



An
Bord
Pleanála

Inspector's Report

ABP-307082-20

Development	Construction of a single storey 5 screen cinema.
Location	Harbour Street Car Park, Harbour Street, Mullingar, Co. Westmeath.
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	196195
Applicant(s)	Omniplex (Cork) Ltd
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	(1) Siobhan Ni Neill (2) Denis Corroon
Date of Site Inspection	10 th July 2020
Inspector	Colin McBride

1.0 **Site Location and Description**

1.1. The appeal site, which has a stated area of 0.6446 hectares, is located in Mullingar town centre and is currently in use as temporary car park managed by Westmeath County Council. The appeal site is located to the north east of Harbour Street and to the south of the Royal Canal. The site is accessed over a roadway that forms a junction with Harbour Street to the south of the site. The appeal site is located at a lower level than both Harbour Street and the Royal Canal. The northern boundary of the site is defined by the Royal Canal, which has a footpath running along its southern bank at an elevated location relative to the site. To the south east of the site runs Harbour Lane which links Harbour Street and the canal toe path. There is a pedestrian access from the site onto Harbour Lane with an access on the opposite side of the lane facilitating access to the Harbour Place Shopping Centre located to the south east of the site. Along the south western boundary is the rear boundaries of existing properties fronting Harbour Street including a number of two-storey dwellings and the curtilage of a vehicle sales yard. There is an existing dwelling off Harbour Lane located to the south east of the site.

2.0 **Proposed Development**

2.1. Permission is sought for the construction of a new single-storey 5 screen cinema with a gross floor area of 875sqm and with a ridge height of approximately 8.625m high with associated site works. There was some revision to elevations and a relocation of the structure to facilitate retention of an existing tree as a result of further information requests.

3.0 **Planning Authority Decision**

3.1. **Decision**

Permission granted subject to 17 conditions. Of note are the following conditions...

Condition no. 4: Landscaping scheme.

Condition no. 5: Beech tree on western boundary to be protected.

Condition no. 9: Noise emission limits.

Condition no. 10: Operating hours specified.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (09/09/19): Further information required including corrected elevations, submission of a cross section, details of existing and proposed pedestrian and cycling link from the canal, details of the impact of the proposal on trees, details of boundary treatments, management proposal for the car park, hydrological and surface water management details, details of light spill in relation to the Royal Canal pNHA, a response to issues concerning boundary/ownership issues and measures to deal with concern regarding the design of the facade facing onto the canal area.

Planning report (28/02/20) Clarification of further information including hydrological and surface water management details, and details regarding noise impact in the operational phase.

Planning report (13/03/20): the proposed development was considered to be acceptable in the context of visual amenities of the area, the amenities of adjoining properties, to be consistent with development plan policy and satisfactory in the context of traffic safety and convenience. A grant of permission was granted based on the conditions outlined above.

3.2.2. Other Technical Reports

Area Engineer (22/08/19): Further information required including hydrological and surface water management details, and revised layout showing pedestrian access from Harbour Place.

Irish Water (23/08/19): No objection.

Environment Section (16/08/19): No objection subject to conditions.

Area Engineer (28/02/20): Clarification of further information required including hydrological and surface water management details, details of noise impact in the

operational phase and revised layout showing pedestrian access from Harbour Place.

Area Engineer (13/03/20): No objection subject to conditions.

3.3. Prescribed Bodies

Department of Culture, heritage and the Gaeltacht (19/08/19): The site is adjacent a pNHA (Royal Canal) with concerns about potential damage to wildlife. The applicant should be required to demonstrate that there would be no light spill onto the Royal Canal pNHA.

OPW (19/08/19): No objection however regard must be given to ensure adequate protection from flooding.

3.4. Third Party Observations

Third party submissions were received from...

Siobhan Ni Neill, 21 Fonthill Park, Rathfarnham, Dublin 14.

Darren McIntyre, 25 Greenpark West, Mullingar, Co. Westmeath.

Terry Toal, Rosa Villa, Harbour Street, Mullingar, Co. Westmeath.

Lakepoint Retail Park c/o Paula Mullen.

Denis Corroon, Harbour Street, Mullingar, Co. Westmeath.

Cameron Glynn, harbour Quay, Mullingar, Co. Westmeath.

The issues raised can be summarised as follows...

- Poor quality design in the context of visual amenity, architectural heritage and the canal frontage, poor linkages with existing town centre/shopping centre, lack of design statement, adverse impact on adjoining residential amenity, contrary the retail planning guidelines, insufficient information on traffic impact, loss of necessary town centre car parking spaces, proximity to the canal, new cinema not needed, boundary issues, concerns regarding impact on existing access to a dwelling/rights of way, and surface water drainage.

4.0 Planning History

4.1 PL25.215164 (05/5127): Permission refused for extension to Harbour Place shopping centre, demolition of a dwelling, car parking and ancillary works. Refused based on one reasons...

1. The applicant has failed to outline any satisfactory arrangement for continued vehicular access for the three houses currently accessed via laneway L-25112 directly onto Harbour Street. The proposed development would result in two houses being surrounded by the extensive surface carpark and a third house in very close proximity to the carpark, would seriously injure the residential amenity of these properties by reason of noise and disturbance from the surrounding surface carpark, would depreciate the value of these properties, would be detrimental to the residential amenities of the occupants of these houses and would, therefore, be contrary to the proper planning and sustainable development of the area.

4.2 03/5161: Permission sought for extension of shopping centre of 2,670sq.m.

The planning authority sought advice of consultants in relation to the issue of urban design, the results of which were passed on to the applicant. No response has been submitted to a request for further information. The current planning application/appeal site includes this application site. The planning authority states that this application has been withdrawn.

4.3 00/795: Permission granted for demolition of house on the sawmill part of the appeal site in September 2000. This permission has now expired.

4.4 99/1342: Permission granted for 60 no. apartments on sawmill part of the appeal site in September 2000. This permission has now expired.

5.0 Policy Context

5.1. Development Plan

The relevant development Plan is the Westmeath County Development Plan 2014-2020 and the Mullingar Local Area Plan 2014-2020.

The appeal site is zoned Commercial (O-LZ4) with a zoning objective 'to provide from commercial development which does not need to be located in the Town Centre or retail warehousing zone'.

Section 4.1 Town Centre Strategy

Includes the following objectives...

- To reinforce the heart of the town as the priority location for new retail development, with quality of design and integration/linkage within the existing urban form/layout being guiding principles.
- To achieve a sustainable high quality urban environment through accepted design principles in new development and to promote the enhancement of the existing streets and public spaces.
- To preserve the character of the area including the diversity of uses and the fine grain of holdings which exist within the town.

5.2. Natural Heritage Designations

5.2.1 Royal Canal pNHA located to the north of the site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by Siobhan Ni Neill, 21 Fonthill Park, Rathfarnham, Dublin 14. The grounds of appeal are as follows...

- There is failure to link the proposal to the existing shopping centre, the design and scale of development is out of character with existing residential development in the vicinity. The appellant raises concerns regarding the impact of the proposal on architectural heritage and archaeological potential and notes that the site is an inappropriate location for the proposed development.
- There was a lack of a design statement and the overall design is inappropriate in the context of the town centre and its proximity to a number of structures that are protected and of architectural heritage value. The proposal would have an adverse impact in regards to visual amenities, adjoining amenities and conservation including archaeological, architectural heritage and endangering existing habitats.
- The proposal would contravene Local Area Plan policy regarding preserving residential areas. The proposal is an inappropriate scale adjacent residential development and the site would lend itself better to residential development, which is needed.
- There should be justification provided for the proposal on the basis of sequential analysis in accordance with the Retail Planning guidelines.
- The proposal lacks integration with existing commercial development and the surrounding area.

- Insufficient information regarding impact on the road network. The proposal would be more approximately located at the shopping centre which has a significant level of parking.

6.1.2 A third party appeal has been lodged by Denis Corroon, Harbour Street, Mullingar, Co. Weestmeath. The grounds of appeal are as follows...

- The EIS submitted does not meet the requirement of Part X of the Planning and Development Act 2000 and Part 10 of the Planning and Development Regulations 2001.
- The appellant notes there are existing issues regarding surface water drainage concerning this site and adjacent the appellant property. The appellant notes that the proposal should be require to direct surface water drainage to public system on the L25112 and that the Council should have conditioned this to be the case.
- The appellant notes there is a right of way through this site to the rear of his property and such must be retained and is only viable access for emergency services if required as the L25112 is too narrow.

6.2. Applicant Response

6.2.1 Response by Magahy, Broderick Associates on behalf of the applicants, Omniplex (Cork) Ltd.

- The development is sub-threshold development and does not require an EIS.
- The issue of surface water drainage was addressed to the Council's satisfaction.
- The appellant adjusted the boundary of the site to have regard to one of appellant's issues regarding rights of way and access.
- The applicant raise concerns regarding the appeal by Siohan NiNeill and whether such person legally exists. The applicants note that they consider this

appeal be driven by commercial rivalry and that it should be established that the appellant is valid objector.

- The location and design of the development is such that it would have no significant visual impact at this location or on the character or existing protected structures or building of architectural heritage value.
- The proposal is satisfactory in regards to integration and will attract footfall to the area.
- The location of the development in the town centre will minimise traffic generation.
- The proposal is not subject to flood risk and will not impact upon any existing habitats or wildlife.

6.3. **Planning Authority Response**

No response.

7.0 **Assessment**

7.1. Having regard inspected the site and associated documents, the main issues can be assessed under the following headings.

Principle of the proposed development/Development Plan policy

Design, scale, visual amenity

Adjoining amenity

Drainage

Habitats/wildlife

Traffic

EIA Screening

Appropriate Assessment

7.2 Principle of the proposed development/Development Plan policy:

7.2.1 The appeal site is located in close proximity to the town centre and currently in use as a car park. The site zoned Commercial (O-LZ4) with a zoning objective 'to provide for commercial development which does not need to be located in the Town Centre or retail warehousing zone'. The proposed use would be permitted use within the zoning objective and its location on a site in close proximity is acceptable and appropriate for a use of this type.

7.2.2 The appeal site is an overflow car park run by the Council and does not appear to in heavy use. The location is not well supervised and the provision of an active use of this location would be a positive factor. I would note that there is an existing cinema located in the town run by IMC Cinema and located in the Lakepoint Retail Park to the east of the town. I would note that the fact there is an existing cinema or competition is not a planning consideration. I would consider the principle of the proposed development is acceptable at this location.

7.2.3 One of the appeal submissions notes that the proposed use should be subject to a sequential tests as per the Retail Planning Guidelines. As noted above the appeal site is a town centre location zoned for commercial use and the proposed use is a type of use that would be permitted within such a location/zoning. I would consider that the appropriate location of the use in terms of land use zoning means that there is no requirement for a sequential test in this case. I would also reiterate the existence of a cinema elsewhere in Mullingar is not a relevant factor as competition is not a planning consideration.

7.3 Design, scale, visual amenity:

7.3.1 One of the appeal submission is critical of the design and layout with the proposal considered out of character and scale to adjoining development including residential, having an adverse impact on existing protected structures and buildings of architectural heritage value, being poor in design and having no linkages with the existing shopping centre.

7.3.2 Firstly in relation to linkages to existing development and the town centre, the site is reasonably connected to the surrounding area. The car park has an existing pedestrian link (across Harbour Lane) to the Harbour Shopping centre located to the south east of the site. There is laneway between the two both there is a pedestrian gate on each side of it. It is notable in the drawings submitted that a defined pedestrian path between the new structure and the existing pedestrian gate to the south east is to be provided. In addition to this linkage there is existing footpath along the entrance road to the car park up to Harbour Street and a pedestrian entrance on to the footpath running along the south of the Royal Canal. I would consider that the proposal links in well with the surrounding area.

7.3.3 The appeal site is a low lying site and is significantly lower in ground level than Harbour Street to the south and the Royal Canal to the north. The appeal site is not a highly visible site from the surrounding area due to its low lying elevation and existing vegetation and structures surrounding the site. The site is visible from the canal bank, however the low level relative to the site would mitigate the impact of any structure on site. The proposed structure is a very simple flat roof structure with a maximum ridge height of 8.638m (it does step down to a lower height adjacent the canal). The external finishes are a mixture of stone cladding, metal panels and a high level of glazing. I would consider that the overall design proposal while not of exceptional architectural merit and being generic in nature, is of an acceptable standard based on its siting, design and scale. As noted above the appeal site is not highly visible or prominent in the surrounding area due to its low ground level relative to Harbour Street and the Royal Canal and due to intervening structures, vegetation and boundary treatment.

7.4 Adjoining Amenity:

7.4.1 There are a number of adjoining structures/uses due to the sites town centre location. There are a number of dwellings (two-storey) that back onto the site fronting Harbour Street as well as the curtilage of a car sales business. To the north is the

Royal Canal and its associated toe path. To the east is Harbour Lane and beyond it is the Harbour Quay Shopping centre.

7.4.2 The appeal submission raise concerns regarding the overall scale and potential overbearing impact of the proposal relative to adjoining properties. The proposal is for a new cinema building within an existing car park with the cinema building located to the west of the site. As noted above the levels of the site are significantly lower than the ground level of existing structures fronting Harbour Street. I would be off the view that any adjoining residential development is if of sufficient distance from the appeal site and the location of the proposed structure so as to have no significant or adverse impact on residential amenity. There is a dwelling at a similar level to the car park located to the south of the site (appellant's property, Dennis Corroon). The difference in levels between the appeal site and the dwellings on Harbour Street is such that the proposal would not be overbearing in scale. In the case of the appellant's dwelling, the proposed structure is located to the west of the car park sufficient distance from the appellant's dwelling so as have no significant or adverse impact on residential amenity. In addition I would note that the appeal site is within a town centre location and the nature of the use is compatible at such a location.

7.4.3 One of the appellants (Dennis Corroon) has raised concerns regarding rear access currently enjoyed from the car park to their property and the potential that the proposal would interfere with such. The appellant's dwelling appears be located off Harbour Lane, however does have access onto the car park. I would note that the proposed structure is located in the western portion of the car park away from the appellants property so there is no reason why any existing access from the car park should be interfered with.

7.5 Drainage:

7.5.1 One of the appellant's raises concern regarding surface water drainage and the manner in which such is currently dealt with at this location and is to be dealt with post development. In this regard I would note that the appeal site is located in an

urban area that is serviced by a municipal surface water drainage system. I would note that the Council have indicated satisfaction with the proposal in relation to surface water drainage. I would consider that the issue of surface water drainage has been dealt with to the satisfaction of the Council and would recommend attaching standard conditions regarding such.

7.6 Habitats/Wildlife:

7.6.1 The appeal site is located adjacent the Royal Canal, which runs along the northern boundary of the site with toe path between it and the appeal site. The Royal Canal is designated as a pNHA. The Department of Culture, heritage and the Gaeltacht raised the issue potential damage to wildlife (bats) noting that the applicant should be required to demonstrate that there would be no light spill onto the Royal Canal pNHA.

7.6.2 The applicant noted that light fittings and lighting design would be carried out to ensure no light overspill onto the canal area. I would consider that a condition could deal with this matter. In terms of general disturbance and impact on the canal area, I would note that the site is a town centre site currently in use as a car park. I would consider that the proposal although it provides for a new structure and an increased intensity of use, would be acceptable in the context of the canal area. I would note that canal and associated toe path although in close proximity is separated from the site due to its higher elevation and by the existing embankment between the appeal site and the canal toe path. The proposal entails no encroachment onto the canal area and I would consider that subject to adequate conditions regarding construction management, light overspill and noise limits, that the proposal would have no adverse impact on the integrity of the pNHA. I would note that the proposal also facilitates retention of an existing mature tree.

7.7 Traffic:

7.7.1 One of the appeal submission notes that there is lack of information regarding traffic impact of the proposed development. The proposal is for a new cinema building

within an existing car park. The proposal entails use of part of the site and retention of the remainder as car parking. There is a significant level of car parking within the existing car park and such does not appear to be used to its full capacity. I would consider that there is sufficient car parking retained on site to serve the proposed development. In addition I would note that the site is a town centre location and has the benefit of existing car parking and access arrangements. I would consider that the proposal would be acceptable in the context of traffic impact.

7.8 EIA Screening:

7.8.1 One of the appeal submission indicates EIS submitted does not meet the requirement of Part X of the Planning and Development Act 2000 and Part 10 of the Planning and Development Regulations 2001. The proposal is not accompanied by an EIS. It is notable under Part 2, Section 10(iv) of Schedule 5 of the Planning and Development Regulations, 2001 (infrastructure Projects) that the following category requires a mandatory EIA...

Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. (In this paragraph "business district" means a district with a city or town in which the predominant land use is retail or commercial use).

7.8.2 The appeal site has an area of 0.6446 hectares. In this regard there is no mandatory requirement for Environmental Impact Assessment. Having regard to the nature and scale the development which consists of cinema, 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.

7.9 Appropriate Assessment:

7.9.1 Having regard to the nature and scale of the proposal, no appropriate assessment issues arise and it is not considered that the proposal 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. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

The provision of the Mullingar Local Area Plan 2014-2020, the existing pattern of development at this town centre location, the design, scale and layout of the proposed development, and the submissions and observations on file, it is considered that, subject to the compliance with the conditions set out below, the proposed development would be in accordance Development Plan policy, would not detract from the visual amenities of the area, would be acceptable in the context of the amenities of adjoining properties and the integrity of the Royal Canal and its associated pNHA. 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, , and as amended by the further plans and particulars received on the 05th day of February 2019 and 11th of March 2020, 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 interests of clarity.

2. Details of materials, colours and textures of all external finishes to the proposed development shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interests of visual amenity.

3. Site development and building works shall be carried out only between the hours of 07.00 to 18.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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 amenities of property in the vicinity.

4. 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 or within the curtilage of the site unless authorised by a further grant of permission.

Reason: In the interest of visual amenity.

5. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

6. Drainage requirements including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

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

7. 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 intended construction practice for the development, including traffic management, noise, vibration and dust management measures and off-site disposal of construction/demolition waste.

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

8. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

9. The beech tree on the western boundary shall be protected during construction and thereafter be maintained in accordance with the Tree Report submitted.

Reason: In the interests of visual amenity.

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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Colin McBride
Planning Inspector

24th July 2020