively small scale of the development now proposed, I consider that the services arrangements to support this development can be adequately provided for without significant adverse environmental impact.

7.0 RECOMMENDATION

I recommend that permission is granted in accordance with the following:

Reasons and Considerations

Having regard to the siting of the development within established commercial lands, the range of uses proposed and the provision of satisfactory sanitary services to accommodate these uses, and to the prevailing pattern of development in the vicinity of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area, would not endanger public safety by reason of traffic hazard, and would otherwise be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further drawings and details submitted to the planning authority on the 25th May, 2016 and to the Board on 29th July, 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions required 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. The car wash, associated shed and use of the bored well associated with the car wash is hereby permitted for a period of five years from the date of this order unless, prior to the end of that period, permission for their retention has been obtained.

Reason: To allow for a review of this part of the development having regard to the circumstances then pertaining.

3. Within three month of the date of this order, the following shall be submitted to, and agreed in writing with, the planning authority:
 - (a) Details for the lowering of the concrete pillars along the front boundary wall;
 - (b) The nature and extent of the surfacing of the vehicular entrance and the area between the front boundary wall and the road carriageway;
 - (c) The nature and extent of the proposed boundary fence to be provided along the flank boundary to the north-east of the site; and
 - (d) Details of the proposed concrete kerbing along the flank of the car wash bay area, the proposed oil interceptor and associated maintenance programme.

The works associated with the above shall be completed within six month of the date of this order.

Reason: In the interest of orderly development, traffic safety and pollution prevention.

4. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be erected or displayed on the building or within the site unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

5. The disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

6. 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. The contribution shall be paid within one month of the date of this Order, 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Kevin Moore

Senior Planning Inspector

October, 2016.