



An  
Bord  
Pleanála

## Inspector's Report 302545-18

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<b>Development</b>	Permission for alterations to workshop previously approved under ref. 1199/19 including revised site boundaries, a new pedestrian fire escape door to existing passageway and front yard. To close existing pedestrian access to dwelling house. Variation to permission ref. 1199/19 remove condition no's 1 and 4 of said permission.
<b>Location</b>	Jervis Street
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	18/505
<b>Applicant(s)</b>	Colman and Florrie O'Flynn
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party Appeal
<b>Appellant(s)</b>	Colman and Florrie O'Flynn
<b>Observer(s)</b>	Fergal and Sharon Kerr

**Date of Site Inspection**

17<sup>th</sup> November 2018

**Inspector**

Joanna Kelly

## **1.0 Site Location and Description**

- 1.1. The appeal site has a stated site area of 0.062ha and is located to the rear of an existing detached two storey dwelling along Jervis Street (N52 Ardee to Kells Road), Ardee, Co. Louth. The dwelling which forms part of the landholding is immediately adjacent to a 'Top' service station and vehicular and pedestrian access to the dwelling traverses the service station lands. The existing workshop is located to the rear of the dwelling house on lower lying lands.
- 1.2. The workshop was not accessible at time of inspection. There is an existing pedestrian access via steps from the house to the workshop which were locked at time of inspection. There is an existing vehicular access to the workshop via the cul-de-sac located west of the dwelling. This appears to be a private lane serving two other dwellings and what appears to be a scrap yard/builders yard.
- 1.3. The workshop has a floor area of 286sq.m. with the site layout plan indicating the provision of 6 no. internal car parking spaces. The workshop has a pitched clad roof as opposed to a mono-pitch roof indicated on the plans Ref. No. 99/1199.
- 1.4. While the predominant uses in the area are residential, there are ad hoc commercial/industrial uses also noted. The river Dee is located approx. 70m south of the site.

## **2.0 Proposed Development**

- 2.1. Permission is sought for alterations to workshop previously permitted under P/1199/99 including revision to the site boundaries, provision of a new pedestrian fire escape door to existing passageway to side of existing workshop. Erection of new signage to workshop and front yard. Permission is also sought to close existing pedestrian access to the dwelling house from the workshop. Permission is also sought for the removal of conditions 1 and 4 of the parent permission which limited the use of the workshop.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority refused permission for the development for the following reasons

#### Reason No. 1

Condition 1 of previous permission ref. 99/1199 states that “workshop shall be used by the occupants of the house of whose site it is located”. The proposed development would contravene materially a condition attached to an existing permission for development, which would, therefore, be contrary to the proper planning and sustainable development of the area.

#### Reason No. 2

The subject site is located on lands zoned as Residential (RE) within the Ardee Local Area Plan 2010-2016 (ALAP), where it is the zoning objective “to protect and /or enhance existing residential communities and provide for new residential communities”. It is considered that the proposed development would be a non-conforming use having taken due account of the zoning objective of the existing lands in question. The proposed development would seriously injure the residential amenities of the existing and future residents of the estate. The proposed would, therefore, be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report

The planner’s report provides details on the site description, history and relevant planning policy.

Reference is made to the submission from Fergal and Sharon Kerr in respect of the application which raised concerns about the application regarding lack of detail of the proposed use; traffic and environmental consequence for neighbouring properties; gates interfering with parking spaces; lack of turning space on site; concerns regarding validation of application with regard to access to site via a private road and no right of way; spelling of name; buildings not dimensioned correctly and no legal right to open fire door at location.

With regard to planning considerations the report indicates that a light industrial/workshop unit would be a non-conforming use within this residential zoning. The proposal would materially contravene a condition of the previous permission which was only granted on the basis the business being tied to the family dwelling. Neighbouring properties to the south would be affected by the proposal. It is recommended that permission be refused for two reasons.

#### 3.2.2. Other Technical Reports:

Infrastructure – 18 July 2018 – Recommends grant of permission subject to conditions.

Irish Water – 3 August 2018 – No objection (Class 1) response

## 4.0 **Planning History**

**File Ref. No. 99/1199** Permission granted to Eamonn and Martha Kerr for workshop and retention of extensions to dwelling house. There are two conditions which are of direct relevance to this appeal as follows:

**Condition 1** The workshop shall be used by the occupants of the house of which site it is located.

**Reason:** In the interests of the protection of the residential amenities of the surrounding dwellings.

**Condition 4** The workshop shall only be used for the manufacture and supply of timber panelling for the manufacture of kitchen cabinets and built-in units.

The Board should note it appears that no reason was cited for this condition in the parent permission.

## 5.0 Policy Context

### 5.1. Development Plan

Louth County Development Plan 2015-2021 is the statutory county development plan. Section 6.3 refers to Development Management Guidelines for Industrial and Commercial Developments.

Ardee Local Area Plan 2010-2016 appears to be the most recent Local Area Plan. The appeal site has a land use zoning objective 'RE – to protect and/or enhance existing residential communities and provide for new residential communities'. Chapter 9 deals with Design Principles and section 9.4 deals specifically with development management standards for industrial and commercial developments.

### 5.2. Natural Heritage Designations

No known designations in the vicinity of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The primary grounds of appeal are lengthy and I have amalgamated the issues raised and summarised as follows:

- It is set out that the purpose of the application to the council was to seek to remove the two conditions so as to modernise the structure in terms of fire safety and security of the commercial building and to allow the structure to be used by someone other than the applicants themselves for the purposes of the manufacture and supply of timber panelling and kitchens.
- The Local Area Plan is now two years out of date and no longer accurately reflects the existing uses on the ground.
- A workshop is not identified within the zoning matrix and having regard to section 8.7.1 the planning authority and ABP may apply discretion in determining whether certain uses can be permitted within a zone provided that they are not in conflict with the primary use zoning objective.
- Condition 1 of 99/1199 is ambiguous and its purpose and relevance to planning area unclear. No reason for Condition 4 was given which is unlawful.
- It is submitted that Condition 1 and 4 are not reasonable and are not in accordance with section 7.3.5 of the Development Management Guidelines and as the premises has been sold and the new owners are not in a position to continue working at this late stage it is unreasonable to continue with these conditions.
- It is requested ABP determine this appeal 'de novo' and remove these unreasonable conditions to enable the future use of the building.
- The appellant sets out that there was a long-established large-scale builder's yard located on the appeal site. The imposition of condition no. 1 attempted to avoid subletting of lots within the builder's yard.
- A large portion of the builder's yard is now developed as two houses and these conditions are no longer applicable.
- Condition 4 restricts the occupants to only manufacture and supply the timber panelling for the manufacture of kitchen cabinets and built-in units. Doors, worktops, handles, and all other elements of a kitchen could not be carried out in the workshop. The making of panelling for free standing units is also not permitted. The making of wardrobes or under stairs storage is also not permissible.
- Reason no. 1 of the planning authority decision is unfair and unreasonable having regard to the fact that this application seeks to remove the specific

condition. If said permission is removed then it cannot be described as being a material contravention.

- The question is whether the removal of the conditions would affect the proper planning and development of the area. It is submitted that it would not.
- Reason no. 2 cited by the Planning Authority is unreasonable having regard to the long-established use of the site as a workshop and having regard to the history and pattern of development in the area.
- The use has not had any impact on the residential amenity of the area.
- Two houses were permitted to the rear of the workshop in situ and it was considered by the planning authority at that time that the workshop and houses could happily exist adjacent to each other.
- It is submitted that there is no change of use proposed, the proposed development is merely to upgrade the building to comply with fire regulations.
- Request the Board to make a fair and reasonable assessment of the development and to grant permission and remove the two conditions.

## 6.2. Planning Authority Response

- All matters raised in the appeal and observation have been previously addressed in the planner's report.
- Request the Board to refuse permission.
- In the event of a grant a suggested condition has been detailed regarding limitation of use to that defined under Class 4 of Part 4 (Classes of Use) of Schedule 2 of the Planning and Development Regulations as amended.

## 6.3. Observations

An Observation has been received from Fergal and Sharon Kerr and is summarised as follows:

- Concerns about development as there is very little detail contained in the documentation.



- Observers believe application should have been invalidated for reasons pertaining to inter alia, failure to mark right of way; location of site notices; lack of dimensions; inaccurate information in relation to foul sewerage treatment; non-compliance with EPA 2009.
- Concerned that the development will become a stand-alone development with the possibility of selling or leasing it on the open market.
- Concerned applicants have no legal entitlement to extend their right of way.
- Documentation indicates premises are already connected to a mains foul sewer. There is no such foul sewer on Jervis Street.
- Existing septic tank that is located in the yard at the shed is actually serving the house and shed. Percolation area serving the development is located beneath the applicant's concrete yard.
- Car parking arrangements impractical and cannot be complied with.
- No road visibility shown on the site plan.
- Planning permission not required to upgrade emergency lighting, smoke detectors etc to comply with fire safety regulations.
- It is well within the remit of the couple to maintain the structure in the same way the house.
- Concerns regarding type of facility to be operated at this location.

## 7.0 **Assessment**

7.1 Pursuant to site inspection and inspection of the surrounding environs including the road network, examination of all documentation, plans and particulars, and observation on file, the following are the relevant planning considerations of this application:

- Validation Concerns
- Removal of Conditions 1 and 4 of parent permission
- Alteration works

- Waste water management
- AA screening
- EIA screening

## 7.2 Validation Concerns

The observers have raised concerns regarding validation of the application by the planning authority. I note the concerns raised and consider that these are matters for the local authority who duly considered the application valid. I noted two site notices in place as per locations indicated on the site layout plan at time of inspection and therefore, I am satisfied that the public would have been aware of the application. With regards to incorrect spelling of name, lack of dimensions etc. I consider that the issues in question are 'de minimus' and do not prejudice the consideration of the appeal before the Board.

## 7.3 Removal of Conditions 1 and 4 of the parent permission

The First Party are seeking the removal of condition 1 and 4 of the parent permission granted under Reg. Ref. No. 99/1199 which limited the use of the workshop as follows.

**Condition 1** The workshop shall be used by the occupants of the house of which site it is located.

**Reason:** In the interests of the protection of the residential amenities of the surrounding dwellings.

**Condition 4** The workshop shall only be used for the manufacture and supply of timber panelling for the manufacture of kitchen cabinets and built-in units.

It is contended that the limitation of the use of the workshop to the occupants of the dwelling house which form part of the landholding failed to future proof the ability to modernise and ensure its continued use. Having regard to the details of the parent application I consider that the conditions imposed at the time were reasonable in that the type of workshop sought was to be used by the applicants at the time who were

the occupiers of the dwelling. Notwithstanding that there was no reason cited for Condition no. 4 in the parent permission, it is reasonable that the planning authority sought to control the size and scale of the operations within the workshop so as to protect the existing residential amenities of the area.

It is noted that the two dwellings located at the end of this cul-de-sac appear to have been constructed at the same time/after the workshop and as such it is reasonable having regard in particular to the zoning objective of the lands in question that any future use of the workshop is such that would not compromise the existing residential amenity of the area. The planning authority have cited that the workshop is a non-conforming use in the reason for refusal. As the principle for the workshop has been established on the site having the benefit of permission, I do not consider that this is a reasonable reason for refusal. However, it needs to be established whether the proposed use is such that would have an injurious impact on the existing residential amenity of the area.

With regard to the proposed use, the information provided by the First Party is conflicting in that it is clearly stated that the purpose of the application is not to seek a change of use but yet the permission is seeking to remove Condition 1 and 4 as they are considered overly restrictive.

The planning authority has cited that the proposal would “materially contravene a condition attached to an existing permission” and this is an unreasonable reason for refusal given that the first party sought to remove this condition. I agree with the first party on this and consider that proposal before the Board to remove conditions should be assessed on its merits. Given that the house has been subsequently sold and the new owners have no need for the workshop, it is considered that condition 1 could be removed where it is demonstrated that the use of such would not be detrimental to the proper planning and sustainable development of the area. The matter of waste water management should also be considered in the context of removing Condition 1 and I refer the Board to this matter under the heading of Waste Water Management.

I am not satisfied that by removing Condition 4 as sought by the First Party that there is adequate information on file to determine what the actual use of the workshop would be. Reference is made in the documentation that free standing units such as

wardrobes or under stairs storage could not be manufactured on site. I do not consider that the wording of condition 4 is such that would prohibit the manufacture of such timber units. I am unclear what the statement “the doors, worktops, handles, and all other elements of a kitchen could not be carried out in this workshop” is referring to. I consider it reasonable that the goods such as handles for doors of such units could be attached in the workshop however they could not be manufactured unless they are made of timber.

It is noted that six parking spaces are proposed within the site and given the proposal to install signage, it would appear that the intended use would mean it would be open to the public. This in itself raises concerns about increased traffic along a cul-de-sac which serves residential units. It is unclear if the cul-de-sac is a private lane or a public road, however, I consider it is most likely private having regard to a reference in the 99/1199 file which indicated access would be from a road permitted in File Ref. No. 98/822.

Having regard to the land use objective to protect existing residential amenities of the area, I consider that the use of the workshop as a stand-alone entity of the dwelling house needs to be fully assessed and this requires the submission of details pertaining to the intended use and processes and/or activities to be carried out. It is also considered that details as to whether the unit will be open to visiting members of the public, scale of operations, hours of operations, deliveries, likely noise emissions etc. are all planning considerations that should be assessed to allay any concerns regarding potential impact on contiguous residential properties. I, therefore, conclude that in the absence of details regarding the intended use of the workshop the removal of Conditions 1 and 4 is unjustified.

#### 7.4 Alterations to proposed workshop

Pursuant to site inspection and examination of details available on the planning enquiry system of Louth County Council accessed 17/11/2018, the workshop as built is not in accordance with the plans permitted in the parent permission. The workshop indicated in the original application has a mono-pitch roof with an overall height of 5.1m. The existing workshop has a pitched roof and the plans submitted indicate a height of 5.5m. There were high level external windows proposed along the northern

elevation of the workshop which have not been constructed. External fenestration and doors are also different to that actual constructed on site. I, therefore, conclude that the existing structure does not appear to have been constructed in accordance with the plans and particulars submitted in Reg. Ref. No. 99/1199.

With regard to the proposed alterations, subject to this appeal, the First Party are seeking to construct a fire escape access onto the end of the cul-de-sac. It is proposed to block up the existing access to the workshop from the existing dwelling house to the north. In principle, I have no objection to same. The closing off of the pedestrian access from the dwelling does, however, does mean that the existing workshop would in effect be completely independent of the dwelling house. The observer indicates that the cul-de-sac is a private lane. There are no details on file regarding the status of the road. The First Party has provided no information to address the concerns in this regard. The Board may wish to consider the provision of section 34 (13) of the Planning and Development Act 2000 as amended which sets out that “a person shall not be entitled solely by reason of a permission under this section to carry out any development.”

#### 7.5 Waste water management

I note the concerns by the Observers regarding the septic tank and percolation area. The First Party indicate on the application form that the development is connected to a public sewer. It is unclear whether the development is connected to the public sewer or served by a septic tank. The parent permission 99/1199 indicated that the site (both the dwelling house and workshop) was served by a single septic tank and percolation area. As the applicant is seeking to vary the site boundaries and remove condition 1 which restricted the occupants of the workshop to that of the house, I consider this an issue that needs to be resolved. The planning authority has not clarified whether the public sewer serves the development. Irish Water indicate that where the applicant proposes to connect to a public mains/wastewater network a valid connection agreement is required. I did not observe any man-holes in the immediate area to indicate the presence of a public sewer. I consider this to be a valid concern which remains outstanding. It is not appropriate to have a house and a workshop in separate ownership served by a single septic tank and percolation area

and as such I consider this a reason for refusal. While the observer raised concerns about this to the planning authority, I note that neither the Planning Authority nor the First Party has responded to the concerns. The Board may consider it a new issue as the planning authority did not cite in their reasons for refusal.

## 7.6 AA Screening

Having regard to the nature and scale of the proposed development and nature of the receiving 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.

## 7.7 EIA Screening

Having regard to the nature and scale of the proposed development comprising the alterations of a permitted workshop, revised site boundaries and variation of previous permission by removal of conditions 1 and 4 and associated site works in a serviced urban area there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 8.0 **Recommendation**

8.1. I recommend that permission is **refused** for the proposed development subject to the following reasons and considerations.

## 9.0 **Reasons and Considerations**

1. In the absence of details specifying the intended operations/use of the workshop, which is located on lands with a zoning objective 'RE- to protect and/ or enhance existing residential communities and provide for new residential communities' it is considered that the removal of Conditions 1 and 4 of the parent permission 99/1199 is unjustified and the Board is not satisfied

that the proposed development would not have an undue impact on the existing residential amenities of the area. The proposed development is therefore considered contrary to the proper planning and sustainable development of the area.

2. The Board is not satisfied that the applicant has demonstrated that the dwelling house and workshop have suitable independent waste water management proposals. In the absence of such information, the Board is not satisfied that the proposed development would not be prejudicial to public health.

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Joanna Kelly  
Senior Planning Inspector

17<sup>th</sup> November 2018