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Bord  
Pleanála

## Inspector's Report ABP 307714-20

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<b>Development</b>	Retention of change of use of retail to café. Change of use of ground floor café to restaurant and all associated site works.
<b>Location</b>	30-32 Oliver Plunkett Street, Mullingar, County Westmeath.
<b>Planning Authority</b>	Westmeath County Council
<b>Planning Authority Reg. Ref.</b>	20/6048
<b>Applicants</b>	Adrian and Deirdre Murphy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Ciarán Moynihan and Carol Whyte
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	20 <sup>th</sup> October 2020
<b>Inspector</b>	Brendan Coyne



## 1.0 Site Location and Description

- 1.1. The site (0.04 ha) is located on the northern side of Oliver Plunkett Street in Mullingar and comprises a three-storey mid-terrace premises. The ground floor of the premises is in use as a café, known as 'Days Bazaar Café' and the first floor is in use as an art gallery with ancillary office, store and staff rooms. The second floor of the premises contains 3 no. store rooms and a w.c. A gated laneway / right of way to the eastern side of the site provides access to an enclosed yard to the rear of the premises. This laneway also provides access to a 1.5 storey dwelling located to the north of the site and property to the east of the lane. The yard to rear of the appeal premises is accessed via a 1.6m wide entrance served with a metal gate along its eastern boundary. The remainder of the eastern and northern boundaries of the yard are bound with a block wall c. 2m high and the western boundary is defined by the side gable wall of the adjoining property, which has a door opening onto the yard.
- 1.2. The yard contains several wooden picnic benches serving the café, a covered seating area at its north-western corner and an enclosed refuse storage area at its north-eastern corner. The walls within the yard are painted extensively with coloured murals. The adjoining premises to the west of the appeal site is in retail use at ground floor level and appears to be in residential use at first and second floor levels. The adjoining premises to the east of the site is a café at ground floor level. On-street parking is provided along both sides of Oliver Plunkett Street to the front of the premises. The site lies within Mullingar's town centre Architectural Conservation Area and Archaeological Zone.

## 2.0 Proposed Development

- 2.1.1. Permission sought for the RETENTION of the following (as described in public notices);
- Change of use of 120 sq.m. of the ground floor from retail use to a café.
- 2.1.2. Permission sought for the following:
- Change of use of the ground floor café to a restaurant.
  - Provision of 2 no. additional toilet cubicles and a cold room at ground floor level.

- All ancillary site services.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

3.1.1. Westmeath County Council granted permission for the proposed development subject to 8 no. Conditions. Noted Conditions include:

C.2 Full details of future occupiers of the development shall be submitted for the written agreement of the Planning Authority prior to occupation.

C.3 (ii) Hours of operations of the outdoor area to the rear of the premises - restricted to the hours of 10am to 8pm daily, unless agreed in writing with the Planning Authority.

C.4 (i) The windows on the front façade of the premises shall be kept free of adhesive material, stickers, posters and advertisements and (ii) no sandwich boards or similar structures shall be displayed outside the premises.

C.6 Hours of operations of the restaurant – restricted to between 8am and 10pm Sunday to Thursday and between 8am and 11pm on Fridays and Saturdays, unless agreed in writing with the Planning Authority.

C.8 Provide a designated waste storage area.

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

#### **3.2.1. Senior Executive Planner Report (29<sup>th</sup> June 2020)**

Basis for the Senior Executive Planner's decision. Includes:

- The proposal is consistent with the mixed-use zoning objective for the site.
- The principle of a cafe use is established on the ground floor whereby permission was granted under P.A. Ref.10/5151 for the retention of a coffee shop to the rear of the retail unit.
- The proposed development will not materially alter the character of the established building.

- The proposed minor external alterations would not create an adverse visual impact.
- The proposed restaurant at ground floor level would contribute positively to the vibrancy and vitality of Oliver Plunkett Street, both during day and night-time hours.
- The proposal would ensure the continued use and preservation of this prominent building.
- The proposal would provide a diversity of business i.e. a restaurant and an art gallery.
- The proposal would not impact on the Architectural Conservation Area. No groundworks are proposed.
- The retention and proposed change of use of the premises would be contrary to Policy P-RET17 which requires no more than two in every five high street units be permitted a change in use to a non-retail use, within the core retail area.
- The proposal would result in the loss of a retail unit to a non-retail use and cumulatively undermine the retail vibrancy of the Town Center.
- Recommendation – REFUSE permission. The reason for refusal was as follows;

*The retention of a cafe and proposal to further develop the entirety of the ground floor of this premises as a restaurant, the subject matter of this application, will result in the proliferation of non-retail uses along the northern side of Oliver Plunkett Street which is located within the defined retail core of Mullingar town. In this regard, and in the absence of satisfactory information submitted on file to the country, it is considered that the development proposed is contrary to policy P-RET17 of the Mullingar Local Area Plan 2014-2020, will contribute to a further loss in maintaining and sustaining the retail attraction of the retail core in Mullingar and will therefore be contrary to the proper planning and sustainable development of the area.*

### **3.2.2. Director of Services Report (30<sup>th</sup> June 2020)**

Having considered the Senior Executive Planners report, the Director of Services recommended that the proposed development be GRANTED permission. The basis for the Director of Services decision includes the following:

- The proposed development is consistent with all of the policies contained in the Westmeath County Retail Strategy, adopted by the Council in 2019 and that this strategy forms part of the Mullingar Local Area Plan.
- The recommended reason for refusal refers solely to policy P-RET17 contained within the Mullingar Local Area Plan, which was adopted by the Council in 2014 in respect of retaining active frontages within the core retail area defined in the Retail Strategy. This policy states that no more than two in every five High Street units / outlets will be permitted a change in use to a non-retail use, within the core retail area. However, in context, due cognisance should be given to the fact that this policy was not included in the most recent Retail Strategy for the County, that the precedent of a non-retail use is established on this site under P.A. Ref. 10/ 5151 and that the proposed development will provide an active frontage onto the street.
- The Westmeath County Retail Strategy states that the policies contained within the Retail Strategy shall supersede those within the County Development Plan where any discrepancy exists and it is considered that this should also apply, where a conflict in policy exists between the Retail Strategy and the Mullingar Local Area Plan.
- The proposed development will allow for enhanced vibrancy and vitality within the core of the Town Center both in terms of the daytime and nighttime economy and will not unduly compromise the retail core.

### 3.2.3. ***Other Technical Reports***

**District Engineer Report:** No objection subject to Condition.

### 3.3. ***Prescribed Bodies***

**Irish Water:** No objections.

**H.S.E. - Environmental Health Officer:** Conditions recommended with regards dust, waste management, pest control, ventilation, drainage, potable water supply, water storage tanks, refuse storage facilities and condenser units.

## 4.0 Planning History

**P.A. Ref. 19/6354** Permission sought by Adrian & Deirdre Murphy for a change of use of the existing ground floor from a café to a restaurant use, the provision of 2 no additional toilet cubicles and a cold room at ground floor level within the existing footprint and all ancillary site services. This application was declared INVALID.

**P.A. Ref. 10/5151** Permission GRANTED in 2011 for the retention of a change of use of part of ground floor of premises from retail to coffee shop and part of first floor of premises from residential to retail together with internal alterations

## 5.0 Policy and Context

### 5.1. Development Plan

**Westmeath County Development Plan 2014-2020** is the statutory plan for the County.

#### **Mullingar Local Area Plan 2014-2020:**

The following provisions are considered relevant:

**Zoning:** The site is zoned 'Mixed Use' with the Objective O-LZ2 'To provide for, protect and strengthen the vitality and viability of the town centre, through consolidating development, encouraging a mix of uses and maximising the use of land, to ensure the efficient use of infrastructure and services'.

The site is located within an Architectural Conservation Area and a Zone of Archaeological Potential.

The site is located within the 'Retail Core' as detailed on Map 4.1 - Character Areas.

**Section 3.21 General Retailing Policies & Objectives** – relevant policies include:

**Policy P-RET17:** To retain active frontages within the Core Retail Area defined in the Retail Strategy. No more than two in every five high street units/outlets will be permitted a change in use to a non-retail use, within the Core Retail Area.

**Policy O-LZ2:** To provide for, protect and strengthen the vitality and viability of the town centre, through consolidating development, encouraging a mix of uses and maximising the use of land, to ensure the efficient use of infrastructure and services.

**Section 8.6.3 - Parking Standards:** Parking provision will be required to comply with car parking and cycle provision standards of the Westmeath County Development Plan 2014-2020.

**Section 14.9.2** of the Westmeath Development Plan requires 0 no. car parking spaces for a restaurant in a designated town centre area.

### **Westmeath County Retail Strategy 2019 - 2026**

The Westmeath County Development Plan 2014-2020 was varied in 2019 by Variation No. 5 to incorporate the provisions of the Westmeath County Retail Strategy 2019 – 2026.

## **5.2. Natural Heritage Designations**

Lough Owel SAC (Site Code: 000688) and SPA (Site Code: 004047) is located c.4.3 km to the north-west of the site. Lough Ennell SAC (Site Code: 000685) and SPA (Site Code: 004044) are located c. 3.7km to the south-west of the site. Wooddown Bog SAC (Site Code: 002205) and NHA (Site Code: 000694) is located c. 3.8km to the north-east of the site.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. A third-party appeal was received from Ciarán Moynihan and Carol Whyte, who reside at No. 28 Oliver Plunkett Street, which adjoins the appeal site to the east. The grounds of appeal document submitted refers to the appellants original objection submitted to the Planning Authority. The following is a summary of the issues raised in both the grounds of appeal submission and original objection submitted to the Planning Authority. These are addressed under the headings below.

#### **6.1.2. Hours of Operation**

- The hours of operation of the proposed development represents a significant change to the existing hours of operation.
- The existing hours of operation are from 8am to 6pm.

- The hours of operation of the proposed development extend up to up to 10pm at weekdays and 11pm at weekends.
- The appellants request the hours of operation be suitably restricted to minimise disruption to the residential amenity of neighbouring property.

#### 6.1.3. The 'open yard' to the rear of the premises.

- The drawings submitted are misleading / inaccurate by reason that they do not show the boundary walls enclosing the open yard.
- A gate to the open yard has been removed resulting in customers of the premises regularly trespassing onto the appellants private lane. This causes security, privacy and insurance issues.
- The appellants request that this gate be restored and alarmed to prevent further trespassing.
- The use of the open yard would impact on residential amenity of the area by way of noise nuisance and disturbance.

#### 6.1.4. Foul Drainage

- The foul drain serving the premises experiences ongoing sewage blockages due to the connected cubicles and inflow of wastewater from the café.
- Because the appellants own the laneway, they have had to pay to have these problems rectified.
- The proposed additional extra toilets will exacerbate this problem.

#### 6.1.5. Appendices lodged with the appeal include a number of photographs of the open yard to the rear of the premises.

## 6.2. Applicant Response

#### 6.2.1. The response received from Billy Murtagh of BGM Consulting Engineers, representing the Applicants, is summarised as follows;

- The applicant will operate the proposed restaurant in accordance with the hours of operation imposed by the Planning Authority.
- The open yard will be accessible to the customers and staff of the restaurant.

- The applicant is willing to erect a gate to enclose the open yard in order to restrict the movements of users of the yard.
- The applicant has not been aware of issues with regards the foul sewer along the private laneway. The applicant is happy to collaborate with the appellants to resolve any issues with regards foul drainage.

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

The Planning Authority did not respond to the grounds of appeal.

### 6.4. **Observations**

None

## 7.0 **Assessment**

7.1. I have reviewed the proposed development and the correspondence on the file. I note the Planning Authority were satisfied that the proposed development accords with the policies and objectives of the Mullingar Local Area Plan 2014-2020 and the Westmeath County Retail Strategy 2019 - 2026. I am satisfied that the proposed development is acceptable in principle, in accordance with the zoning objective of the site. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issues are addressed under the following headings:

- Impact on Residential Amenity
- Drainage

These are addressed below.

### 7.2. **Impact on Residential Amenity**

7.2.1. The appellants express concern with regards the impact of the proposed development on their residential amenity. Particular concerns can be summarised as follows;

- The hours of operation of the proposed restaurant represents a significant change to the hours of operation of the existing café. The hours of operation of the existing

café are from 8am to 6pm and the hours of operation of the proposed restaurant extend up to 10pm on weekdays and 11pm at weekends.

- The use of the open yard to the rear of the premises would impact on the residential amenity of the appellants by way of noise nuisance and disturbance.
- The open yard is not gated, thereby causing trespassing from users of the yard onto the adjoining appellants private lane and thereby impacting on their privacy, security and insurance liability.

The appellants request that the hours of operation of the proposed development be suitably restricted to minimise disruption to their residential amenity and that the former gate along the boundary of the yard be restored in order to prevent further trespassing.

7.2.2. With regards the hours of operation of the proposed development, the Planning Authority imposed 2 no. conditions addressing this issue. Condition No. 3(ii) restricts the use of the open yard to the rear of the premises to between 10am and 8pm daily, unless otherwise agreed in writing with the Planning Authority. Condition No. 6 restricts the operation of the restaurant between the hours of 8am and 10pm Sunday to Thursday and between 8am and 11pm on Fridays and Saturdays, unless otherwise agreed in writing with the Planning Authority. The site is located in the retail core of Mullingar, as detailed on Map 4.1 of the Mullingar Local Area Plan 2014-2020 and is zoned 'mixed use', with the objective 'to provide for, protect and strengthen the vitality and viability of the town centre, through consolidating development, encouraging a mix of uses and maximising the use of land, to ensure the efficient use of infrastructure and services'. Given the town centre location of the proposal, the existence of a late night economy and activity along Oliver Plunkett Street with nearby public houses, restaurants and take-aways, existing levels of background activity and noise along Oliver Plunkett Street (regional road R390) and existing residential use on adjoining lands, I consider that the hours of operation imposed by the Planning Authority for the proposed restaurant and use of the open yard to the rear of the premises are appropriate.

7.2.3. In addressing the appellants concern with regards the open yard to the rear of the premises and its impact on their residential amenity, the Planning Authority imposed Condition No. 3 (iii) requiring that prior to the occupation of the permitted development, the applicant shall submit details of measures to be undertaken which will ensure the

avoidance of potential nuisance (including smoke fumes and noise) arising from the development on the amenities of adjoining residential properties and measures to prevent encroachment on adjoining third party lands. I am satisfied that such requirements, along with the restricted hours of use of the open yard between the hours of 10am and 8pm daily, would minimise impact on the residential amenity of neighbouring property with regards noise nuisance and disturbance. I consider, however, that in the event of a grant of permission a condition should also be imposed requiring that no music or other amplified sound be emitted to the open yard or broadcast from the premises in such a manner as to cause nuisance to the occupants of nearby properties. Such condition would further safeguard the residential amenity of neighbouring property. Furthermore, in order to negate the appellants concerns with regards trespassing, security and loss of privacy on their private lane, I consider that a condition should be imposed requiring that the access along the eastern boundary be permanently gated, restricting access to the laneway.

7.3. In consideration of the above, I recommend that the appeal should not be upheld in relations to these grounds of appeal.

#### 7.4. **Drainage**

7.4.1. The proposed development provides 2 no. additional w.c cubicles at ground floor, of which one would be a disabled w.c. The appellants express concern with regards the capacity of the existing foul drain to accommodate the increased load from the proposed 2 no. additional toilet cubicles and inflow of wastewater from the proposed restaurant. The appellants state that this drain has experienced ongoing sewage blockages and because they own the laneway have been liable for the costs of its repair.

7.4.2. In response to this, the applicants state that they had not been aware of this issue and would be happy to collaborate with the appellants to resolve any issues with regards foul drainage.

7.4.3. The H.S.E. Environmental Health Officer's report recommends a Condition requiring that 'the drainage connections should be constructed and connected to the existing sewer in a manner that minimises the risk of blockage that may result in public health nuisance. In addition, the existing sewerage connection must be adequate to cater for

the additional cubicles'. The Planning Authority District Engineer report outlines no objections to the proposed development subject to standard condition. Likewise, Irish Water outline no objections to the proposed development. I note, however, that the Planning Authority did not impose any specific conditions with regards foul drainage. In the absence of documentary evidence demonstrating that the foul drain serving the proposed restaurant does not have the capacity to handle the additional volume generated by the proposed development, it is my view that the appellants claim cannot be supported. Notwithstanding this, I consider it appropriate that, in the event of a grant of permission, a condition should be imposed requiring the applicant or developer to submit for the written agreement of the Planning Authority, prior to commencement of development, foul and surface water drainage plans for the proposed development showing the location of all drains, manholes, Ajs, etc. located within site boundary. This information should include pipe sizes and gradients of pipes. Such condition would ensure adequate drainage provision for the proposed development to the satisfaction of the Planning Authority. I recommend, therefore, that the appeal should not be upheld in relations to this issue.

## **7.5. Appropriate Assessment**

- 7.5.1. The site is located c. 4.3km to the south-east of Lough Owel SAC (Site Code: 000688) and SPA (Site Code: 004047) and c. 3.7km to the north-east of Lough Ennell SAC (Site Code: 000685) and SPA (Site Code: 004044). Having regard to the nature and modest scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway 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.

## **8.0 Recommendation**

- 8.1. I recommend that permission be granted subject to conditions, for the reasons and considerations below.

## 9.0 Reasons and Considerations

Having regard to the town centre location of the proposed development and the 'Mixed Use' zoning objective relating to the site, it is considered that, subject to compliance with the conditions set out below, the retention of the change of use of 120 sq.m. of the ground floor from retail use to a café and the proposed change of use from a café to a restaurant on Oliver Plunkett Street, would not impact on the residential amenity of neighbouring property, would not be prejudicial to public health and would not unduly impact on the character of the Architectural Conservation Area in which it is located. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>(i) The operation of the restaurant shall be limited to between the hours of 08.00 hours and 22.00 hours Sunday to Thursday and between the hours of 08.00 hours and 23.00 hours on Fridays and Saturdays.</p> <p>(ii) The hours of use of the outdoor area to the rear of the restaurant shall be limited to between the hours of 10.00 hours and 20.00 daily.</p> <p><b>Reason:</b> In the interest of the residential amenity of properties in the vicinity.</p>
3.	<p>(i) Prior to commencement of development, the applicant or developer shall submit for the written agreement of the Planning Authority, foul and</p>

	<p>surface water drainage plans for the proposed development showing the location of all drains, manholes, Ajs, etc. located within site boundary. The information shall include pipe sizes and gradients of pipes.</p> <p>(ii) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interests of public health and in order to ensure adequate drainage provision.</p>
4.	<p>A gate of appropriate height, materials and finishes shall be provided along the eastern boundary of the open yard to the rear of the premises, restricting public access from the yard to the adjoining private laneway. Details of this gate shall submitted for the written agreement of the Planning Authority, prior to commencement of development.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
5.	<p>Live and/or amplified music entertainment shall be confined to internal building areas and shall not be played within the yard to the rear of the premises.</p> <p><b>Reason:</b> In the interests of residential amenity.</p>
6.	<p>The developer shall control odour emissions from the premises in accordance with measures which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.</p> <p><b>Reason:</b> In the interest of public health and to protect the amenities of the area.</p>
7.	<p>Prior to the commencement of development the developer shall submit, and obtain the written agreement of the planning to, a plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular,</p>

	<p>recyclable materials and for the ongoing operation of these facilities.</p> <p><b>Reason:</b> To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.</p>
8.	<p>The glazing to the shopfront shall be kept free of all stickers, posters and advertisements.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
9.	<p>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.</p> <p><b>Reason:</b> 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.</p>

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Brendan Coyne

Planning Inspector

21<sup>st</sup> October 2020