



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314805-22

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<b>Development</b>	Renovate ground floor level only. Proposed development will include takeaway area, seated restaurant, toilets, kitchen, stores, new shopfront signage and associated siteworks.
<b>Location</b>	29 Patrick Street, Mountmellick, Co. Laois, R32 N4O3.
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	22294
<b>Applicant(s)</b>	Jianhang He.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Ken and Margaret Goode.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	25 <sup>th</sup> of July 2023
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1. The site is a mid-terraced unit along Patrick Street in Mountmellick, Co. Laois. It is a three storey four bay unit with a commercial unit on the ground floor and an open access to the rear.
- 1.2. The ground floor unit has been vacant for a considerable time.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the renovation of the ground floor of an existing buildings to provide a restaurant and takeaway area as well as kitchen, stores, toilet, new signage and all associated works.

## 3.0 Planning Authority Decision

### 3.1. Decision

Laois Co. Co. by Manager's Order of the 13<sup>th</sup> of September 2022 decided to grant planning permission for the proposed development subject to 14No. conditions

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- Following the response to a further information request relating to issues, the planning authority accepted the justification for the new use, the response to third party submissions and carparking requirements.

#### 3.2.2. Other Technical Reports

No objections to the proposed development from Roads.

Applicant must engaged with Irish Water regarding Pre-Connection Enquiry.

### 3.3. Prescribed Bodies

None.

### 3.4. Third Party Observations

- The proposal will exacerbate congestion in the town
- Noise pollution in the town centre
- Potential for odours from the business
- Parking
- New door/ shared gateway
- Too many takeaways in a small town.
- Waste
- Proximity to school

### 4.0 Planning History

No relevant planning history.

### 5.0 Policy Context

#### 5.1. Development Plan

Laois County Development Plan 2017-2023 and Mounmellick Local Area Plan 2018-2024.

#### 5.2 Mountmellick LAP 2018-2024

The site is zoned Town Centre.

The objective is 'to enhance the vitality and viability of the town centre through the promotion of retail, residential, commercial, office, cultural, public facilities and other appropriate uses in the urban core'. [To encourage the use of buildings and backlands in particular the full use of upper floors, preferably residential purposes.]

Within the zoning restaurant and hot food takeaway are normally acceptable.

**TCR O7:** Promote an appropriate mix of day and night time uses within the Town Centre.

**TCR P3:** Promote the reuse of existing Town Centre buildings through appropriate design and adaptation.

**TCR P4:** Prohibit the proliferation of uses in the Town Centre which would detract from the amenities of the area or the vitality and viability of the Town Centre.

**TCR P6:** Encourage and facilitate the reuse and regeneration of derelict and vacant sites and disused buildings, especially upper floors.

**TCR P7:** Promote living over the shop and conversion of Town Centre buildings into housing units.

### 5.3 **Laois County Development Plan 2017-2023**

#### ***DM TC 6 HOT FOOD TAKE-AWAY***

The development of hot food take-aways will be strictly controlled and a proliferation of this use will not be encouraged. This type of development will generally only be considered in towns and villages where the development would not result in the loss of retail and office frontage. The Council may impose restrictions on opening hours. The opening of new fast food/takeaway outlets in close proximity to schools or children's play areas will be restricted so as to protect the health and wellbeing of children.

In dealing with applications for such developments the Planning Authority will have regard to the following:

- 1) The effects on the amenities of adjoining properties particularly as regards hours of operation, noise, odour and general disturbance;
- 2) The location; standalone take-aways not attached to restaurants will not be encouraged, where an existing residential unit is above or the proximity to a school or children's play area;
- 3) The anticipated levels of traffic generation (a traffic and car parking statement shall accompany any application);
- 4) The generation, storage and collection of waste; Quality signage proposals, plastic or neon signage will not be permitted.

### 5.2. **Natural Heritage Designations**

The River Barrow and River Nore SAC is 264metres north-east of the subject site.

### 5.3. EIA Screening

Having regard to the nature and scale of the development proposed, the site location within an established built-up urban area which is served by public infrastructure and outside of any protected site or heritage designation, the nature of the receiving environment and the existing pattern of urban development in the vicinity, and the separation distance from the nearest sensitive location, 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

#### 6.1.1 *Non Compliance with Planning Policy*

With Laois Co. Co. Development Plan 2021-2027 the site is within Town Centre (Primary/ Core Retail Area). The existing character of the area should be respected and every effort made to protect existing amenities.

*Policy Objective TC7 -Retain and foster a mix of uses in towns and village centres including residential commercial., community-based, civic, educational, recreational, tourism and religious to bolster the central role of town/ village centres in the day to day lives of Laois people.*

*Objective TC 9 – provide for night-time economy in town centres including public houses, nightclubs, restaurants and takeaways, subject to considerations of undue concentration/ proliferation and mitigation any adverse effects of these uses and other uses on the residential amenity of town centre residents.*

*Policy DM TC 6 – Hot Food Take-Away The development of hot food take away will be strictly controlled and a proliferation of this use will not be encouraged. This type of development will generally only be considered in towns and villages where the development would not result in the loss of retail and office frontage. The Council may impose restrictions on opening hours. The opening of new fast food/takeaway*

*outlets in close proximity to schools or children's play areas will be restricted so as to protect the health and wellbeing of children.*

*In dealing with applications for such developments the Planning Authority will have regard to the following:*

- 1) The effects on the amenities of adjoining properties particularly as regards hours of operation, noise, odour and general disturbance;*
- 2) The location; standalone take-aways not attached to restaurants will not be encouraged, where an existing residential unit is above or the proximity to a school or children's play area;*
- 3) The anticipated levels of traffic generation (a traffic and car parking statement shall accompany any application);*
- 4) The generation, storage and collection of waste; Quality signage proposals, plastic or neon signage will not be permitted.*

Laois Co.Co. seek to avoid a proliferation of any type of service dominating town centres. There should be a strong mix of service provision available to promote healthy towns which support local population.

The propose development represents an over concentration of development of this kind along Patrick Street. There are currently 7No. fast food outlets within 500metres of the premises.

Laois Co. Co. accepted that the applicant will move its current takeaway premises on Patrick Street to this premises. The current premises has planning permission to operate as a takeaway and that permission will remain whether the applicant is an occupant or not. The planning authority should not have accepted this logic to overcome the proliferation of takeaway services in the town.

The proposal does not comply with DM TC 6 , TC 7 and TC 9, and it will have a negative impact which these development plan policies seek to deter.

#### **6.1.2 Traffic and Parking**

The Laois County Development Plan sets out required parking provision for restaurant and takeaway use separately. As per Table 10.3 there should be 1No. space per table and a takeaway use must provide 6No. carparking spaces. The

proposal does not include any parking spaces. The change of use from a vacant unit to a restaurant/ takeaway will result in additional parking requirements. If there is not adequate parking in front of or beside the premises, patrons will park on the road or mount kerbs. There are very few parking spaces along Patrick Street. There are not enough spaces to sustain the extra parking the proposed development will generate. In addition, the permission will remain with the existing premises to operate as a takeaway, therefore, creating more parking problems for the town.

### 6.1.3 **Noise and Odour**

The upper floors at 29 Patrick Street are in use as residential units. The proposal is directly beside and under residential properties. The extractor ducts could cause a nuisance. There will be a high volume of cooking and odours which will negatively impact on the residents of No. 30 as well as residents inside of the subject building. There will be noise disturbance from the refrigerated units. The issues of noise and odours has not been adequately addressed.

### 6.1.4 **Waste Management**

Irish Water stated in a submission the applicant had not engaged with it. No confirmation of feasibility was submitted to the local authority and it is noted that a request for this was not included within Laois Co. Co. request for further information, There has been no consideration of the waste management on site because there is only one manhole serving No. 29 and No. 30

Furthermore, proposals for refuse storage is ad hoc, and food items could attract vermin.

## 6.2. **Applicant Response**

A summary of the response received is as follows:

### 6.2.1 **Proposed Use**

- The proposal is not a proliferation of hot food takeaways. There are currently 7 takeaway businesses in Mountmellick. Once the business is active there will still 7 No. takeaways. Four Seasons has been operating in the town centre since 2004 while other takeaways have come and gone. The applicant is currently in a leased premises, the proposed development

enables them to operate from an owner-occupier buildings. The town centre location is an ever-changing environment.

- The property has remained empty for a considerable length of time. The proposed site on Main Street Mountmellick, a busy town centre street with mixed uses including residential. The access to the takeaway/ restaurant and residential will be via the front door of the building.
- The applicant has specialist contractors and equipment in the current premises to deal with noise and odours arising from the premises. This is not a standalone takeaway and is part of a restaurant.
- The applicant has an ongoing contract with a waste disposal company. There is a recycling policy in place at their current premises. The bins will be stored to the rear of the premises near the kitchen block and will be moved to the front for collection.

#### **6.2.2 Responses to Issues raised in the Appeal**

- The proposed new door is not commercial and will give no access to the takeaway restaurant. The third-party appellants have a right of way through the gateway.
- The applicant deliberately close at 11.30pm to avoid the late-night pub activity.
- The lease will expire on the applicant's current premises at No. 36 Patrick Street.
- All drains will be surveyed and inspected. A provider for commercial grease traps will install a commercial grade trap. The Environmental Health Officer inspects their current premises regularly and this will continue to into the current premises.
- There is no on-site parking available. The carparking at the current address is currently provided by public car parking. If credit for the existing use at the current premises is the same as the current premises based on the development plan parking requirements.



- The kitchen is to the rear of the premises. The premises is not a protected structure.
- The Four Season has existed since 2004 and have operated under a clean bill of healthy.

### 6.3. Planning Authority Response

There was no further comments from the planning authority.

## 7.0 Assessment

7.1. I have read all the documentation attached to this file including inter alia, the appeal, the report of the Planning Authority, in addition to having visited the site. The primary issues, as I consider them, are (i) compliance with development plan policy, (ii) impacts on residential amenity, (ii) impacts on Town Centre.

### 7.2. Compliance with Development Plan Policy

The Laois County Development Plan 2017-2023 and Mountmellick 2018-2024 are the relevant development plans for Mountmellick town. The subject site is a disused mid terrace building on the Main Street (Patrick Street). The applicants currently operate a takeaway business on the same street at 37 Patrick Street. The proposal is to relocate the current business to the subject site. Therefore, development plan policies relating to the re-use and restoration of existing building stock are relevant as well as policies relating to Takeaways.

Firstly, the subject site is a three storey four bay building. There is a shopfront and rear access at street level, with residential use on the upper floors. The building has remained vacant for many years and needs refurbishment works. It is proposed to reuse the building from a retail outlet to a restaurant/ takeaway on the ground floor with residential use on the upper floors.

The principle of the development is in keeping with the **Town Centre** zoning objective, i.e. *'to enhance the vitality and viability of the town centre through the promotion of retail, residential, commercial, office, cultural, public facilities and other appropriate uses in the urban core. To encourage the use of buildings and backlands in particular the full use of upper floors, preferably residential purposes.'*

According to the Zoning Matrix Table, restaurant and hot food takeaway are normally acceptable.

Secondly, according to the Laois County Development Plan policy: **DM TC 6 HOT FOOD TAKE-AWAY** *The development of hot food take-aways will be strictly controlled and a proliferation of this use will not be encouraged. This type of development will generally only be considered in towns and villages where the development would not result in the loss of retail and office frontage. The Council may impose restrictions on opening hours. The opening of new fast food/takeaway outlets in close proximity to schools or children's play areas will be restricted so as to protect the health and wellbeing of children.*

The proposed development is in keeping with this policy because the development will not result in the loss of office or retailing along the Main Street of Mountmellick because the ground floor has been vacant for a considerable length of time. It will enhance the general area by reopening a property that has been vacant for years. It will upgrade the residential accommodation in the town centre.

In terms of the proliferation of takeaways in the town, I did note there are a number of take aways in the general vicinity of the site along Main Street and off Main Street, including the applicants current premises. According to the appeal file the justification for the current proposal is that the applicant has leased their current premises since 2004 and has now purchased the subject site. They are relocating their longstanding business to their own property. The third-party appellants have expressed serious concern regarding the proliferation of takeaways in a town already served with a high volume of takeaway premises. However, I consider this relocation of an existing takeaway and does not represent an increase in the number of takeaways in Mountmellick. It is accepted the use will remain at the applicant's current premises, but there are no guarantees it will reopen as a takeaway and that site, is not the subject of this planning application..

Takeaway outlets of all varieties have increased nationwide particularly since the pandemic. There is no evidence to suggest that Mountmellick is any different to

other towns in Ireland. It is not the planning system's function to regulate competition between various takeaway operators. The floor plan includes seating for 26No. patrons, therefore the takeaway is ancillary the main restaurant use, which will enhance the vitality of the Main Street and it is different to stand alone takeaway outlets.

In dealing with applications for such developments the Planning Authority will have regard to the following:

- 1) The effects on the amenities of adjoining properties particularly as regards hours of operation, noise, odour and general disturbance;
- 2) The location; standalone take-aways not attached to restaurants will not be encouraged, where an existing residential unit is above or the proximity to a school or children's play area;
- 3) The anticipated levels of traffic generation (a traffic and car parking statement shall accompany any application);
- 4) The generation, storage and collection of waste; Quality signage proposals, plastic or neon signage will not be permitted.

The proposed development is in keeping with these parameters.

### **7.3. Impacts on Residential Amenity**

The subject site is located in a town centre location where there are a variety of uses, and opening hours associated with various properties. The planning application states the restaurant will operate from 5pm -11.30pm Monday to Sunday, and as a coffee dock from 9am to 3pm Monday to Sunday. This can be conditioned as part of the decision.

The applicants have stated they have operated the same business as the current proposal in Mountmellick since 2004. The waste collection and storage will be to the rear of the building beside the kitchen area in sealed bins, the applicant has a contract with a registered waste disposal company. The odour and noise will be internal within the building. There will be specialist installations to the kitchen area of the building to minimise noise and odours. I observed the applicants current premises along Patrick Street during my site inspection and there were no noise or odour issues arising during normal opening hours.

#### **7.4. Impacts on Town Centre**

- The proposed development will generate parking, according to the planning application documents at a rate of 1No. space for the residential use and 1No. space per table i.e. 6No. spaces. The former use was a retail with a residential unit on the first floor. There is ample public parking to the front of the site. There is a parking credit associated with the current business. The new development will not increase demands on parking.
- Deliveries will take place on a weekly basis at designated loading bays on the Main Street.

#### **7.5. Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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 the planning authority's decision to grant planning permission for the proposed development be upheld by the Board.

#### **9.0 Reasons and Considerations**

Having regard to the Town Centre zoning objective for the area in the current Mountmellick Local Area Plan, the associated planning policies for the Town Centre and the pattern of land use in the vicinity it is considered that, subject to the conditions set out below, the proposed development will not unduly impact on the amenities of the area or property in the vicinity and is therefore 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 as amended by the plans

and particulars received by the Planning Authority on the 18<sup>th</sup> of August 2022, 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. Use of the premises shall be as in accordance with the details as submitted with the planning application for a restaurant with an ancillary takeaway facility. No change of that use shall take place without a prior grant of planning permission notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 and any statutory provision amending or replacing them.

**Reason:** To protect the amenities of property in the vicinity.

3. 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.

**Reason:** In the interest of public health and to protect the amenities of the area.

4. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The scheme shall include the provision of litter bins and refuse storage facilities.

**Reason:** In the interest of visual amenity.

5. A waste management plan including the provision for the storage, separation and collection of all waste, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the permitted use.

**Reason:** In the interest of public health and the amenities of the area.

6. Water supply and drainage arrangements, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

7. The hours of operation shall be :

(a) Coffee Dock 9.00-15.00 hours Monday- Sunday

(b) Restaurant/ Takeaway 17.00-23.30 Monday -Sunday.

**Reason:** In the interest of the amenities of property in the vicinity

8. No advertisement or advertisement structure (other than those shown on drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site in such a manner as to be visible from outside the building unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

10. The construction of the development shall be managed in accordance with a Final Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interests of public safety and residential amenity.

11. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0900 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 amenities of property in the vicinity.

12. 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

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Caryn Coogan

Planning Inspector

17<sup>th</sup> of August 2023