



An  
Bord  
Pleanála

## Inspector's Report ABP-300239-17

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<b>Development</b>	Retention for increase in storage capacity of depolluted end of life vehicles on site from 20 cars to 70 cars under existing waste permit no. WFP/L/2016/22B/TI
<b>Location</b>	Abbeyfeale West, Abbeyfeale, County Limerick
<b>Planning Authority</b>	Limerick County Council
<b>Planning Authority Reg. Ref.</b>	17/264
<b>Applicant(s)</b>	Rory Flahive
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Shane O'Connor & Jacqueline Quirke
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> February, 2018
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

1.1. The site of the proposed development is located at the south-western end of the town of Abbeyfeale in County Limerick. It lies to the west of a local road that serves primarily one-off houses in the vicinity of the site. The site itself falls steeply away from the road. There is a garage building at the northern end adjoining the site's boundary and forecourt area. The remainder of the site area south of this is taken up by the open storage of cars, other vehicles and some containers. The boundaries of the property comprise mainly some hedgerow and tree lines. There is a bungalow immediately north of the site, a cemetery to the west, and extensive detached housing to the east and south.

## **2.0 Proposed Development**

- 2.1. The proposed development would comprise the retention for increase in the storage capacity of depopulated end of life vehicles on a site from 20 cars to 70 cars under existing Waste Permit No. WFP/L/2016/22B/TI.
- 2.2. Details submitted with the application included a letter of consent for the making of the application from the landowner, a letter from the applicant explaining the need for the application, and a report on environmental controls associated with the development.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 23<sup>rd</sup> October, 2017, Limerick City & County Council decided to grant permission for the proposed development subject to 18 conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planner noted the site's planning history, reports received and the objection made. The key planning issues were identified as the residential zoning and non-compliance with conditions attached with a previous grant of planning permission.

Further information on the facility was considered necessary, inclusive of details requested by others reporting to the planning authority.

### 3.2.2. Other Technical Reports

Environmental Services stated that it had no comment to make.

A report from Operations & Maintenance Services noted that sightlines from the existing entrance are very poor and the entrance gradient was excessively steep making it extremely dangerous to exit. Requirements for the entrance were set out. It was further noted that car parking on the site is haphazard and needed to be addressed. A revised site layout plan was requested showing how the proposal would fit within the site.

### 3.3. Prescribed Bodies

The Environmental Health Officer from the HSE sought details on the location of a well on the site and those in the vicinity. A schedule of conditions was set out in the event a grant of permission issued.

### 3.4. Third Party Observations

An objection to the proposal was received from Shane O'Connor and Jacqueline Quirke. The grounds of the appeal reflect the concerns raised.

### 3.5 Further information was requested on 18<sup>th</sup> May, 2017 and a response to this request was received by the planning authority on 19<sup>th</sup> July, 2017.

Following this submission, Shane O'Connor and Jacqueline Quirke made a further submission relating to their concerns.

Reports to the planning authority were as follows:

A report from the Operations & Maintenance Services recommended that entrance and parking details be conditioned and raised a new issue relating to surface water disposal for which further details were requested.

The Planner noted the response to the further information request but considered further details were required in relation to landscaping and also recommended that the details required by the Operations & Maintenance Services should be requested also.

- 3.6 Clarification was sought from the applicant on 14<sup>th</sup> August, 2017 and a response to this request was received on 26<sup>th</sup> September, 2017.

Following this, the reports to the planning authority were as follows:

Irish Water had no objection to the proposal.

The Environmental Health Officer from the HSE recommended that the on-site well be properly lined and protected if permission is to be granted.

The Operations & Maintenance Services noted that it was imperative that a proposed embankment, screening and planting of trees and hedgerow do not interfere with sightlines. Conditions were set out in relation to the entrance, car parking and surface water disposal.

The Planner recommended that permission be granted subject to conditions.

## 4.0 Planning History

### P.A. Ref. 08/1847

Permission was granted for the retention of a car garage repair and maintenance workshop and end of life vehicle facility including hardstanding for crashed and abandoned cars and stacking and bailing of end of life vehicles, petrol interceptor, storage containers, concrete slab and bund walls for oil, petrol and diesel storage.

Condition 3 of that permission was as follows:

- “3. *The proposed development is subject to the Section 47 agreement attached to the grant of planning permission, which restricts the applicant and successive owners of the lands from further expansion/intensification of the existing business or any other commercial development on the lands.*

*Reason: In the interest of orderly development.”*

The application details included the Section 47 agreement of March 2009 wherein the applicant agreed that he and successive owners would undertake not to seek

permission for any further expansion/intensification of the existing business or any other commercial development on the lands.

## 5.0 Policy Context

### 5.1. Abbeyfeale Local Area Plan 2014-2020

#### Zoning

The site is zoned 'Existing Residential'.

It is stated that the purpose of this zoning is to ensure that new development is compatible with adjoining uses and to protect the amenity of existing residential areas.

Car repair/sales and industry is generally not permitted within this zone.

#### *Non-Conforming Uses*

The Plan states:

Throughout the County there are uses which do not conform to the zoning objective of the area. These include uses which were in existence on 1<sup>st</sup> October 1964, or which have valid planning permissions. Reasonable extensions to and improvement of premises accommodating these uses will generally be permitted within the existing curtilage of the development and subject to normal planning criteria.

#### Small Scale Business in Residential Areas

The Plan states:

Proposals for planning permission for small-scale business from people working in their own homes will be considered based on the scale and nature of operations. Uses which might negatively impact on residential amenity such as the repair of vehicles will not be permitted in a residential area. The level of customers/callers will also be taken into account. Any proposals for small scale businesses in residential areas shall comply with Section 10.6.2 of the County Development Plan.

## 5.2. Limerick County Development Plan

### 10.6.2 - Small Scale Businesses in Residential Area

The Plan states:

There has been a growth in the number of applications for small scale business from people working in their own homes. The scale and nature of operations will be taken into account. Uses such as the repair of vehicles will not be permitted in a residential area. The level of customers/callers will be taken into account. The Planning Authority will permit these in cases 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 business serves a local need.
- Adequate parking requirements are met.
- There is no significant loss of residential amenity to adjoining residences in terms of general disturbance, noise, traffic generation etc.

Permission will be subject to normal environmental and planning criteria. 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of the third party appeal may be synthesised as follows:

- The site is on land zoned 'Existing Residential'. Uses such as the repair of vehicles are not permitted in this area.
- The previous application 07/3171 was refused and the reasons for refusal were appropriate.

- Regarding Planning Application 08/1847, there was a Section 47 agreement and the applicant was not permitted to expand or intensify the existing business.
- The recurring theme with all the applications on the site is 'retention'.
- In the current application, the applicant did not deal accurately with the issues raised. There are serious concerns relating to the entrance, parking, non-compliance with conditions attached to the previous permission, and landscaping.

## 6.2. Applicant Response

The applicant's response to the appeal may be summarised as follows:

- When permission was granted in 1988 there was little or no development along this road. The garage and dismantling business was regularised in 2008. The reason for the application is that it is uneconomic and impractical to have cars dismantled and ready for collection in time.
- This is an established use on this site prior to the commencement of the Local Area Plan and no extension to the site boundaries is proposed. The storage area is approximately 6 metres below road level and new planted berms will screen the vehicles.
- Regarding the previous applications, the owners did not carry out the entrance changes and, as permission has expired, the applicant is now looking to relocate the entrance to a safer location.
- The applicant operates under a licence that gives him permission to store up to 50 ELVs on site at any one time without having any environmental impact. The increased storage will not lead to an intensification of the current use of the property.
- The applicant has committed to screen the suite in order to mitigate against unsightly views of the garage and stored vehicles.

- The activities under the waste licence has not received any noise complaints to date and the applicant has not been instructed to conduct noise monitoring. It can be inferred that noise is not an issue.

### 6.3. **Planning Authority Response**

I have no record of any response to the appeal from the planning authority.

### 6.4. **Further Responses**

The third party, in response to the applicant's response, refuted the submission made to the Board and considered none of their concerns had been addressed.

## 7.0 **Assessment**

### 7.1. Introduction

I consider that the planning issues requiring consideration in this appeal relate to the principle of the development at this location, the development in the context of its parent permission, and impact on residential amenity.

### 7.2. The Principle of the Development in the Location Proposed

7.2.1 The site of the proposed development is located on lands zoned 'Existing Residential' in the current Abbeyfeale Local Area Plan. The purpose of this zoning is to ensure that new development is compatible with adjoining uses and to protect the amenity of existing residential areas. Car repair/sales and industry is generally not permitted within this zone. It is, therefore, clear that the nature of the development now before the Board is one that should not be facilitated at this location in accordance with the zoning provisions.

7.2.2 The proposed development would be a non-conforming use and I acknowledge that the Plan allows for reasonable extensions to and improvement of premises accommodating these uses within the existing curtilage of the development and subject to normal planning criteria. However, this must be clearly evaluated against the provisions that relate to small scale business in residential areas. The plan has express provisions relating to such uses. The Plan is forthright in relation to uses



such as that now before the Board and states that uses which might negatively impact on residential amenity, such as the repair of vehicles, will not be permitted in a residential area. This cannot be clearer and these provisions are repeated in the Limerick County Development Plan. The proposed development, in accordance with the Local Area Plan and County Development Plan provisions, should not be permitted.

7.2.3 Overall, it may reasonably be concluded that the proposed development materially conflicts with the zoning provisions of this location and fundamentally is contrary to the provisions of the Plan as they relate to small scale business.

### 7.3. The Development in the Context of the Parent Permission

7.3.1 The parent permission governing the use of the facility on this site is that granted under Planning Permission 08/1847. This was a retention permission that permitted the retention of a car garage repair and maintenance workshop and end of life vehicle facility. It included hardstanding for crashed and abandoned cars and stacking and bailing of end of life vehicles, a petrol interceptor, storage containers, a concrete slab and bund walls for oil, petrol and diesel storage.

7.3.2 Condition 16 of that permission limited the end of life vehicles for bailing to be kept on the site to 20 at any one time. While I do not propose to further address the significant environmental concerns arising from the lack of hardstanding areas and the necessity for such provisions where there has been, and is, very extensive external storage of end of life cars and other vehicles on open ground at this site, it is important to acknowledge that vehicles and containers are openly stored on soft ground beyond the curtilage of the garage and this brings with its serious environmental concerns, notwithstanding the submission from the applicant that the end of life vehicles which are de-polluted are stored on hard core. I question how runoff from the open storage of vehicles in such conditions does not pose an environmental risk. This risk reinforces the inappropriateness of the non-conforming use at this location. Clearly, the local authority's monitoring of the waste permit is

intended to address the pollution threats arising from the type of open storage that is taking place at present.

7.3.3 In my opinion, a critical issue arising from the previous permission is the attachment of Condition 3 which allowed the facility to operate in the manner that was originally proposed within an established residential area but expressly prohibited the expansion or intensification of the facility. This condition reads as follows:

“3. *The proposed development is subject to the Section 47 agreement attached to the grant of planning permission, which restricts the applicant and successive owners of the lands from further expansion/intensification of the existing business or any other commercial development on the lands.*

*Reason: In the interest of orderly development.”*

7.3.4 The Section 47 agreement forms part of the application details contained in Planning Application 08/1847. The applicant at that time made a binding agreement that he and successive owners would undertake not to seek permission for any further expansion/intensification of the existing business or any other commercial development on the lands. It is clear from this that Condition 3 does not allow the development now before the Board, which is an intensification of activities at this site. There is no understanding as to why the planning authority did not address this issue. However, it is apparent that this is a most critical planning consideration relating to the proposed development that would have prohibited any grant of planning permission.

7.3.5 It is evident from the above that the only reasonable conclusion to draw is that the proposed development would materially contravene Condition 3 of Planning Permission 08/1847 and that it should not be permitted.

#### 7.4. Impact on Residential Amenity

7.4.1 The proposed development has significant adverse impacts on the amenities of established residential properties in this residential area. The development is highly unsightly when viewed from the public realm, such as the public roadway, and this is intensified for nearby properties on more elevated ground immediately east of the

local road. The nature of the activity on this site results in the transportation of vehicles into and out of the site (undoubtedly by trucks and larger vehicles pulling trailers), the de-polluting of vehicles within a garage structure that is frequently open at its frontage, and the piling and open storing of vehicles on the site. The nature of the activities would bring with it a significant degree of nuisance through noise, parking, public road usage, entrance and exit difficulties where a seriously deficient entrance is in place, etc. It is for most of these reasons why a garage of this nature is a use that is not encouraged within a residentially zoned area. The further intensification of activities at this site unquestionably intensifies the unsightly impact and increases the nuisance arising for residents in this location.

7.4.2 Having regard to the impacts resulting, it is reasonable to conclude that the proposed development constitutes a significant nuisance to residents of the area, is highly intrusive, and is an activity that should not be expanded upon in the interest of residential and visual amenity. Finally, I would not be satisfied that the provision of a strip of screening along the road edge would successfully address the adverse visual impact arising and I would seriously question the appropriateness of such a screening approach where interference with visibility at the entrance would be most likely.

## 7.5. Traffic Impact

7.5.1 The existing entrance serving the facility is a traffic hazard. The entrance is located close to a bend on the local road and sightlines are seriously deficient. Access arrangements are compounded by the very steep gradient leading from the entrance to the garage.

7.5.2 The landowner failed to provide an alternative entrance as was required by Planning Permission 08/1847 and I understand the appellants' concerns that an alternative entrance would not be provided to a satisfactory standard.

7.5.3 It is my submission that one should not be facilitating the intensification of an activity of this nature with access onto this local road where the road is deficient in alignment and width and does not accommodate the functioning of this facility in a safe manner. The proposed development would intensify undesirable vehicular

movement of a nature not suited to this residential area and would constitute a traffic hazard.

## **8.0 Recommendation**

- 8.1. I recommend that permission is refused in accordance with the following reasons and considerations.

## 9.0 Reasons and Considerations

1. The site of the proposed development is located on lands zoned 'Existing Residential' in the Abbeyfeale Local Area Plan 2014-2020. The purpose of this zoning is to ensure that new development is compatible with adjoining uses and to protect the amenity of existing residential areas. Car repair facilities are generally not permitted within this zone. Furthermore, it is a provision of the Plan relating to small scale business in residential areas that uses which might negatively impact on residential amenity, such as the repair of vehicles, will not be permitted in a residential area. It is considered that the proposed development, which seeks to intensify the garage use and increased external storage of vehicles, would materially contravene the zoning objective, would conflict with the provisions of the Plan relating to small scale business within residential areas, and would result in significant adverse impacts on the amenity of residential properties in the area by way of noise, vehicular traffic movements, and adverse visual impacts. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development would contravene materially a condition attached to the existing parent planning permission which governs the development on this site, namely condition number 3 attached to the permission granted by Limerick County Council under planning register reference number 08/1847, which prohibited further expansion/intensification of the existing business or any other commercial development on the lands.
3. It is considered that the intensification of vehicular traffic and traffic turning movements associated with the proposed development would endanger public safety by reason of traffic hazard due to the road serving the site being seriously substandard in terms of width and alignment.

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Kevin Moore  
Senior Planning Inspector

8<sup>th</sup> March 2018