



An  
Bord  
Pleanála

## Inspector's Report PL09.247522

---

<b>Development</b>	Change of use of portion of shop premises at ground floor level from retail to the preparation, storage and cooking of hot food for consumption off premises.
<b>Location</b>	McCann's Newsagents, Calverstown, Kilcullen, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	16/515
<b>Applicant(s)</b>	John McCann
<b>Type of Application</b>	Retention of Permission
<b>Planning Authority Decision</b>	Grant of Permission
<b>Type of Appeal</b>	3 <sup>rd</sup> V Grant
<b>Appellant(s)</b>	Michael Lynch
<b>Observer(s)</b>	Eamon Rooney
<b>Date of Site Inspection</b>	18 <sup>th</sup> January 2017
<b>Inspector</b>	Susan McHugh

## **1.0 Site Location and Description**

- 1.1. The subject site is located at Calverstown Crossroads, County Kildare, which is a small settlement some 6.5 kilometres southwest of Kilcullen, in an otherwise generally rural area. It comprises a part two-storey / part 1.5 storey property in a neighbourhood centre terrace. There is a dedicated surface car park to the rear of the premises.
- 1.2. The premises is occupied by McCann's Newsagent, a convenience shop with a ground floor area of a stated 174sqm which contains 2 hot food counters. These are located to the rear of the premises, to the side behind the checkout area.
- 1.3. On inspection of the site the two hot food counters are located perpendicular to each other, one advertising various hot food items such as hot dogs and burgers, the other advertising a full pizza menu. A stand of leaflets located inside the door give full details / menus for 'Florences Take Away'.

## **2.0 Proposed Development**

- 2.1. The proposed development is for the retention of the change of use of a portion of the existing shop premises (44.2sqm) at ground level from retailing of goods to the preparation, storage and cooking of hot food for consumption off the premises, (mainly consisting of fish, chicken, burgers and chips).

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By Order dated 11<sup>th</sup> October 2016, Kildare County Council made a decision to grant permission for retention subject to 20 no. conditions. Those of note referred to ancillary use, advertising, opening hours, requirement to erect new outdoor bin within 2 weeks, surface water and foul waste, grease traps, noise control and noise study to be submitted within 3 months and waste collection.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The basis for the Planning Authority decision had regard to

- the nature and design of the proposed development
- the location of the site within the Village of Calverstown and the character of adjoining developments
- the retention of the change of use of part of the existing shop to a take-away would not seriously injure the amenities of the area or of property in the vicinity and
- would be in accordance with the proper planning and sustainable development of the area.

#### 3.2.2. Further Information Request

The five items of further information request were in relation to hours of operation of existing shop and takeaway, bin storage facilities, location of grease traps, detail of ventilation and extraction and proposed signage for the take away.

#### 3.2.3. Other Technical Reports

CFO: No objection subject to conditions.  
Environment: No objection subject to conditions.  
Area Engineer: No objection subject to conditions.  
Compliance: Noted UD in relation to the site.  
Transportation: No report available at the time of writing.  
Water Services: No objections subject to conditions.

### 3.3. Third Party Observations

Third party submission by Michael Lynch, The Forge, Calverstown, Co. Kildare objects to the retention of the existing takeaway in the village on the grounds of adequacy of development description, detrimental effect on adjacent dwelling house, car parking, opening hours, noise, odours, litter, vermin and general disturbance.

### 4.0 Planning History

- **Enforcement:** UD 6639 regarding unauthorised car parking, file closed.
- **P.A. Ref. 09/1389 2009** Grant of permission for (a) retention of existing car parking as constructed incorporating 17 no. car parking spaces of which 8 no. spaces are part of the approved planning permission register reference no. 04/1152, (b) retention of existing entrance gate to car park.
- **P.A. Ref. 07/206 2007** Grant of permission for change of use from office no. 1 to shop at first floor level which is a modification of existing use granted under planning permission reg. ref. no. 04/1152. A condition of this permission prohibited the sale of hot food for consumption off the premises (which was not a condition of the parent 2004 permission).
- **P.A. Ref. 04/1152 2004** Grant of permission for (a) proposed two storey and a half commercial unit, consisting of shop and store on ground floor and 2 no. office units at first floor, (b) All associated site development works to include car park, services etc.
- **P.A. Reg. Ref. ED00555: ABP Ref. RL 09.RL3402** : April 2016 decision, that the change of use of part of the existing retail premises for the sale of hot food for consumption off the premises was development and was not exempted development.

## 5.0 Policy Context

### 5.1. Development Plan

**The Kildare County Development Plan 2011-2017** is the operative development plan for the area. Chapter 17 sets out village plans for a number of rural settlements including Calverstown. The plan assigns a role of rural settlement to the village.

5.2. No specific zoning applies to the site, however it is identified as being located within the settlement core. It is also within an area indicated where development proposals will be subject to site specific flood risk assessment 'appropriate to the type and scale of the development being proposed'.

### 5.3. Retail Policy - Chapter 9.

At 9.6.1 Corner Shops and Smaller Villages / Settlements. It is the policy of the Council:

'R36: To retain, encourage and facilitate the retail role of Corner Shops and Small Villages around the County.

R37: To encourage and facilitate preservation of retail and other services within established rural centres.'

5.4. **Development Management Standards - Chapter 19**, Section 19.10.6 Fast Food Outlets /Takeaways /Amusement Arcades. It is the policy of the Council 'to prevent the excessive concentration of these uses and to ensure that the intensity of any proposed use is in keeping with both the scale and pattern of development in the area. Assessment of these developments will have regard to noise at boundaries and other effects of the development on the amenity of nearby residents in terms of general disturbance, hours of operation, car parking, litter and fumes and the need to safeguard the vitality and viability of shopping areas in the town centre and to maintain a suitable mix of retail uses. The planning authority will control the opening hours of takeaways.'

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The Third Party Appeal is submitted by Mr. Michael Lynch. The grounds of the appeal are summarised as follows;

- The lack of a proper description of the proposed development (no reference to pizzeria).
- The severe impact on the established residential amenity arising from odour, noise, litter (vermin) and general disturbance.
- The impact of litter from the premises on the amenity of the village and potentially on the open stream opposite which could lead to a flood risk.
- The description of car parking spaces on private property (which has the benefit of a live permission) as being available to serve the takeaway.
- The lack of information to demonstrate that sufficient car parking existing for the complex in its entirety including the takeaway facility.
- The lack of information about how odours will be mitigated i.e. vents.
- The reality that no-one will use the car park spaces at the rear of the facility and will park on the narrow street.
- The established precedent for refusing similar type take-away facilities in shops elsewhere in the County.
- The lack of information about opening hours.
- The location beside a public house which attracts patrons at late hours.

### 6.2. Applicant Response

Submission by Vincent JP Farry and Co LTD Planning and Development Consultants on behalf of the applicant Mr. John McCann is summarised as follows:

- Principle of development is acceptable at this location.

- No objections were raised by the Environmental Health Officer.
- There is sufficient parking behind the building, and there is a strong likelihood of multi-purpose trips to the premises.
- The appellant has greatly overstated the effect of cooking odours on the amenities of the adjacent house, which is located approximately 40m from the extraction point and given the prevailing wind pattern.
- The issue of noise- related concerns should not be overstated given the proximity of the subject site to other commercial uses, particularly a public house.
- In relation to litter the applicant states that they have provided sufficient waste storage facilities for their premises and will install a bin outside the shop.
- Notwithstanding the concerns as regards flooding as a result of litter blocking a nearby stream there is no evidence that any such blockage has ever taken place.
- The existing shop and hot food counter cater for all sections of the local population and for passers-by, and is in practical terms a focus point for the community in Calverstown.

### 6.3. **Observation**

A submission was made on behalf of the residents of the Village of Calverstown and surrounding village areas and can be summarised as follows;

- Village shop is an integral part of the village and provides an essential service.
- The change of use is well supported within the Calverstown area and attach a village petition in support of the change of use.

### 6.4. **Planning Authority Response**

- 6.4.1. The Planning Authority had no further comments and referred to all reports on file.

## 7.0 **Assessment**

7.1. I wish to examine this appeal under the following headings;

- Principle of Development
- Description of Development
- Impact on Adjoining Amenities
- Parking
- Flooding
- Appropriate Assessment

### 7.2. **Principle of Development**

As regards the principle of development the appeal premises is located centrally within the village core of Calverstown. There is currently no takeaway facility within the village. The application includes a petition with approx. 290 signatures in support of the development. As noted by the third party they have a live planning permission for shops and café (Reg. Ref. 05/2397 which was extended by Reg. Ref 12/124 to March 2017). This permission has not been implemented to date, so the issue of proliferation of such uses does not therefore arise. The appeal premises is currently operating as a takeaway, and I consider that the provision of this use within an existing newsagents, a viable and sustainable use which contributes to the vitality of the village.

### 7.3. **Description of Development**

I consider the public notices adequately describe the nature of the existing use, particularly given that this is a retention permission and the level of signatures on the submitted petition in support of the development.

### 7.4. **Impact on Adjoining Amenities**



In considering the characteristics of the impact of the use to be retained, I consider that having regard to the scale of the use, with a total floor area of 44.2sqm, which is ancillary to the principal use of the premises as an established newsagent, the potential for negative impact on the amenity of the first floor offices and adjacent dwellings or the amenities of the area is limited.

7.5. I consider that concerns and issues raised in relation to noise and disturbance, odour and vermin can all be appropriately mitigated by good management and the implementation of appropriate noise and abatement measures.

7.6. As regards hours of operation I consider that the hours of opening of the Take Away Mon – Fri from 8am to 11pm, and Sat, Sun and Bank Holidays from 9am to 11pm to be reasonable in the interest of protecting the amenities of the area.

7.7. On the issue of refuse storage, I am satisfied that the existing waste management storage facilities located to the rear of the existing premises are sufficient, in addition to the provision of an additional free standing litter bin on the pavement to the front of the shop. I note that matters of compliance and enforcement are issues for the Local Authority, and any concerns arising in relation to the implementation of the governing permission in accordance with the detailed conditions should be investigated and addressed accordingly.

#### 7.8. **Car Parking**

As regards the issues of parking the scale of the development will not give rise to significant additional vehicular traffic. There is ample parking located to the rear. The area opposite the shop referred to by the Appellant as being located within his ownership is essentially an extension of the road itself and appears to function as an informal pull in parking area. On inspection of the site I witnessed customers walking to the shop and either parking directly outside or across the road. There was sufficient space for cars to manoeuvre without in my opinion giving rise to a traffic hazard.

#### 7.9. **Flood Risk**

Having regard to the nature of the application the issue of flood risk assessment is not relevant to the current appeal.

#### **7.10. Appropriate Assessment**

As regards the issue of Appropriate Assessment, having regard to the nature and scale of the development to be retained, and nature of the receiving environment, and proximity 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 project on a European site.

### **8.0 Recommendation**

- 8.1. I recommend that the decision of Kildare County Council be upheld and permission for retention granted for the reasons and considerations set out below and subject to the conditions attached.

### **9.0 Reasons and Considerations**

Having regard to the central location of the site within the village of Calverstown and to the scale of the development to be retained, it is considered that subject to compliance with the following conditions, the development is in accordance with the development plan objectives for the area, would not significantly detract from the amenities and character of the area and would therefore be in accordance with the proper planning and sustainable development to the area.

### **10.0 Conditions**

1. The development shall be retained and completed in accordance with the plans and particulars lodged except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. This permission authorises a change of use of a portion of a retail shop unit to take-away. The take-away element shall remain ancillary to the use of the unit as a retail unit at all times and shall not become the predominant feature of the unit.

**Reason:** In the interest of clarity.

3. The noise level shall not exceed 55 dB(A) rated sound level as measured at the nearest dwelling. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority within three months of this decision.

**Reason:** To protect the residential amenities of property in the vicinity

4. No additional signage advertising structure/advertisements or other projecting elements including flagpoles shall be erected within the site unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

5. The hours of operation shall be between 08.00 hours and 23.00 hours Monday to Friday and between 09.00 hours and 23.00 hours on Saturday, Sunday and Bank Holidays.

**Reason:** In the interest of the residential amenities of property in the vicinity.

6. Water supply and drainage arrangements, including 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.

7. A new free standing bin as detailed in the application shall be erected to the front of the shop within 3 months of this permission and shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and the amenities of the area.

8. The developer shall control odour emissions from the premises in accordance with measures (including extract duct details) which shall be submitted to, an agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of public health and to protect the amenities of the area.

---

Susan McHugh

Senior Planning Inspector

27<sup>th</sup> January 2017