



An
Bord
Pleanála

Inspector's Report PL.09.248492

Development	Extension and reconfiguration to shop and first floor residential unit, signage, access and site works.
Location	Moyglare Village Shop, Moyglare Road, Maynooth, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	16/977
Applicant(s)	Justin and Grainne Dunne
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party V Grant
Appellant(s)	Frank and Mary Murtagh.
Observer(s)	<ol style="list-style-type: none">1. Keith McCrory2. Pat Curran3. Pat O'Brien4. Mary Richardson5. Gerry King

6. Ria Collery Walsh

7. Patrick Holly

Date of Site Inspection

3rd August 2017

Inspector

Susan McHugh

1.0 Site Location and Description

- 1.1. The appeal site is located within the built-up area of Maynooth approx. 1km north of the town centre. The Moyglare Nursing Home is located approx. 100m to the north on the eastern side of the Moyglare Road and the GAA Club is located approx. 150m to the south.
- 1.2. The site has an area of 0.0521ha. It is located on a corner site at the entrance to an established residential estate known as Moyglare Village which is accessed off the Moyglare Road. The estate is characterised by two storey semi-detached houses finished in brick at ground floor and plaster at first floor.
- 1.3. The site consists of semi-detached property with a vacant shop at ground floor and residential apartment at first floor.
- 1.4. The existing shop unit has a stated floor area of 68sqm. The front elevation displays signage associated with the vacant shop 'The Village Store' and a number of directional light fittings over the sign. The vacant shop extends along the side boundary to the rear consisting of a container type structure, which is visible from the adjoining semi-detached house, No. 124 Moyglare Village.
- 1.5. The existing first floor apartment has a stated area of 75.5sq.m. and is accessed via a separate front door and stairs at ground level next to the shop entrance. It comprises 2 bedrooms to the front with toilet/shower and kitchen/living area to the rear. The apartment also contains an external balcony to the rear which is accessed via sliding doors from the kitchen living area.
- 1.6. To the front the site there is a hard-standing area which is open to the road on one side and enclosed by a low front boundary wall in front of the shop/house.
- 1.7. The site is bounded to the eastern side boundary by a low concrete wall stepping up to a 2m high wall adjoining the existing area of open space at the entrance to the estate. Access to the side and rear garden is via 2m high double steel gates and is screened from the front by a 2m high wall contiguous with the front elevation of the house.
- 1.8. The site is bounded to the rear by mature planting and trees and a 2m high wall. The gable of the adjoining and appellants' house to the rear /north, No1. Moyglare Abbey, is set off the rear boundary of the appeal site by approx. 1m.

2.0 Proposed Development

2.1. Permission is sought for the following;

Proposed Shop - Extension to the side of the existing ground floor shop of 26sqm. with new glazed shop entrance and signage to the front and side giving a total floor area of 94sqm.

Proposed Residential Unit - Extension to existing first floor residential unit of 57sqm. giving a total floor area of 132.5sq.m. At ground floor it is proposed to provide a new entrance to the side with new stairs and storage area of 10 sq.m. At first floor it is proposed to relocate the existing kitchen and dining area to the front and provide a new living area with first floor window to front and side. To the side it is proposed to provide a new sitting room and toilet, each with a window to the side gable, and to the rear it is proposed to provide two bedrooms with dormer windows.

Private rear garden - To be located to the rear along the western boundary with new 2m high screen wall.

Car Parking - Revised car parking layout for 7 cars. Three no. car parking spaces are designated for the residential unit and are located in the rear garden. Four no. car parking spaces are proposed for the shop unit and are located to the front of the shop.

It is proposed to connect the proposed development to the public mains and public sewer.

2.1.1. Following a request for further information, a revised site layout plan was submitted indicating a revised rear garden layout, access for delivery vans and turning area, two car parking spaces and private garden area to the rear along the northern boundary with bin storage area along the western boundary.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted permission subject to 16 conditions. Of relevance to this appeal include the following conditions;

Condition No. 5 – external lighting to be agreed with the planning authority.

Condition No. 6 – opening hours 8am-9pm Mon Fri, 9am -9pm Sat, Sun and bank holidays.

Condition No. 7– no deliveries outside 9am-5pm.

Condition No. 8 – no fried foods shall be cooked within the premises at any time.

Condition No. 9 – car parking in accordance with Kildare County Development Plan standards.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports (7/11/2016 and 20/04/2017)**. Basis for the Planning Authority decision includes:

- Consideration of issues raised by observer (see section 3.4 below) regarding hours of operation, nature of goods to be sold, boundary treatment, lighting, air conditioners and other possible nuisances to neighbours. Further information sought to address these matters.
- Further information, accompanied by nine letters of support from people living in the vicinity.

3.2.2. **Other Technical Reports**

Transportation – No objection subject to conditions.

Water Services – No objection subject to conditions.

Environment Section – No objection subject to requirements in relation to water and waste.

Environmental Health Officer – No objections subject to requirements in relation to ventilation.

Fire Service – No objections subject to requirements in relation to obtaining a Fire Safety Certificate.

3.3. **Prescribed Bodies**

Irish Water – No objections

3.4. Third Party Observations

A submission was lodged by Frank and Mary Murtagh (the appellants) and included the following;

- Query the opening and closing hours of the new shop.
- Question if there will be food (deli) and alcohol sold.
- Request existing trees along their boundary are retained so as to protect their privacy, block out noise and dim any lighting.
- Request lighting in the back garden should be motion censored only and seek clarification on whether parking is for tenants use only.
- Air conditioners or fans should be placed on the outside 'end gable' to reduce noise and nuisance.
- Strongly object to any deep-fat frying food or a commercial extract fan.

4.0 Planning History

PA Reg. Ref. 16/977, ABP ref. LV09.LV3336 - Application for leave to appeal by Patrick Holly, 5 Moyglare Abbey, Maynooth declared invalid 15th May 20017.

PA Reg. Ref. 02/1302 - Permission refused January 2003 for the erection of a two-storey house adjoining the side of the shop. The reasons for refusal related to the material contravention of the terms of a previous planning permission 91/1127 which designated part of the subject site as open space and that it would constitute overdevelopment of the site.

PA Reg. Ref. 91/1127 - Permission granted for a shop. Condition No. 3 disallowed the sale of hot food for consumption off the premises and Condition No. 14 disallowed use as a take-away.

5.0 Policy Context

5.1. Development Plan

Kildare County Development Plan 2017-2023

Chapter 19 – Development Management Standards

Maynooth Local Area Plan 2013-2019

The subject site is zoned 'B' Existing Residential, the zoning objective for which is; *'To protect and improve existing residential amenity; to provide appropriate infill residential development and to provide for new and improved ancillary services.'*

Table 17: Land Use Zoning Matrix; Residential development is permitted.

Convenience shops are open for consideration. Takeaways are not permitted in existing residential areas.

5.2. Natural Heritage Designations

The Rye Water Valley/Carton SAC is located to approx. 1.5km to the east of the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal against the decision to grant permission by the planning authority has been lodged by Frank and Mary Murtagh, No. 1 Moyglare Abbey, the neighbours immediately to the north of the subject proposal. In summary, it states;

- Welcome the re-opening of a local convenience shop but strongly objects to changing it into a hot food takeaway and potentially an off-licence. The previous shop only sold groceries, confectionery and newsagent.
- The site notice was not displayed properly and it did not refer to change of use.

- Requests additional conditions be attached to prohibit the preparation or sale of hot food at any time of day, to prohibit the sale of alcohol, to protect hedgerows and neighbours and to restrict deliveries to the front of the shop.
- Notes the previous planning permission PA 91/1127 and condition No. 3 which restricted the use of the shop such that it not be used for the sale of hot food for consumption off the premises. Notes condition No. 14 which restricts the use such that it not be used as a takeaway.
- Notes the land use zoning objective for Existing Residential where Takeaway uses are not permitted. Were the shop to sell takeaway food it would be severely detrimental to the residential amenity of the area.
- Notes Development Plan policy in relation to takeaways and proximity of such uses to other vulnerable uses e.g. residences, and likely impacts on general and residential amenity. The proposed development because of its proximity to adjoining residential properties would give rise to an unacceptable increase in noise/ disturbance, traffic, parking, litter and fumes and have a detrimental effect on neighbours residential amenity.
- Asserts that if the shop is allowed to sell alcohol, it would have a negative and harmful effect on residential amenity in the vicinity.
- References condition No. 17 of the previous permission which required the hedgerow along the rear be retained and the response to the further information request by the applicant that the trees at the back boundary will be retained.
- Notes that previously the back garden was not accessed and now it is proposed to change this to a mini back garden and delivery yard and a car park for 2 cars which constitutes overdevelopment and raises concerns regarding traffic safety and residential amenity.

6.2. Applicant Response

A response was submitted by Dave Mulcahy Planning Consultants Ltd on behalf of the applicant which can be summarised as follows;

Hot Food Take-Away/Off-Licence

- The applicant has not applied for permission for a hot food take-away or an off-licence and therefore these grounds of appeal are entirely unreasonable.
- The appeal is vexatious and the Board are requested to dismiss the appeal under Section 138 (a) (i) of the Planning and Development Act 2000, as amended.
- Highlights that one of the conditions of the planning permission (No.8) specifically prohibits fried foods from being cooked on the premises.
- Planning permission for a shop does not extend to an off-licence which requires a separate change of use planning application, as such this issue is irrelevant to this application/appeal.
- Notes that the definition of 'shop' in the Planning and Development Regulations, 2001 (as amended) allows for the sale of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use. The applicants are, therefore, perfectly entitled to sell wine in the same manner as any other shop. The inclusion of a condition prohibiting alcohol would be draconian, putting the shop at a competitive disadvantage to all other shops in the area.

Site Notice

- Submits that the issue of where the site notice was displayed was an issue for the Council in assessing the application. The fact that the appellants made a submission to the Council within the 5 week period demonstrates that it was visible and their right to an appeal has not been compromised.

Additional Conditions

- The appellants have included a list of additional conditions – clearly they do not seek the refusal of the application but only a variation of the conditions attached to the permission.
- A condition in relation to the hedgerow boundary to remain in situ is proposed.

- Request the Board reject the requirement for a condition that deliveries be received at the front of the shop rather than the proposed delivery yard at the rear.

6.3. **Planning Authority Response**

The Planning Authority had no further comment.

6.4. **Observations**

6.4.1. Seven further observations were submitted in support of the appellants from the following parties;

1. Keith McCrory – 2 Moyglare Abbey, Maynooth
2. Pat Curran – 115 Moyglare Village, Maynooth
3. Pat O'Brien – 109 Moyglare Village, Maynooth
4. Mary Richardson – 7 Moyglare Village, Maynooth
5. Gerry King – 3 Moyglare Village, Maynooth
6. Ria Collery Walsh – 1 Moyglare Abbey, Maynooth
7. Patrick Holly – 3 Moyglare Abbey, Maynooth

6.4.2. The issues raised can be summarised as follows;

- Concern that the shop will include a 'hot deli' and fast food take away
- Odours from the kitchen when hot food is prepared.
- Leftover food will attract vermin
- People eating food in the vicinity and creating litter
- Number of customers coming to the outlet in a residential area
- Number of cars parking in this area
- Proximity of two new schools to the outlet
- No reference to fast food outlet in the planning notice

- If in time a licence to provide alcoholic beverages was to be granted this could lead to anti-social behaviour
- Potential for chipper vans parking to the side of the property.
- Contravenes the terms of a previous permission 91/1127 which designates part of the site as open space.
- Queries the ownership of the site.

6.5. Appellants Further Response

6.5.1. This submission can be summarised as follows;

- Strongly disagree with the statement that the appeal is vexatious and have genuine concerns in relation to the change of use.
- No issue with a shop similar to what existed but have concerns in relation to the cooking of hot food and sale of alcohol.
- Letters of support are from people living over 2 miles away.
- Notes an error in condition No. 6 where opening hours are stated as 8am- to 9am and should be 8am to 9pm.
- Delivery hours as per condition No. 7 are reasonable but request that deliveries are to the front of the shop to minimize traffic hazard and disruption to neighbours.
- Condition No. 8 is too vague and must be changed to prohibit any cooking of any food by any means.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues. The issues can be dealt with under the following headings;

- The Use of the Shop
- Parking and Deliveries

- Boundary Treatment
- Appropriate Assessment

7.2. The Use of the Shop

- 7.2.1. The development is located in an area zoned 'B' Existing Residential: *'To protect and improve existing residential amenity; to provide appropriate infill residential development and to provide for new and improved ancillary services'*. It is noted that the appeal site comprises a large plot and adjoins an area of public open space to the east.
- 7.2.2. This is an existing but currently unoccupied retail unit serving a local neighbourhood and in respect to the zoning I do not consider that an additional 26sqm of retail space would have any bearing in terms of impacting on the objectives of the zoning or the integrity of the residential area. It is also generally welcomed by the appellant and neighbouring properties. Therefore, I consider that increasing the retail area of an existing retail store located as it is at the entrance to an established residential estate is acceptable in principle.
- 7.2.3. It is noted that while the appellants welcome the re-opening of a local convenience shop, they strongly object to a change of use to a hot food takeaway and potentially an off-licence. The applicants claim that the third party appeal in relation to this contention is vexatious and request that the Board dismiss the appeal under Section 138(a) (i) of the Planning and Development Act 200, as amended is also noted. However, based on my assessment of the submitted documentation I would not concur with the applicant's view on this matter.
- 7.2.4. There are two matters in relation to the nature of the use in my opinion, and I consider it appropriate to deal with them separately. Firstly, the matter of the use of the shop for the preparation and sale of hot food / take away and secondly the matter of an off licence use.
- 7.2.5. The appellant has raised concerns in relation to the use of the shop for the preparation of and sale of hot food / take away in proximity to adjoining residential properties which would give rise to an unacceptable increase in noise/ disturbance, traffic, parking, litter and have a detrimental effect on neighbours residential amenity.

They note that air conditioners or fans should be placed on the outside 'end gable' to reduce noise and nuisance and strongly object to any deep-fat frying food or a commercial extract fan being erected on the premises. In observations submitted concerns were also raised in respect to the issue of odours from the kitchen when hot food is prepared, as were issues in relation to leftover food and people eating in the vicinity of the shop. The appellant also notes that under the zoning objective takeaway uses are not permitted.

- 7.2.6. The appellant also asserts that if the shop is allowed to sell alcohol, it would have a negative and harmful effect on residential amenity in the vicinity. In observations submitted there is a concern that if in time a licence to provide alcoholic beverages was to be granted this could lead to ant-social behaviour.
- 7.2.7. I would note, however, that the proposed development is for an extension to the existing shop only and does not refer to the sale of hot food / takeaway or off licence in the public notices.
- 7.2.8. I would agree with the applicant that to operate as a take away would require an application for a change of use. I have examined the floor plans internal layout and elevations of the proposed shop and am satisfied that no area has been identified for preparation of food associated with a take away, and no extractor fans are indicated on external walls. The planning authority attached condition No. 8 in relation to the sale of fried foods which the appellant considers too vague. The appellant has also requested that a condition be attached to a grant of permission to prohibit the preparation or sale of hot food at any time of day. The appellant also refers to a previous planning permission granted under Reg. Ref. 91/1127 which disallowed the sale of hot food for consumption off the premises and for use as a take-away.
- 7.2.9. The applicants' agent refers to the definition of 'shop' in the Planning and Development Regulations 2001 (as amended) which specifically excludes restaurant and also refers to a number of decisions by the Board where the provision of a small deli type facility has been deemed not to require a change of use from retail.
- 7.2.10. I note the Planning and Development Regulations 2001, as amended, at Part 2, Article 5 provide a specific definition of a shop. In addition to providing for the retail sale of goods, it provides for the '*sale of sandwiches or other food for consumption off the premises where the sale of such food is subsidiary to the main retail use*'.

However, the definition also includes that the meaning of a shop for the purposes of the Regulations does not include for '*the sale of hot food for consumption off the premises*'. In terms of addressing the concerns of the appellant, I consider that a condition addressing this issue can be attached to a grant of permission which would prohibit the sale of hot food for consumption off the premises and may be a more appropriate condition. I recommend that Condition no.8 be amended accordingly. I would also consider that the preparation of hot food is likely to be a cause of odour and as the appeal site is located in close proximity to adjoining residential properties that this would not be an acceptable use.

7.2.11. The other matter which requires some consideration in this appeal is the sale of alcohol and change of use to an off licence. The applicants' agent refers to the definition of a 'shop' in the Planning and Development Regulations, 2001 (as amended) which allows for the sale of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use. The applicant contends that they are, therefore, entitled to sell wine in the same manner as any other shop and that should they decide to sell beer and spirits they will have to seek permission for a part change of use to off-licence. While I note the concerns of the appellant in relation to the sale of alcohol, I am satisfied that the proposed development, which does not include a change of use to off-licence, is acceptable, particularly given the hours of opening. I do not consider it necessary or appropriate to include a condition prohibiting the sale of alcohol.

7.2.12. In conclusion, I am satisfied that the proposed refurbishment and extension to the existing shop which is modest in scale is acceptable in principle, and subject to a condition disallowing the sale of hot food for consumption off the premises, would not seriously injure the residential or visual amenities of the area.

7.3. **Parking and Deliveries**

7.3.1. In response to the further information request the applicant proposes to provide three no. parking spaces to the front serving the proposed retail element and two parking spaces to the rear serving the residential unit. The use of the later will be controlled by bollards.

7.3.2. Parking and turning provision for delivery vehicles will be located to the side and rear of the site. The applicant states that deliveries will be done at off peak traffic times using small delivery vans. I note that the planning authority's Transportation Department had no issues with this element of the proposal and considered that there is sufficient room within the site for the parking and manoeuvring of a small delivery vehicle.

7.3.3. The appellants however have sought a condition requiring deliveries to be received at the front of the shop rather than the delivery yard to the rear. The applicant makes the case that it is far more convenient to carry in stock via the rear door to the store, rather than having to bring it through the shop itself. Notwithstanding that the planning authority have included condition No. 7, which limits deliveries between the hours of 9am and 5pm, I am of the opinion that the use of the rear garden area for the delivery of goods would result in noise and general disturbance to the amenities of the adjoining residents. I also consider that it would detract from the amenity of the occupants of the first floor apartment and the use of their private outdoor amenity space. I note the small scale of the shop unit and the large area to the front of the premises which would appear adequate to accommodate small scale deliveries.

7.3.4. I therefore recommend that a condition be attached which would require that the rear area to the property would accommodate vehicular traffic associated with the residential unit only and not be used by vehicles for the delivery of goods associated with the shop unit.

7.4. Boundary Treatment

7.4.1. The appellant has raised concern in relation to the retention of existing planting along the northern boundary of the appeal site which currently offers screening to their property and have requested that a condition be attached to a grant of permission similar to that attached to a previous permission on the site. I can confirm from my site inspection that the existing mature planting offers considerable screening and note that the applicant has no objection to the retention of this planting. I therefore recommend that a condition be attached accordingly.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully services 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

I recommend that planning permission should be granted subject to conditions for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the location of the site on residentially zoned lands and to the compliance with the development standards for residential and retail development in the Kildare County Development Plan 2017-2023 and the Maynooth Local Area Plan 2013-2019, it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the residential amenities 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 carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted the 24th March 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed 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 extension shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. Details of the external shopfront and signage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

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

4. No advertisement or advertisement structure, other than those shown on the drawings submitted with the application shall be erected or displayed on the building or within the curtilage of the site in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

5. Details of all external lighting associated with the development shall be submitted for the agreement in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of visual and residential amenity.

6. The proposed shop shall not operate outside the period of 0800 to 2100 hours Monday to Friday and 0900 to 2100 hours Saturday Sunday and Bank Holidays inclusive.

Reason: In the interest or residential amenities.

7. No deliveries shall be taken from the premises outside the hours of 0900 hours and 1700 hours, Monday to Saturdays, nor at any time on Sundays or public holidays.

Reason: To protect the residential amenities of the area.

8. The grant of this permission does not include permission for the sale of hot food for consumption off the premises.

Reason: In the interest of orderly development.

9. The area to the side and rear of the premises shall be used for car parking associated with the residential unit only and not for delivery vehicles.

Reason: In the interest of residential amenity.

10. Existing planting located along the northern rear boundary of the site shall be retained.

Reason: In the interest of visual and residential amenity.

11. 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.

12. The developer shall pay to the planning authority a financial contribution respect of public infrastructure and facilities benefitting 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 the 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 developers 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.

Susan McHugh

Planning Inspectorate

15th August 2017