



An
Bord
Pleanála

Inspector's Report

ABP-306621-20

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| Development | Construction of pharmacy with signage & ancillary site development works. |
| Location | Cannaboe , Ballinamore , Co. Leitrim |
| Planning Authority | Leitrim County Council |
| Planning Authority Reg. Ref. | 19255 |
| Applicant(s) | Remcoll 2 Ltd. |
| Type of Application | Permission. |
| Planning Authority Decision | Grant |
| Type of Appeal | Third Party |
| Appellant(s) | Ciaran Smyth. |
| Observer(s) | Frank Maxwell. |
| Date of Site Inspection | 15 th May 2020. |
| Inspector | Sarah Lynch |

1.0 Site Location and Description

- 1.1. The site is located to the south east of Ballinamore town centre directly adjacent to the Ballinamore Bypass. The development site forms part of a partially complete 2/3 storey mixed use development with retail uses at ground floor and residential above.
- 1.2. A number of retail/commercial units at ground floor are vacant at present. A large surface car parking is located to the side and rear of the building and a basement carpark has been developed underneath the partially complete single storey units.

2.0 Proposed Development

- 2.1. It is proposed to provide a pharmacy within an existing unit of the existing mixed use development.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. Sligo County Council determined to approve permission for the proposed development subject to conditions.

3.3. Planning Authority Reports

3.3.1. Planning Reports

- The planners report was consistent with the decision of the planning authority.

3.3.2. Other Technical Reports

- District Engineer – no objection.
- Building Control – no objection subject to compliance with Building Control.
- Fire Officer – no objection subject to provision of hydrants, and water supply capable of providing 20 litres per second.
- Water Services, Waste – There is an existing wastewater connection, conditions are specified for new wastewater pipe work.
- Water Services, Water supply – no comment as there is an existing connection.

- Environmental Health – No objection subject to compliance with food hygiene regulations.

3.4. **Prescribed Bodies**

None

3.5. **Third Party Observations**

A number of third-party submissions were received, the issues raised are outlined within the grounds of appeal.

4.0 **Planning History**

P04/1546 A 10 year permission was granted for a mixed use development as follows:

- Supermarket with service yard
- 5 retail units
- 2 office units
- 21 residential units
- Creche and play area
- 141 parking spaces
- Car showroom

P05/544 Permission was granted for the revision of P04/1546 and comprise the increase in office floor space through the decrease in circulation space. Overall floor area remained the same as originally permitted. Conversion of 2 storey office block to a 1 bed two storey duplex and minor elevational alterations.

P07/544 Permission was granted for the revisions to the above permission to include:

- Increase of floor are by 401sqm, change of use of creche to residential, provision of an additional retail unit.
- Changes will provide for a total of 25 no. residential units

- Extension to provide 6 no. retail units and 4 office units at first floor.

5.0 Policy Context

5.1. Development Plan

The lands are designated within the development plan as 'Mixed Use' within which a mix of residential and commercial activity takes place. The plan requires that buildings are designed and located so as to be capable of adaptation to a range of other uses. In determining the suitability of development within this zone regard shall be given to the environmental impact of the proposed development on neighbouring uses.

Ballinamore is identified as a 2A tier centre and it is envisaged that it will become one of the County's key towns, becoming the centres for and drivers of economic growth.

- OBJ 7 - To seek the development of lands zoned 'Mixed Use' for commercial residential, health, community, educational, cultural, retail and related uses.

5.2. Natural Heritage Designations

5.3. The nearest Natura 2000 site to the proposed development is Cuilcagh - Anierin Uplands SAC which is located c. 6.9km north west of the development site.

5.4. EIA Screening

5.5. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal which has been prepared by Liam Madden Architect on behalf of Ciaran Smyth. The issues raised can be summaries as follows:

- Proposed scheme is a re-hash of previous schemes
- The original development ceased in 2007 and has been abandoned since.
- Concerns regarding the commercial track record of the applicant.
- The availability of commercial space must be independently assessed by ABP.
- The proposed development will be commenced and left abandoned.
- The development contravenes the parent permission.
- ABP should consider whether any permission should issue until the existing
- No AA screening was carried out.
- Cumulative impact of all applications at this location has not been considered.
- The developer stated that the relief road was a private road, concerns are raised in relation to the ownership and maintenance of this road and the right of way over this road.
- There is no planning for a refugee direct provision centre.

6.2. Applicant Response

Meitheal Architects have prepared a response to the grounds of appeal which can be summarised as follows:

- The appellant is a frequent objector and the appeal should be considered vexatious.
- High court proceedings have been submitted which detail protests in relation to the use of existing apartments for people in emergency accommodation and refugees.
- The developer is proposing to invest significantly in the development and the surrounding area.

6.3. Planning Authority Response

Leitrim County Council have issued a response to the grounds of appeal which can be summarised as follows:

- The building is authorised and compliance has been submitted. A slight variation which resulted in a minor increase in floor area was noted and was not considered to be a material change to the development, retention permission was therefore not required.
- The planning authority carried out an AA screening.
- The public have a right of access over the public road a high court order was sought to prevent certain named persons from passing over the access road in order to allow the completion of the apartments.
- The development is located on appropriately zoned lands and there is no requirement within the County Development Plan to submit a justification test..
- The status of the refugee direct provision centre was not a matter for consideration under this application.
- The planning authority considers the proposed development to be in accordance with the requirements of the county development plan.
- The proposed use does not require planning permission as it is considered a retail unit which was permitted under the parent permission.

6.4. **Observations**

One observation has been received from Frank Maxwell and is summarised as follows:

- The investment to finish the development is welcome.
- The development is complete and there is no noncompliance.
- ABP should consider the track record of the appellant.

7.0 **Assessment**

- 7.1. This is a third-party appeal in relation to the decision of Leitrim County Council to permit a pharmacy unit to be provided within a partially complete commercial development in Ballinamore. The proposed development is located within an area zoned as mixed use in which retail units are permissible. It is of note that this unit was previously permitted as a retail unit within the parent permission for the site and

therefore does not constitute a material change of use. The principle of the proposed development is therefore considered to be acceptable. I have reviewed the plans and particulars submitted and am satisfied that the issues for consideration before the board relate solely to the grounds of appeal, no other substantive issues arise. The issues can be summarised as follows:

- Principle of development
- Access & car parking
- Appropriate Assessment
- Other Matters

Principle of development

- 7.2. It is proposed to convert an existing retail unit located to the rear of the development adjacent to the Tesco entrance to a pharmacy. It is contended by the appellant that there is no need for additional pharmacy within Ballinamore and the permission of this use will result in the closure of one of the pharmacy's in the town centre. It is stated within the grounds of appeal that the Board should seek a justification for such a use.
- 7.3. As mentioned above the lands are zoned mixed use within the Leitrim County Development Plan within which retail developments are permissible. I note that there are no policies within the Leitrim County Development Plan that require a justification test for such uses. It is of further note that the existing unit was permitted as a retail unit within the parent permission of the development and as such no material change of use is proposed. The principle of the proposed development is therefore accepted.
- 7.4. Ballinamore is identified as a 2A tier settlement within the County Development Plan, it is envisaged within the Plan that the settlement will develop into a key town for the county and become a centre for and driver of economic growth. It is the policy of the Council to promote the commercial growth of these settlements and to ensure that there is a sufficient variety of services available to improve the attractiveness of such settlements to investment opportunities. In the absence of any policy or objective which restricts such uses within the town and given that the unit has a permitted retail use I consider that the requirement of a justification for the proposed use is not required.

7.5. The proposal merely seeks to provide a pharmacy within an existing retail unit, and in the context of the foregoing I consider this to be acceptable.

Access and carparking

7.6. Concerns have been raised within the grounds of appeal in relation to the ownership and right of access over the adjacent road. The Council have responded to these concerns stating that whilst the existing road is partially privately owned public access is permissible and as such access to the proposed development will not be restricted or impacted upon.

7.7. The Council further states that whilst there was a court order preventing certain parties from accessing the road, this was to allow the completion of the apartments to take place and did not restrict the general public from accessing the development.

7.8. I did not observe any access restrictions at the time of site inspection and observed customers and visitors to the site accessing the premises freely. Landownership and access rights are largely a legal matter and is not one that the Board can finally determine. Section 34 (13) of the Planning and Development Act, states that the granting of permission does not entitle a person to carry out development and covers the eventuality that the development cannot be implemented for legal reasons.

7.9. Having regard to the details submitted and the observations made by the Council I do not have concerns in relation to the proposed access arrangements to the development.

7.10. The proposed use does not give rise to car parking requirements in excess of what has been permitted to cater for the unit within the parent permission. As such no additional spaces are required in this instance.

Appropriate Assessment

7.11. I note from the grounds of appeal that the appellant has raised concerns in relation to the failure of Leitrim County Council to request an AA screening from the applicant. I further note the Council's response to the grounds of appeal in which it is stated that an appropriate assessment screening was carried out and screened out any likely significant effects.

7.12. The nearest Natura 2000 site from the development is the Cuilcagh - Anierin Uplands SAC which is located c. 6.9km north west of the development site. In the absence of

any hydrological links to this site and having regard to the nature of the development which is a change of use, its location in a serviced urban area, and the separation distance to any European site, 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.

Other Matters

7.13. The applicant has raised concerns in relation to the legal status of the proposed development. I note that in response to these concerns the Council has confirmed that all compliance has been submitted for the original development and there are no enforcement proceedings in relation to the development. Additional concerns were raised in relation to the use of the existing apartments adjacent to the appeal site to accommodate refugees and reference is made to the use of these units as a direct provision centre. This issue is not relevant to the consideration of this appeal.

8.0 Recommendation

8.1. I recommend that permission is granted subject to the following conditions

9.0 Reasons and Considerations

9.1. Having regard to the zoning objective of the site, the provisions of the Leitrim County Development Plan 2015-2021, the existing pattern of development in the area, and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, or create a traffic hazard for road users. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the

developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity

2. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of hours of working, noise management measures and off-site disposal of construction/demolition waste and removal methods and offsite disposal of hazardous materials.

Reason: In the interests of public safety and residential amenity

3. No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

4. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and 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.

Sarah Lynch
Planning Inspector

20th May 2020