



An
Bord
Pleanála

Inspector's Report ABP-300390-17.

Development	Permission for change of used from Xtravision Retail unit to a Thai Restaurant.
Location	Greenfield Shopping Centre, Straffan Road, Maynooth, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	17/693.
Applicant(s)	Adam Lyons.
Type of Application	Permission.
Planning Authority Decision	Grant subject to conditions.
Type of Appeal	Third Party.
Appellant(s)	Anita Cleary.
Observer(s)	None.
Date of Site Inspection	23 rd February, 2018.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located within the Greenfield Shopping Centre, which is accessed off the Straffan Road in Maynooth. The Centre is a single storey development which includes a variety of different retail uses, including a chemist, supermarket, drycleaners, barbers, butchers as well as a fast food take-away. There is a charity shop located to the north east corner of the centre. There is surface parking for approximately 70 cars to the south of the shopping centre with residential uses to the north, east and south.
- 1.2. The centre is described as a neighbourhood centre and is located approximately 500m to the south of the town centre and approximately 800m to the north of Junction 7 of the M4. To the north west of the site, there is a large petrol station with Mace shop.

2.0 Proposed Development

- 2.1. Permission is sought for change of use from Xtravision Retail Unit to a Thai Restaurant. The proposed development will include the redecoration of the interior including artistic murals, a background photo booth and a private hire kiosk. The external frontage shall be repainted and have commercial signage. The external side wall shall have an artistic mural painted. The application also includes for plant, associated with the operation of the restaurant, located on the roof including extract fans and air conditioning compressors and the installation of an external grease trap at the connection to the existing mains at Greenfield Shopping Centre, Straffan Road, Maynooth, Co. Kildare.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission for the proposed development subject to conditions, including condition 4 which requires the provision of a solid

boundary wall along the north west boundary of the alleyway and retention of the existing hedge.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report concluded that the proposed restaurant represents a suitable and complementary use to the wider Neighbourhood Centre and will bring an otherwise vacant business unit back into use. The report included AA. Further information was required in relation to a number of issues including waste storage, location and specification of ventilation equipment, noise, odour mitigation measures and question in relation to a takeaway.

Following receipt of the response to the further information request, concerns remained in relation to the bin storage proposal. Following clarification, the Planning Office recommended that permission be granted subject to conditions, including a condition in relation to bin storage. This recommendation formed the basis of the Planning Authority's decision.

3.2.2. Other Technical Reports:

Planning Officer:	Site notice in place, no objections.
EHO:	Further information required.
Environment Section:	No objection subject to conditions.
Water Services:	No objection subject to conditions.
Roads & Transport:	No objection.
Irish Water:	No objection.

3.2.3. Third Party Submissions;

There are two third party submissions in relation to the proposed development from the Greenfield Estates Residents Association and Ms, Anita Cleary. The issues raised are summarised as follows:

- Unauthorised development on the site

- Permission has been refused for a takeaway previously, 12/157 refers. Any grant of permission should include conditions in relation to take away use.
- Proximity to houses which would be severely affected by late night noise and odours. In particular, concerns are raised in relation to the mechanical extract ventilation system and air conditioning system.
- Hours of operation and issues in relation to the sale of alcohol.
- Signage should reflect that of the Greenfield Shopping Centre with no projecting elements or rear illumination.
- Car parking issues and existing traffic hazards raised.
- Litter and refuse issues raised.
- Need for another restaurant questioned.

The Board will note that Ms. Cleary responded following the submission of the response to the further information request. The following further issues are raised:

- The mechanical extract ventilation system is to be located approximately 16m from the site boundary with the residential property, not 31m as submitted. The system would generate a constant loud noise and smell and would require a noise enclosure and acoustic screen.
- The opening hours are a concern given the proximity to a densely populated area with young families. The response did not address issues of alcohol sale.
- Previous refusal of permission for a takeaway restated.
- Location of bin storage on a footpath is not acceptable.
- Road safety and car parking issues. Contradictions in the traffic report noted.

4.0 Planning History

PA ref 10/397: Permission granted for the construction of a single storey 128m² retail unit to the north end, and an 80m² retail unit to the south end of existing neighbourhood shopping centre with new canopy throughout, revised car parking layout, revised entrance, and

new loading bay off Straffan Road, with all associated site works.

PA ref 11/209: Permission granted for amendments to permission PA ref 10/397, omitting retail unit to the south end of existing neighbourhood shopping centre and amendments sought to revise car parking layout with all associated site works.

PA ref 12/157: Permission refused for an amendment to PA ref 11/209 for a change of use from granted retail unit (extension to Xtravision) to a Chinese food takeaway and delivery service, customer waiting area food preparation area, kitchen, w/c changing area and food storage areas with all associated site works.

The reason for refusal related to a policy within the 2002 Maynooth LAP which noted that no further permissions would be granted for takeaway developments due to a perceived excessive concentration in the town.

There is an Unauthorised Development file noted in relation to the subject site. This current appeal seeks to address the issues arising.

5.0 Policy Context

5.1. Development Plan

The subject site is located within the development boundaries of Maynooth and the Maynooth Local Area Plan, 2013-2019 is the relevant policy document affecting the site. The site is located within an area zoned as 'Neighbourhood Centre', where the zoning objective seeks 'to provide for and protect local neighbourhood facilities'. A restaurant is a use which is permissible in principle.

5.2. Natural Heritage Designations

The subject site is not located within, or adjacent to, any designated European Site. The Rye Water Valley / Carton SAC, Site Code 001398, is located approximately

2.5km to the west. The proposed development will not result in disturbance to virgin ground.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third party appeal by Ms. Anita Cleary, against the decision of the Planning Authority to grant permission for the proposed change of use. The issues raised reflect those raised during the Planning Authority assessment of the application and are summarised as follows:

- Proximity of mechanical extract ventilation system to residential boundaries.
- Hours of operation, the sale of alcohol and the impact on residential amenity.
- Litter issues
- Roads, traffic and parking issues.
- Procedural issues raised in relation to the response to the further information and clarification requests.
- The proposal to locate the bins store in the laneway will have health and safety issues for residents. Hours of collection will also impact on residential amenity.
- The restaurant should be located in the town centre.
- The development will impact on quality of life, will devalue the residential property and would seriously injure the amenities of the area by reason of noise, litter, odour and disturbance.

6.2. Applicant Response

The first party has responded to the third party appeal. The submission presents an introduction to the proposed development, as well as providing a planning context, and is summarised as follows:

- The proposed development will include a modern mechanical plant which will be designed to a high specification in order to ensure against significant odours or noise.
- The boundary of the residential development is 16m, and the house, which is considered the most sensitive location, is 31m. For the majority of the year, there will be no use of the garden when the restaurant is operational.
- The opening hours are reasonable when compared to other restaurants in Maynooth.
- The sale of alcohol is a matter for the courts rather than a planning issue.
- No objection to a condition requiring a litter plan being put in place.
- The proposed restaurant will open at 5.30pm and therefore will not impact on car parking demand during the day.
- It is proposed to provide a separate enclosure for the storage of waste in the alleyway.
- The proposed development will provide an alternative use for residents and tourists.
- Conditions have been attached to address issues of residential amenity.

It is requested that the Board uphold the decision of Kildare County Council and grant permission.

6.3. Planning Authority Response

The Planning Authority submitted a response advising no further comments.

6.4. Observations

None.

7.0 Assessment

7.1. Having regard to the nature of the appeal before the Board, together with the information presented in support of the development, technical reports and third party submissions, I consider it appropriate to assess the development under the following headings:

- Impacts on Residential Amenity
- Other Issues
- Appropriate Assessment

7.2. The Board will note that the development seeks to change the use of an existing retail unit to a restaurant. The site is zoned Neighbourhood Centre which is intended to serve the immediate needs of the local working and residential population and complement, rather than compete with the established town centre. Medical clinics and professional offices, workshops, creches, small convenience stores or cafes are all envisaged in this zone. A restaurant is a use which is permitted in principle on such zoned lands. As such there is no objection in principle to the proposed development

7.3. Impacts on Residential Amenity

7.3.1. Having considered the full detail of the proposed development, I consider that the development has the potential to impact on the existing residential amenity of properties immediately adjacent to the proposed bin storage area. The Board will note that the location of the bin storage area changed during the Planning Authority's assessment of the proposal. The final proposal is that the bins will be stored in the back alley behind the Greenfield Shopping Centre. I note that the Planning Officer, in his final report, advised that it was not possible to determine during his site visit whether there is a solid internal boundary alongside the hedgerow. The boundary between the houses to the north east and the shopping centre comprises a hedge only.

7.3.2. The alleyway was locked on the day of my site inspection but I took a photograph from under the gate. The alley is a narrow, unpaved space which

appears to provide for escape access for the businesses in the Shopping Centre. The area appears unkempt with litter strewn beside filled bins and rubbish bags. It is indicated that the bins in the alley are those of the Charity shop. I would consider that the nature of the waste arising from the Charity shop will differ significantly from that of a restaurant.

7.3.3. The applicant proposes to construct a timber bin store in the alley to house the three wheelie bins required to service the restaurant. I have serious concerns about this proposal on two fronts. In the first instance, if the bin store is built as proposed, it would impact on a potential escape route from the rear of all the other businesses within the shopping centre. In addition, and having regard to the nature of the waste arising, there is potential for the bins to attract vermin and odours. Given the proximity of the site to residential properties, together with the nature of the existing boundary, I consider that a grant of permission for the bin store as proposed would have the potential to cause significant dis-amenity by reason of odours and also noise.

7.3.4. I note the decision of the Planning Authority included condition 4 which requires the provision of a solid boundary along the north western boundary of the alleyway and retention of existing hedge. The houses are located to the north east of the alleyway and no clear detail is provided in terms of this boundary. It is also unclear if the applicant has permission from the relevant owner to erect a solid boundary, and how long would this boundary be. Having regard to the open nature of the boundaries, together with the narrow alleyway, I consider that if permitted, this element of the development would have a significant impact on existing residential amenities of the area and would be contrary to the proper planning and sustainable development of the area.

7.3.5. The third party appeal centres on the potential for the development, and the elements of the development, to impact on the existing residential amenities of their property. In particular, issues are raised in relation to the mechanical extraction system and its proximity to residential properties. While the applicant has suggested that the house is the sensitive location, I would concur with the appellant that the private open space of the house is also important. I would not accept the argument that the rear garden would generally not be used at the same time the restaurant is operational and for the majority of the year there will be no use of the garden during

operational hours. It would be wholly unacceptable to grant planning permission for a use which would impact on the residential amenities of a property, including the private open space. That said, I am generally satisfied that as the use is permissible in principle, and in light of the proposals before the Board for the restaurant save for the proposed bin storage issue, the development is acceptable in terms of the ventilation system proposed and appropriate conditions can be included in any grant of permission to control odour and noise emissions from this system.

7.4. Other Issues

7.4.1. The third party has raised concerns in terms of the potential for additional littering arising due to the proposed restaurant. I would not consider that the nature of the development will give rise to significant littering and I would accept the first party's assertion that the development is not a 'take away' in the traditional sense of the word. Should the Board be minded to grant permission in this instance, a condition requiring the preparation of a litter plan could be included.

7.4.2. The development, being located within a Neighbourhood Centre, has access to the existing surface car parking in the immediate vicinity. I am satisfied that there are no objections from a parking perspective. The third party has raised concerns in terms of roads and traffic issues due to the entrance to the east of the Centre. I would not consider that the traffic movements arising at this junction are significant and would note the proximity of a sharp turn in the road, which results in slower speeds.

7.4.3. With regard to the hours of operation, the Board will note that the existing take away which is located within the Neighbourhood Centre, closes at 1am. The proposed restaurant will open from 5.30pm to 11.30pm with the kitchen closing at 10pm. I am satisfied that this is reasonable.

7.4.4. Finally, the appellant has submitted concerns in terms of the number of restaurants available in Maynooth. The Board will note that the Retail Planning Guidelines 2012¹ provides that the planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation. Having regard to the nature of the proposed development, together with the location of the

¹ Guidelines for Planning Authorities, Retail Planning. Department of the Environment Community and Local Government. April 2012.

site within the Greenfield Shopping Centre, I am satisfied that the development is acceptable and will not, if permitted significantly impact on the viability of the existing retail offer of the Centre.

7.5. Appropriate Assessment

The subject site is not located within, or adjacent to, any designated European Site. The Rye Water Valley / Carton SAC, Site Code 001398, is located approximately 2.5km to the west. The proposed development will not result in disturbance to virgin ground. Having regard to the nature and scale of the proposed development and the nature of the receiving brownfield site within the wider established residential environment, 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

- 8.1. It is recommended that the proposed development be refused for the following reason

9.0 Reasons and Considerations

Notwithstanding the zoning objective afforded to the subject site, and the proposed use being a use which is permissible in principle in the Maynooth Local Area Plan, 2013-2019, the Board is not satisfied that the development as proposed can adequately or appropriately deal with the storage of waste arising from the restaurant. The proposed bin storage location would impact on an escape route to the rear of existing businesses in the Greenfield Shopping Centre and would impact on the residential amenities of the adjacent properties due to the proximity to the residential boundaries, by reason of noise and odour. The development would therefore, have a significant impact on existing residential amenities of the area and would be contrary to the proper planning and sustainable development of the area.

A. Considine
Planning Inspector
12th March, 2018