



An
Bord
Pleanála

Inspector's Report

ABP-317479-23

Development

Construction of a restaurant with a raised external dining area and all associated works.

Location

Site adjacent to the Proposed
Omniplex Cinema, Harbour Street Car
Park, Harbour Street, Mullingar, Co.
Westmeath

Planning Authority

Westmeath County Council

Planning Authority Reg. Ref.

22464

Applicant(s)

Limerick Omniplex Limited

Type of Application

Permission

Planning Authority Decision

Grant with Conditions

Type of Appeal

Third Party

Appellant(s)

1. Patrick and Paula Horan
2. June Connell

Observer(s)

None

Date of Site Inspection

12th of September 2024

Inspector

Caryn Coogan

1.0 Site Location and Description

- 1.1. The site is located on the north-eastern side of Harbour Street, Mullingar within the existing Omniplex Cinema site. It has a stated to be 0.76h.
- 1.2. The Ominplex Cinema is access off Harbour Street Mullingar, along a short private road, into a large surface carpark. The cinema building is located along the western site boundary. The Royal Canal and walkway run along the northern site boundary above the level of the subject site. There is an embankment forming the northern site boundary representing the sharp change in ground level from the carpark and the subject site.
- 1.3. The site is positioned to the east/ north-east of the carparking area. It is enclosed inside a palisade fence. It is overgrown and unkept on appearance.
- 1.4. There are two dwellings contiguous to the subject site along its eastern site boundary. These two dwellings are accessed from a single narrow road off Harbour Street.
- 1.5. To the east of the dwellings and their access road is Harbour Place Shopping Centre and associated carpark.

2.0 Proposed Development

- 2.1. The development will consist of the construction of a new part single, part two storey restaurant (internal floor area circa 269sq.m.) circa 6.1m high with raised external dining area at first floor level and associated site works/ carparking.
- 2.2. Following a request of further information requiring revised drawings to address anomalies on the drawings, a Design Rationale Statement was submitted, with detailed landscaping plans.

3.0 Planning Authority Decision

3.1. Decision

Westmeath Co. Co. granted the proposed development subject to 16No. conditions. The majority of the conditions are standard planning conditions. Those relevant to the appeal are:

Condition 3: Hours of operation to be agreed with the planning authority.

Condition 4: Boundary treatment to the service/ refuse collection area to be agreed with the planning authority.

Condition 8: Lighting to be agreed with planning authority.

Condition 12: Noise restriction

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The proposed development is partially located on lands
- Third party objections are summarised
- The outside terrace will be used all year round, it is remote from dwellings and screened by the building. Hours of operation should be stipulated.
- Internal lighting and the terrace will be illuminated.
- The Omniplex carpark will be used with 10No. additional bicycle spaces proposed (16No. is required)
- .Refuse storage within an enclosed compound.
- There is adequate carparking within the Omniplex cinema which has 70No. spaces.
- The landuse is acceptable with the zoning
- Ther is adequate separation distance between the development and existing dwellings
- Connection to public services

- Development Contribution condition applicable : €6,996.69
- Permission with conditions is recommended.

3.2.2. ***Other Technical Reports***

- Engineer Report: 50kmph applies. New connections to public infrastructure. No objection subject to conditions.
- EHO A Construction Management Plan should be provided
- Environment Section: The site does not appear to be hydrologically linked to any watercourses. No objections subject to conditions.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

Here were a number of third-party objections to the proposed development citing the following concerns:

- Boundary treatment
- Green cover to be maintained
- Deliveries adjacent to dwellings
- Late opening hours
- Noise
- Odours
- Open air terrace
- Bar licence

4.0 **Planning History**

4.1 ***Planning Reference : 19/6195 (ABP 307082-20)***

Permission granted to construct a new single storey 5 screen cinema, gross plan area of 875sq.m. and approx.. 8.62m high and associated works.

5.0 Policy Context

5.1. Development Plan

Mullingar LAP 2014-2020 (as extended)

Site is zoned Proposed Residential and Commercial (see appended zoning map in the photo plates attached to this report). The following is the objective of each:

O-LZ1 – To provide for residential development associated services and to protect and improve residential amenity.

O-LZ4 To provide for commercial development which does not need to be located in the Town Centre or Retail Warehousing zone.

P-CA2 To promote high quality urban design which responds positively to the town's historic character and architectural heritage.

Partially located in **Opportunity Site 8** Harbour Street Carpark as per Map MLAP 02 Mullingar LAP 2014-2020

Currently predominantly in use as a public car park, which is considered to an uneconomical use of land. The area is suitable for mixed use development including commercial. Active frontage onto the Royal Canal is required.

Mullingar is identified as a key town in the National Planning Framework

5.2. Natural Heritage Designations

5.2.1 The site located in The Brosna SC sub-catchment of the Lower Shannon SAC.

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

6.0 The Appeal

6.1. Grounds of Appeal

There are two third party appeals. I will summarise the relevant issues submitted.

6.1.1 *June Connell, Harbour Street, Mullingar*

- There is no information regarding the future tenant or the type of restaurant. Will it be a fast-food restaurant across the road from two primary schools?
- **Boundary Treatment:** The development will be impinging on an area of environmental importance – The Royal Canal- has not been mentioned or the boundary treatment of same. In an adjoining site last year, Bord Pleanala imposed conditions regarding the boundary treatment to be agreed in writing. These sanctions were not adhered to, trees were removed and a palisade fence was erected. There are no conditions imposed with regard to the length or height of the secure boundary wall in the grant of permission, and these leaves residents with no factual information with regard to security lighting and noise pollution. The proposed access for deliveries and refuse is less than 12ft from her bedroom window, and her amenities will be affected.
- The drawings state the 'high block wall will remain'. The wall is actually less than 4ft and not a high block wall as stated. The mature hedging is all that is allowing some privacy and noise reduction, which is mere meters from their bedroom and front door.
- There are no details whether the mature hedge will be retained, and its protects the privacy of their home, provides security and prevents noise pollution to their home.
- Operating hours in regards to service requirements deliveries, refuse collection and trading hours.

6.1.2 *Patrick and Paula Horan, Harbour Street, Mullingar, Co. Westmeath.*

- The planning decision does not give due consideration to some issues that directly affect their home.

- The plan submitted shows a wall extending through the length of the boundary between the development and their home. The drawings of the boundary wall are inaccurate. At the southern end there is no wall for a length of 9.75m. The wall then begins a height of 3ft 6inchss and graduates up to 6ft at the canal (northern end).
- There should be a final decision made regarding the minimum uniform height for the boundary wall in the interests of security and privacy.
- There are concerns regarding noise, light and odour associated with the development due to its proximity to their property. There is only 7.9metres between the proposed restaurant and boundary wall. Their property is only 4.8m from the boundary wall, therefore 12.87m from the proposed restaurant.
- There is no indication of the type of ventilation to be used, operating hours, means of securing waste. Means of reducing light pollution or positioning of other noise emitting equipment which may be on site.
- An EIA should be completed by the developer and shared with the residents, with appropriate mitigation measures.

6.2. Applicant Response

6.2.1 Paula and Patrick Horan

- It is likely that a block wall (where one does not already exist) will be provided to the side of the restaurant.
- Elsewhere the boundary is between a 3m deep planted area of the carpark, and the house and a lighter timber fence may be considered more appropriate.
- The restaurant is a considerable and there is a 1.4m wall and a 6m deep planting area between them.
- Smells will be moderate from a mechanical extraction system.
- An EIA is not warranted for a small restaurant distance form their house

6.2.2 June Connell

- As above

- The restaurant/access point is not 12feet from her bedroom window but over 12metres from her dwelling to the existing boundary wall., 6m of dense planting and an access passage of 2.4m.
- The proposed restaurant is a modest restaurant.

6.3. **Planning Authority Response**

The planning response raised no new issues on appeal.

7.0 **Assessment**

7.1. Having inspected the site and considered the appeal file I will deal with the appeal under the following headings:

- *Compliance with the development plan*
- *Design and layout*
- *Impact on residential amenities*
- *Other Matters*

7.2 **Compliance with the Development Plan**

The relevant development plan is the Mullingar LAP 2014-2020 (as extended) This plan is currently under review. In the current plan, the Omniplex site is zoned Commercial. The Omniplex cinema was granted planning permission under appeal reference **307082-20**. The cinema development is complete, and there is a large surface carparking area associated with the cinema. The subject site is located along the eastern side of the carpark, just south of the Royal Canal waterways and walkway. The bulk of the new restaurant site is enclosed within a palisade fence, it is over grown, and is unkempt in appearance. From examination of former maps and aerial photographs it is a brownfield site, that was formerly residential in use, which would explain the split zoning on the site. To the immediate east of the site are two dwellings, accessed from a separate lane along Harbour Street (these are the third-party appellant's properties).

7.3 The site has two zoning objectives in the current development. A large proportion of the site is zoned 'proposed residential', and the remainder is zoned commercial in

line with the extended zoning of the entire Omniplex cinema site. Under the residential zoning a restaurant/ café is '*open to consideration*'. The proposed use is acceptable under the commercial zoning.

7.4 The site is partially located in **Opportunity Site 8** Harbour Street Carpark as per *Map MLAP 02 Mullingar LAP 2014-2020*. The proposed development would compliment the existing cinema use on the overall site and provide a more efficient use of this urban brownfield site. I consider the principle of the development to be acceptable.

7.5 ***Design and Layout***

7.5.1 The proposed development backs onto the Royal Canal and walkway. There is a pedestrian link from the Omniplex carpark to the Canal. The Royal Canal is 1.5metres above the level of the site. There is an embankment creating the northern site boundary. The restaurant is a contemporary cube-like design, with an exterior terrace. The terrace is built into the embankment giving views of the Canal.

7.5.2 Mullingar LAP includes an objective *P-CA2 To promote high quality urban design which responds positively to the town's historic character and architectural heritage*. The immediate vicinity of the site has no vernacular or architectural heritage. Therefore, a contemporary design is more in keeping with the cinema design on site.

7.5.3 The proposed building design is single storey and a two storey flat roofed block. It has a total internal floor area of 269sq.m. with an overall height of 6metres. I consider the building to be modest in scale. The exterior finishes consist of a render finish with stone panelling (to mirror the cinema building) and timber cladding. The terrace is an elevated deck built into the embankment.

7.5.4 In my opinion the mass and proportion of the proposed restaurant are acceptable on the appeal site. The building footprint will not be overly dominant or detract ambience and setting of the Royal Canal. The proposed building is modest and will create minimal visual impact on the immediate area. The façade articulation and detailing will provide an interesting backdrop to the extensive surface carparking fronting the site. The building materials, textures and colours are acceptable. On balance, I consider the scale, layout and design of the proposed development to be acceptable on the subject site.

7.6 *Impact on Residential Amenity*

- 7.6.1 There are two adjoining third-party residences who appealed the decision to grant permission for the development. These residences detached units to the east of the proposed development. One dwelling is 12.7m from the proposed building and the other is 16.4metres. In the interests of protecting their residential amenity a 2metre block and capped wall should be provided along the eastern site boundary. The drawings indicate there is an existing high block wall as a common boundary, however, my inspection noted a low wall with a mature screen planting above the wall. In the event the hedgerow was removed, the adjoining properties could be exposed to the proposed development including the service yard and refuse storage area. A more permanent common boundary is required, with dense screen planting.
- 7.6.2 The building heights and setback ensure there will be no loss of light or privacy associated with the proposed development.
- 7.6.3 The site location is urban centre, with a shopping centre located further east of the two dwellings. Notwithstanding this, I believe the proposed restaurant located setback from a public street adjoining two residential properties could result in increased noise levels at night times. The cinemas times appear to finish before 23.00hours Mon-Sun. In the interests of protecting the residential amenity, I consider it reasonable that the restaurant should operate no later than 22.30hours as opposed to catering for the people exit the cinema at 23.00hours.
- 7.6.4 It is indicated the elevated deck will operate all year around. However, outdoor seating will only be suitable during certain weather conditions. The proposed ventilation is not a planning issue. However, it is likely the extractor fans will be positioned on the eastern wall. These are controlled under Environmental Health Specifications and issues relating to ventilation were not mentioned in the E.H.O report dated 10/11/2022. The refuse storage is to the rear of the premises in a dedicated space. It is acceptable in terms of design, layout and accessibility.

7.7 *Other Matters*

- 7.7.1 Given its modest scale, the proposed development does not constitute a project for EIA purposes. The appeal site has an area of 0.76 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.

8.0 AA Screening

- 8.1. I have considered the proposed development, in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.2. The subject site adjoins the Royal canal NHA site ref 2103. There are no Natura 2000 sites in the area.
- 8.3. The proposed development consists of the clearance of the subject site and the construction of a part single/ part two storey restaurant 269sq.m (internally).
- 8.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:
- The nature and scale of the proposed works in the clearance of the site and the construction of the restaurant.
 - The distance from the nearest the European site and lack of connections as the site connects to the existing public surface water drainage network.
 - The conclusions in the Appropriate Assessment screening carried out by the planning authority.
- 8.5 I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 8.6 Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

I recommend permission be GRANTED for the following reasons and considerations and subject to the following conditions.

10.0 Reasons and Considerations

Having regard to the provisions of the Mullingar Local Area Plan 2014-2020 (as extended) to the zoning of the site for commercial and residential purposes, to the design, layout and massing of the proposed development, and to the pattern of development in the vicinity, it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the character of the area or the residential or visual amenities of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and the further information received on the 2nd of May 2023, 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 proposed development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity

2. The proposed principle use shall be a sit down café/restaurant. Any take-away element shall be ancillary only to the permitted main use of café/restaurant.

Reason: In the interest of orderly development and the proper planning and sustainable development of the area.

3. The café/restaurant shall only open between 0800 hours to 2230 hours Monday to Friday and 1000 hours to 2230 hours on Saturday and Sunday.

Reason: In the interest of residential amenity and orderly development.

4. No deliveries shall be taken at or dispatched from the premises outside the hours of 0730 to 2000 hours Monday to Friday, 0800 to 2000 hours on Saturday and 0900 hours to 2000 hours on Sunday.

Reason: To protect the amenities of the area and in the interest of the proper planning and sustainable development of the area.

5. The noise level shall not exceed 55 dB(A) rated sound level, as measured at any point along the boundary of the site. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the residential amenities of property in the vicinity of the site.

6. No external amplified music shall play within the curtilage of the site.

Reason: To protect the amenities of the area.

7. No advertisement or advertisement structure (other than those shown on the 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.

8. All discharge from the food preparation area within the kitchen shall be through a suitable grease interceptor.

Reason: In the interest of public health.

9. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

11. The boundary wall common with the two residential properties to the east, shall be raised to 2metres in height plastered on both sides and capped. The landscaping and screening along the eastern site boundary shall comply with landscaping plan submitted by way of further information on the 2nd of May 2023.

Reason: In the interests of Residential Amenity.

12. The developer shall pay to the planning authority a financial contribution of 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, as amended. The contribution shall be paid prior to 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.

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

Caryn Coogan
Planning Inspector

16th of September 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317479-23		
Proposed Development Summary	Restaurant (269sq.m)		
Development Address	Omniplex Cinema, Harbour Street, Mullingar		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
		No X	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No			Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No		N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____