



An
Bord
Pleanála

Inspector's Report PL11.249190

Development	Retention of structure permitted for storage under (87/49) as commercial storage, structure to East as built, lean-to concrete structure as built, concrete surface yard and toilet structure.
Location	Lord Edward Street, Mountmellick, Co. Laois.
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	17/327
Applicant(s)	Noel Delaney
Type of Application	Retention Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Anne and Edward Harvey
Observer(s)	None
Date of Site Inspection	5 th of December 2017
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The site is located on the eastern side of Lord Edward Street (R422), Mountmellick. It is accessed via a narrow surfaced entrance road from the R422. It is to the rear of a row of houses with frontage onto Lord Edward Street. There is a fire damaged former listed building to the north east of the access.
- 1.2. There is a large shed at the southern end of the site, part of which is proposed for retention. The overall height of the shed has also been increased. The area of the shed proposed for retention is sub-divided from the main shed and is primarily used for storage of bouncy castles, and vans. There is a small office area and a sewing pit to repair damaged bouncy castles also within this area of the shed. On the day of the site visit the area of the shed proposed for retention contained an ice-cream van and a small fork lift vehicle and the adjoining part of the shed another ice-cream van.
- 1.3. The majority of the yard has been concreted over with an area of gravel close to the western and eastern boundaries. There were 2 bouncy castle vans in the yard area on the day of the site visit. There is a toilet block to the rear of the houses which contains a toilet and two separate large steel sinks. There is a manhole to the south of the block. There is a c.1.8m wall along the site boundary with the long narrow rear garden of no.5 Lord Edward Street which adjoins the site. There is a free standing flood light in the site to the rear of no.8, which also contains CCTV cameras facing the shed and yard area. As the site visit was in early December it appeared that the ice-cream vans and bouncy castle business was largely in storage.

2.0 Proposed Development

- 2.1. It is provided that the retention development consists of:
 - The use of the structure permitted for storage under Reg.87/49 (223sq.m) as a commercial storage facility for bouncy castles and 1no. ice cream van;
 - The adjoining structure to the east as built (91sq.m) along with the use as a storage and ancillary repair facility (sewing pit) and storage of 1no. ice cream van;
 - The lean-to concrete block structure as built (25sq.m);

- The concrete surface yard (365sq.m) to facilitate parking of 2no. commercial vehicles for transporting bouncy castles;
 - The small outdoor toilet structure (6.5sq.m).
- 2.2. A Site Layout Plan, Floor Plans and Elevations have been submitted including the areas proposed for retention.
- 2.3. Documentation submitted with the application includes the following:
- A Planning Report by David Mulcahy Planning Consultants Ltd (DM);
 - Engineers Report - BRE 365 Digest;
 - A letter from a Neighbour regarding the business and commercial history of the site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 11th of August 2017, Laois County Council granted retention permission for the development subject to 10no. conditions which include regard to restrictions and limitations of the extent of operations and usage, infrastructural issues and development contributions.

3.2. Planning Authority Reports

3.2.1. Planner's Report

This has regard to the locational context and usage of the site, planning history and policy and to the submissions made. The Planner noted that while this is essentially the same application as that refused by ABP Ref.15/336 refers (PL.11.246823) there are some differences in that the site is not currently within the curtilage of a P.S, and further regard is had to the history of commercial uses on the site. Also it is noted that the Mountmellick LAP allows for the expansion of established and approved uses not conforming to land use zoning objectives (in this case Residential 1). They consider that the nature of the development and the proposed method of operation mitigate against a negative impact on the residential amenity of the dwellings to the

north west and the distance between the building and these dwellings is sufficient to prevent any impact. They also considered flooding not to be an issue. They recommended retention permission subject to conditions.

3.2.2. Other Technical Reports

The Planner's Report notes that the Area Engineer has no objections.

3.3. **Third Party Observations**

3.3.1. Submissions from local residents including the subsequent appellants include the following:

- They note the planning history of refusals and enforcement on this site;
- Noise from the operations, including vehicular movements and volume of traffic;
- Concern about CCTV cameras
- Concern about the location of the toilets on the site, proximate to residential;
- Concern about disposal of wastewater from the business and yard area;
- Contrary to the Residential land use zoning;
- Impact on the P.S;
- Detrimental to residential amenity and will devalue property;
- No consideration of alternatives and will set undesirable precedent.

4.0 **Planning History**

The Planner's Report and Section 3.0 of the DM Planning Report submitted with the application provides details of the extensive planning history of the site. This includes the following:

- The original planning permission for the construction of a storage unit for furniture 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 works 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.

There are four appeal cases associated with this site. The former three cases included the house fronting on to Lord Edward Street within the redline. The subject application or previous application does not. These 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. 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.

- PL11.246823: Retention of a concrete yard, toilets, tea room and raising a section of roof of an existing warehouse. Permission was also sought for a replacement shed with a raised roof level to match the height of the existing warehouse and all associated site works.

Application refused because the Board was not satisfied that the development would not seriously injure the residential amenities of the area. They also noted that the site is located in an area zoned residential and within the curtilage of a Protected Structure the use of which for a commercial activity does not appear to have the benefit of planning permission. The Board considered that the PD would facilitate the consolidation and intensification of such commercial use and that it would be inappropriate to consider a grant of permission in such circumstances.

- 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

5.1. Laois County Development Plan 2017-2023

- 5.1.1. This is the pertinent plan which came into force in July 2017. Table 2 notes that Mountmellick is a service town, Fig. 6 shows that this is the third tier within the Settlement Hierarchy. Section 2.1.4 includes regard to the Mountmellick Local Area Plan (2012-2018) and OBJ2 provides it is an objective to review a number of plans including the Mountmellick LAP. Section 2.1.6 refers to the Laois Core Strategy Map and notes that Zone A includes Mountmellick as a strong growth town. This includes that commercial and economic opportunities within this area will be channelled to such existing settlements. Section 2.5.2 refers to Designated Settlements and includes regard to Service Towns. This includes that land use planning in Mountmellick is guided by the Mountmellick LAP 2012-2018.

- 5.1.2. Table 24 provides details of SACs in County Laois. This includes Mountmellick (site code 002141) and the River Barrow and River Nore (002162). Section 7.12.4 refers to Appropriate Assessment.
- 5.1.3. Appendix A includes the Record of Protected Structures. It is noted that the fire damaged house adjoining the site is not included in the RPS.
- 5.1.4. It is of note that Volume Two which includes the Settlement Plans excludes Mountmellick and provides that the Mountmellick LAP will be reviewed after the Laois CDP has been adopted.

5.2. **Mountmellick LAP 2012-2018**

- 5.2.1. Chapter 3 includes regard to the Core Strategy and notes Mountmellick's role as a service town. Table 4 provides a Schedule of Zoned Lands and includes regard to Residential 1 Established.
- 5.2.2. Chapter 4 concerns Enterprise and Employment. This includes: *Economic development is a key concern of the Council because industrial, commercial and retail development and job creation are fundamental to maintaining and building a sustainable communities and a strong economic base in Mountmellick and its hinterland. A key challenge for the Council is to tackle unemployment by supporting local entrepreneurship as well as attracting new foreign direct investment and small to medium sized enterprises to the town.*
- 5.2.3. Chapter 5 refers to Housing and Infrastructure and provides: *Small pockets of infill development and individual replacement housing units within the Town Centre will be encouraged, as will higher density development in locations where it will have minimal impact on the amenity of its surrounds. The provision of a range of housing forms, types and locations will ensure that the needs of persons seeking housing in the area can be met. While comprehensive backland development may be considered, it is provided: New dwellings that closely overlook the rear curtilage of existing dwellings will not normally be permitted.*
- 5.2.4. Chapter 6 includes regard to Transport, Parking and Flood Risk. This includes regard to the history of flooding of the Rivers Barrow and Owenass in Mountmellick. Map 3 provides a Flood Potential Map for Mountmellick LAP and this shows that the subject site is primarily in Flood Zone A and partly in Flood Zone B. Policy FRP 7

seeks to: *Ensure that the DoEHLG document “The Planning System and Flood Risk Management -Guidelines for Planning Authorities” (2009) is fully implemented in carrying out functions during the period of this Plan, and FRP 8 seeks: To avoid inappropriate development in areas at risk of flooding.*

5.2.5. Chapter 9 concerns the Built Heritage and provides that the list of properties entered in the RPS is contained in Appendix 1 of the Laois County Development Plan 2011-2017. It also notes that this list is not necessarily definitive and maybe amended from time to time.

5.2.6. Chapter 11 considers Urban Design & Development Management Standards. The section on Small-Scale Businesses in Residential Areas states: *The scale and nature of the operations will be taken into account. Uses such as the repair of vehicles will not normally be permitted in a residential area. 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”.

5.2.7. 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.*

5.2.8. 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. This may be due to its perceived effect on existing and permitted uses, its incompatibility with the policies and objectives contained in this Plan or the fact that it may be*

inconsistent with the proper planning and sustainable development of the area. The expansion of established and approved uses not conforming to land use zone objectives will be considered on their merits.

5.3. Natural Heritage Designations

- 5.3.1. 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

- 6.1.1. A Third Party Appeal has been submitted by Anne and Edward Harvey, local residents who reside at no.5 Lord Edward Street. They have regard to the long standing history of planning appeals on this site and their concerns include the following:
- They believe that the change of use to a commercial site, will hugely impact on the residential amenity of the area, by way of noise and light pollution and hazardous waste pollution of surface water.
 - This is a residential area of great historical significance re: the red brick dwellings and the Protected listed building on site in Lord Edward Street.
 - Traffic to and from the site must be considered as a large number of children access the local schools.
 - They totally agree with the most recent Board decision to refuse (Ref.PL11.246823 relates).
 - They enclose a copy of their objection and noted that an enforcement notice was issued to the applicants in May 2017 - Ref UD 16/52.
 - They provide details of issues with the development which they consider are detrimental and cause adverse problems impacting on residential amenity.
 - They include a photograph showing a bouncy castle erected on the site.

- They consider that there are other sites where this business could be located without a detrimental impact on residential amenity and that this has not been explored.
- If this unauthorised development is granted retention permission, it sets a precedent for others to follow in other residential areas.

6.2. Applicant Response

6.2.1. A response on behalf of the First Party includes the following:

- A letter from the applicants Noel and Lucia Delaney
- An Environmental Noise Assessment by Resonate Acoustics
- Letters from local residents including relative to the history of the site, and in support of the application.
- Some details regarding the site from David Mulcahy Planning Consultants Ltd.
- Photographs of the site are also included.

6.2.2. The response from the Applicant's to the grounds of appeal is summarised as follows:

- There has been activity on this particular site since the 1930's both in a residential and business capacity for the past 30 years. They provide details of the history of the site.
- They are concerned about the nature of the complaints made by the Third Party and consider they unsubstantiated and are vexatious.
- They run a small bouncy castle/ice-cream business giving part time work each summer season to 3-4 people.
- Their income from the business is very small in view of the seasonal nature of the operations, which virtually ceases from November to March.
- They note that other businesses are operated within the residential land use zoning.

- To substantiate their claim that they are not causing disturbance by noise they have submitted a report from Resonate Acoustics which refute that the operations cause excessive noise.
- They have installed CCTV cameras solely to protect their property and to be able to provide evidence if necessary against claims such as these. These are not an invasion of privacy.
- They provide details of their hours of operation and note that for the most part the business is summer based.
- They provide ice-cream and inflatables and don't generate income on site. The vans are loaded and they make as little disturbance as possible, so that during daylight hours the yard is predominantly closed.
- They provide details of the washing of the ice-cream vans and note that their operations are environmentally friendly. They don't wash their vans on site they use the local carwash.
- The business does not cause adverse car parking problems. Local schools are nowhere near this business. There is ample visibility available from their entrance to ensure public safety.
- Other than the occasion as shown in the appellant's photograph they do not erect bouncy castles in the yard area.
- The house adjoining their site is not a Protected Structure.
- They wish to conduct their business and consider that it is not detrimental to the residential amenities of the area.

A response from DM Planning Consultants Ltd in their behalf, includes the following:

- They submit that the proposed development represents an appropriate use of the subject lands in accordance with the zoning objective and constitutes proper planning and development of the area. They request the Board to uphold the Council's decision.
- They refer to the Noise Report prepared by Resonate Acoustics and note the conclusions therein, that the use does not cause adverse noise pollution.

- The floodlight was on site when the applicant purchased the site and is non-operational. The applicant is happy to accept a condition that it be removed.
- They provide details of the operations and that the proposal does not lead to hazardous waste pollution.
- The waste water flows to the combined sewer in the same manner as all dwelling and commercial units in the area.
- They also provide details relative to the toilet structure.
- They provide that there has been no objection from the Council to the surface water arrangements and that they will comply with the relevant condition.
- There is no material visual impact on the residential properties fronting Lord Edward Street. The fire damaged property adjoining the site is no longer protected.
- The business only operates for a limited period during the year, primarily during the summer months.
- There are only 4 vans and one forklift and the traffic generation is minimal. Visibility is not an issue at the entrance to the site.
- They refer to the Board's previous refusal and contend that the commercial use is low impact and does not have a material impact on the residential amenities of the area.
- The applicant has applied for retention of a previously permitted storage facility for commercial storage and therefore any ancillary storage fully comes within the land use applied for.
- It is their view that the appellants are the only persons who have an issue with this business and they refer to the letters of support submitted.
- The issue of privacy from a security camera is a civil and not a planning matter.
- The applicants have no objection to a condition to provide a petrol interceptor.
- The commercial storage is low impact and does not have a material impact on the residential amenity of properties in the vicinity.

- They consider the myriad of issues raised in the appeal to be without substance and note the Council's decision to grant permission.

6.3. Further Responses

6.3.1. The Third Party have submitted a subsequent response which includes the following:

- Commercial status is totally inappropriate for the residential area.
- They did not ask the Council to investigate a change of use to a Cash and Carry outlet (see document enclosed).
- The site was purchased by its current owners who would have been aware of the long planning history associated with the site.
- They refer to their genuine planning concerns in their grounds of appeal. They are concerned about the authenticity of some of the letters of support and note some of these do not live proximate to the site.
- They note that the house on the site is a protected structure and that it has been recorded by the NIAH as being of regional importance.
- The business operates longer than the limited period and can be early morning and late at night. The commercial use impacts greatly on their lives.
- They consider that the commercial use devalues their home.

6.4. Planning Authority Response

6.4.1. There has been no response from Laois County Council to the grounds of appeal.

6.5. Observations

6.5.1. There have been no Observations received.

7.0 Assessment

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

- Principle of Development
- Planning History and Considerations since the previous refusal

- Impact on Residential Amenities
- Drainage issues
- Appropriate Assessment.

7.2. Principle of Development

- 7.2.1. It is noted that the Laois County Development Plan has been revised (2017-2023) since the previous refusal on site, but that the Mountmellick Local Area Plan (2012-2018) is still enforce and relates to the subject site. The site is located in an area zoned Residential 1 where 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.
- 7.2.2. It is noted that the original 1987 permission provided for the construction of a furniture 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. I noted this to be the case on my site visit.
- 7.2.3. 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. The shed had been opened to show that there were 2 ice-cream vans parked therein, one within the area of the shed for retention and the other within the adjoining part of the shed. There was also a small forklift truck adjacent to the van in the area proposed for retention. I also noted that there was a Megabounce van in the yard area in front of the shed and one stored to the rear of the fire damaged house. Therefore, there were 4 vans in all, with 2 stored in the shed. During my site visit in December the business appeared to be largely in storage and non-operational.
- 7.2.4. 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 while in the landholding is not within the area shown red and does not form part of this planning application and is currently not fit for habitable purposes – it was

damaged in a fire and while there is scaffolding at the front of the dwelling it does not appear to have been repaired or renovated. The commercial/warehouse use is therefore seen as separate to that of any domestic use.

- 7.2.5. In conclusion, having regard to the land use zoning matrix, it appears that the principle of the subject development in lands zoned for residential use would not normally be acceptable 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 it would appear that the use of the retention development is an extension of the ‘unauthorised commercial activity’ presently being conducted from the site and subject to enforcement action by the planning authority.
- 7.2.6. The issue of whether the retention application including the unauthorised use should be refused as such or regularised as an exception to the zoning objective taking into account the modifications that have been presented and whether they would now be deemed to be acceptable and not detrimental to the character and amenity of the area and neighbouring residents is discussed further below.

7.3. Planning History and Considerations since the previous refusal

- 7.3.1. The Board’s attention is drawn to the Planning History (see section 4.0 above). Requests for a change of use from a storage unit to a commercial tyre depot, retention of the raised roof and retention of an office have been refused permission by the Board on four separate occasions (albeit each request was slightly different and the former related to the use of the warehouse as a tyre depot). Whilst the subject use is discernibly different to a commercial tyre depot originally proposed, it is nonetheless being used for business purposes, a use that has never previously been authorised, and I note that retention permission for the current activity has been requested in this instance.
- 7.3.2. The Planning Report submitted with the application provides that the applicant accepts that there must be a material change from previous applications and the recent Board refusal must be addressed. In particular, it is recognised that the use of the existing storage unit which was granted in 1987 must be addressed as part of any new application rather than being omitted as per previous applications. The First

Party note that they have applied for retention of a previously permitted storage facility for commercial storage and provide that therefore any ancillary storage fully comes within the land use applied for.

- 7.3.3. The Report provides that the applicant is compelled to apply again on the basis that this is his sole source of income and is also the only means by which he can fund the refurbishment of the main dwelling, which is now no longer a Protected Structure, to the front of the site. He purchased the site in 2014 on the basis that it had planning permission for commercial storage use. Also that the applicant has commenced works on restoring the fire damaged house for his occupancy.
- 7.3.4. The description of the retention development differs slightly from that shown in the previous Board refusal Ref. PL11.246823 and the floor areas of the various structures for retention are given. The floor area of the existing building is 223sq.m and the g.f.s to be retained is 91sq.m and it is of note that both included in the description of development and use to be retained. The drawings submitted and Fig. no. 3 of the Planning Report submitted shows the area of the shed and that to be retained. The plans submitted including the Site Layout Plan appears generally similar to the previous application. There is a difference in the elevations shown, in that, the small storage area to the side is shown retained rather than as previously proposed, extended in height the full width of the site. This is currently used as a small office area for the business. The site is also no longer within or adjoining the curtilage of a Protected Structure, and is a separate use, not associated with a dwelling house. The absence of this former P.S from the Council's RPS in Appendix 1 of the current Laois CDP is noted. It is noted that it is still shown on the NIAH list, which appears to have been carried out prior to the fire damage.
- 7.3.5. The First Party provides that they have also specifically applied for commercial use of the existing storage building and yard area and that this application seeks to address all previous unauthorised development in a comprehensive manner. The current application now seeks to specifically retain the use of this structure as a 'commercial storage facility'. Therefore, it is considered that if retention permission is granted that this would regularise the structures and uses both authorised and unauthorised on site. In this respect it is noted that details of the commercial usage of that part of the site originally permitted for furniture storage have not been given, and some clarification is needed on this. It did not appear that the whole floor area of

the shed was being used in connection with the bouncy castle and ice-cream business on the day of the site visit. Therefore, if the Board decide to permit it is recommended that it be conditioned that full details of the storage operations including the goods stored in the existing unit be submitted for the written approval of the planning authority.

7.4. Residential Amenity

- 7.4.1. The Third Party concerns are noted, relative to the proposal being detrimental to residential amenities of the area and to the enjoyment of their dwelling. These include concerns about usage, noise, scale and hours of operations, traffic, adjustments to vehicles, dairy washing of ice-cream vans, environmentally hazardous contaminants, being within the curtilage of a Protected Structure, light pollution, unauthorised development etc. As such it is noted that the development is located in the established residential area, in a backland area where such uses are not normally permitted.
- 7.4.2. However, it is also noted that the large shed existing on this site appears to have had the benefit of permission for furniture storage (Reg.Ref.49/87 refers) since the 1980's and has thus become established on the site. However, subsequently this shed has been extended, used for commercial storage and the roof has been raised. As shown on the plans the shed now extends the full width of the site and the total area of the shed is now (223sq.m) and for retention (91sq.m) i.e 314sq.m. The height of the shed is c.6.5m, along most of its full length, with the exception of the single storey office lean to part on the north western side. The shed/warehouse has two roller shutter doors to the front, one accessing that part of the shed for retention and the other the larger permitted unit. It was noted that these doors are not original and provide access for the ice-cream vans and fork lift truck that are stored in the warehouse.
- 7.4.3. The Planning Report submitted with the application provides that the development will not have any material impact on residential amenity of adjoining property owners and notes that the site is not within the curtilage of a Protected Structure. It is noted that the Inspector's Report relative to the previous Board decision, Ref.PL11.246823 considered that the retention development would not give rise to serious injury to residential amenities at this location. There are residential properties to the north,

south and east. Those properties to the north and south are notably elongated so the actual dwellings associated with these properties (fronting onto Lord Edward St) are a considerable distance from the storage/repair structures on the site. The dwellings at the rear in Grange Hall are closer in that the shed extends the other side of their rear garden boundary walls. However, there are some trees along the rear which provide some screening, although this is more limited in the Winter months. In view of the distance to nearby properties it is not considered that visually the extended shed structure has an adverse impact on adjoining properties.

- 7.4.4. Having regard to the documentation submitted regarding the scale of operations, and the limited comings and goings from the site, it is considered that traffic from the bouncy castle/ice-cream business is low and in view of the existing access and its location within the town speed limits is unlikely to adversely impact on road safety or the amenities of the area.
- 7.4.5. Regard is also had to the Noise Assessment Report by Resonate Acoustics submitted. This provides details of the activities on site and the hours of operations between 8.00am to 9.00pm each day. This also has regard to ambient noise in the locality including traffic noise on Lord Edward Street. It concludes that the noise generated by the Mega bounce site is acceptable with regard to the EPA NG4 noise limit and the existing ambient noise in the area.
- 7.4.6. The main issue in this case is the use of the shed/warehouse as a commercial storage facility and of the associated yard area and toilet block. The Planning Report submitted with the application, provides that approx.70no. bouncy castles are stored on site and notes that this will be reduced to 35no. castles from this season onwards. Therefore, they provide that the bouncy castle usage has been reduced by 50% and is primarily limited to a 7month period and that cleaning of them will take place off site. It also provides that a sewing machine is used, in that part of the shed proposed for retention, for the repair of bouncy castles and that no manufacturing takes place on the premises. The small sewing pit area was noted. The details submitted by DM Consultants provides that the bouncy castles and ice-cream vans provide a low key seasonal commercial business. If the Board decide to permit it is recommended that a condition further restricting hours of operation be included.

- 7.4.7. The toilet block which contains a toilet and a separate room with double sinks is to the rear of no.6 Lord Edward Street. It is noted that this is some distance from the shed and proximate to the residential properties in nos. 5-8 and it is considered that it is unsightly and detrimental to residential amenity and it is recommended that if the Board decide to permit that it be conditioned that this be removed from site and be more contained in that it be relocated in the existing warehouse area.
- 7.4.8. As put forward by the First Party the flood light is non-operational and it is recommended that this be removed and omitted from this site. It has been noted that the use of CCTV cameras is a private civil matter. However, in the event of the removal of the floodlight these would also be removed as they are attached to the flood light pole.
- 7.4.9. In conclusion I would consider that if the Board decide to permit, that the proposed retention development provided the operations are managed in accordance with the conditions recommended below would be regularised and would not have an adverse impact on the residential amenities of the area.

7.5. Drainage issues

- 7.5.1. The Third Party concerns about the potential environmental impact including concerns about contaminants and hazardous waste are noted. The documentation submitted by the First Party provides details relative to the nature of the operations and provides details of the ice-cream business and note that in view of the small scale nature of operations, the amount of dairy product which is washed down the sink is minimal. Also that the waste water flows to the combined sewer in the same manner as all dwelling units and commercial units in the area. As put forward by the First Party it is recommended that if the Board decide to permit that an appropriate drainage condition be included and that it be conditioned that there be no washing of bouncy castles or ice-cream vans on site.
- 7.5.2. The Council have required the applicant to provide an interceptor under Condition no.10 with details of same to be agreed with the planning authority. The First Party provide that the applicant has provided a surfaced yard with appropriate drainage facilities and is willing to install interceptors. If the Board decide to permit, it is recommended that it be conditioned that a petrol interceptor be included on site and

that details of this be submitted to the planning authority prior to the commencement of development.

7.6. **Appropriate Assessment**

7.6.1. The Planning Report submitted by DM Planning Consultants Ltd, provides that a review of Natura 2000 sites within 15k has revealed that the subject site is not located in or adjacent to a Natura 2000 site. The closest sites are as follows:

- The River Barrow and River Nore SAC (002162) – within 110m from the site
- The Slieve Bloom Mountains SPA – 6.4km
- The Slieve Bloom SAC -8.8km.

7.6.2. In view of the significant distances involved and the lack of any direct pathway to the Slieve Bloom Natura 2000 sites it is submitted that a Stage II AA is not required.

7.6.3. In relation to the more proximate River Barrow and River SAC it is noted that there is no direct ecological pathway and there are no airbourne emissions. All foul waste is connected to the main and all surface water is connected to the public mains (combined foul and storm water network). It is provided that given the use of the development and its limited scale it is submitted that a Stage II AA is not required.

7.6.4. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 002162, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

8.0 **Recommendation**

8.1. It is recommended that retention permission be granted subject to the conditions below.

9.0 Conditions

1. The development shall be retained and carried out in accordance with the plans and particulars lodged with the application and by the further plans and particulars received by An Bord Pleanála on the 4th day of October, 2017, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2(a) Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the use of the retention development shall be restricted to the ice cream and bouncy castle business as specified in the lodged documentation, unless otherwise authorised by a prior grant of planning permission.

(b) Within 2 months of the date of this permission full details shall be submitted for the written agreement of the Council regarding the total usage of the commercial storage operations from the shed/warehouse structure.

(c) There shall be no retail sales from the site.

Reason: In the interest of residential amenity.

3. The proposed retention development shall be amended as follows:

(a) The toilet block is not permitted and shall be removed from site within 2 months of the grant of this permission and revised plans shall be submitted showing the toilet facilities located within the commercial warehouse building.

(b) The floodlight shall be omitted and removed from site.

(c) Details of any lighting to be provided on site shall be submitted.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority within 2 months of the grant of this permission.

Reason: In the interests of visual and residential amenity.

4. The activities on site shall be carried out only between the hours of 0800 to 2000 Mondays to Saturdays inclusive, and within the hours of 1000 to 1400 on Sundays and not at all on public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

5. The noise level shall not exceed 55 dB(A) rated sound level, as measured at the nearest dwelling or at any point along the boundary of the site. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the residential amenities of property in the vicinity of the site.

6. 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 displayed or erected (on the building/within the curtilage of the site) unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity and in order to allow the planning authority to assesses the impact of any such advertisement or structure on the amenities of the area.

7. (a) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.
 - (b) There shall be no washing of bouncy castles or of ice cream vans on-site.
 - (c) Details including the locations of silt/oil/fuel interceptors shall be provided.

Details in this regard shall be submitted to and agreed in writing with the planning authority within 2months of the grant of this retention permission.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

8 (a) No display or storage of goods, produce, waste, plant, packaging or crates, machinery or equipment shall be stacked or stored on this site at any time except within such buildings or storage areas as may be agreed in writing with the planning authority prior to commencement of development.

(b) All works shall be carried out within the confines of the building.

Reason: In the interests of residential and visual amenity.

9. A waste management plan including the provision for the storage, separation and collection of all waste, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the permitted use.

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

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

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

Angela Brereton,
Planning Inspector

22nd of December 2017