



An
Bord
Pleanála

Inspector's Report

ABP-305572-19

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| Development | Minor revisions to the existing Mixed-Use Development, removal of internal wall partition between Retail Unit 1 and Off-Licence Unit 2 |
| Location | Heather Hill , Limerick Road , Ennis, Co Clare |
| Planning Authority | Clare County Council |
| Planning Authority Reg. Ref. | 19586 |
| Applicant(s) | B Connors |
| Type of Application | Permission |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party |
| Appellant(s) | B Connors |
| Observer(s) | Luke Ryan |
| Date of Site Inspection | 06 th December 2019 |
| Inspector | Colin McBride |

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.655 hectares, is located to the south of Ennis on the outskirts of the urban area. The appeal site is located on the western side of the R458 and short distance north of the N85. The appeal site is occupied by a mixed use development consisting of a two-storey structure divided into 4 separate retail/commercial units with office space and storage at first floor level. The two-storey building is currently vacant. The appeal site also has a crèche building located at a higher level to the rear of the site (west). The appeal site has an existing vehicular access off the R458 and there is a parking area located between the public road and the two-storey structure on site. Adjoining uses include to the north a single-storey dwelling and what appears to be a farmyard, to the south a detached single-storey dwelling and to the west a wooded area.

2.0 Proposed Development

2.1. Permission is sought for minor revisions to an existing mixed-use development. The development will consist of the removal of internal wall partition between retail unit no. 1 and off licence unit no. 2.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on one reason...

1. Having regard to the quantum of existing retail provision in the area, the provision in the development plan for a new neighbourhood centre to serve this area to the north of the site, the level of vacancy currently prevailing in retail units in Ennis' designated centres, and notwithstanding the onsite "Mixed Use" zoning the Planning Authority considers that the proposed amalgamation of the retail unit with the permitted off-licence, would create a retail unit of a scale that is not in keeping with adjacent commercial units, would result in an intensification of the retail use on the site, would create a counter attraction to existing retail provision in Ennis's designated centres, would be contrary to Goal VI of the Clare County development

plan 2017-2023 (as varied) which seeks to achieve viable and vibrant town centres with shopping areas of appropriate scale at appropriate locations, and would therefore be contrary to the Mid-West regional Planning Guidelines for Planning Authorities, issued by the department of the Environment Community and Local Government in April 2012. The provisions of the Development Plan and to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (06/09/19): The proposal was considered to be contrary Development Plan policy and detrimental to the town centre on the basis of existing quantum of retail space in the area, level of vacancy and the fact that a neighbourhood centre is proposed to the north of the site. Permission was refused based on the reason outlined above.

3.3. Prescribed Bodies

3.3.1 None.

3.4. Third Party Observations

3.4.1 Submission by Luke Ryan

4.0 Planning History

19/206: Permission granted for revisions to existing mixed use development including (1) Permission for alterations to the Main Retail/Medical Use/Office Building (fronting onto the Limerick Road) to include (i) Change of use of first floor Office/Medical Centre to offices (152.4sq.m) and to storage (334sq.m) to serve as ancillary space to Ground Floor Retail Unit No. 1 (ii) Alterations to internal layout at ground floor level to include for a minor extension of the gross floor area of Retail Unit No. 1 into Retail Unit No. 2 (by 20.8sq.m), to provide for a stairwell and toilet, to serve Retail Unit No. 1 and (iii) Change of use of Retail Unit No. 2 (to be reduced in size to 115 sq.m), to use as an Off-Licence, (iv) Change of use of Retail Unit No. 4

(143sq.m) to use as a coffee shop with internal seating. (2) Permission for minor revisions to signage along front elevation of Main Retail/Office Building. RETENTION of minor external alterations to both the approved Main Retail/Office building, and to the Creche Building to the rear of the site, (3) RETENTION of ESB Sub Station Building to rear (west) of the Main Building and (4) RETENTION of internal layout, together with associated site works and services.

11/507: Extension of permission ref no. 05/102.

05/102: Permission granted to demolish existing house and construction of office/medical centre, shop units and crèche.

On a site to the north...

PL03.302966: Permission refused for a licensed, discount foodstore incorporating an off-license area and other developments. Permission refused based on one reason...

1. Having regard to –

(a) The scale of the proposed development and context with regard to intended future development of further retail units, a primary care centre and ancillary office accommodation within the wider masterplan area,

(b) The pattern of development in the area, the distance from the town centre of Ennis and the location of the subject site on a major link road between the town centre and N85 ring road and M18 motorway, and

(c) The existing quantum of retail and commercial development within Ennis and the level of vacancy currently prevailing therein,

it is considered that, notwithstanding the zoning of the site for use as a neighbourhood centre, the proposed development would create a counter attraction to the existing town centre services, which would seriously impact on the vitality and vibrancy of the town centre and would constitute an unsustainable form of development that would be principally dependent on private car based transport. The proposed development would, therefore, contravene the policies of the Mid-West Retail Strategy and the Mid-West Regional Planning Guidelines 2010-2022 and the strategic aim of the current Clare County Development Plan, which seeks to consolidate town centres and co-ordinate transport and land use planning thereby reducing the need to travel. Furthermore, having regard to the Retail Planning Guidelines for Planning Authorities, issued by the Department of the Environment, Community and Local Government in April 2012, which seeks to protect the vitality and viability of town centres as the primary focus for retailing development, the Board is not satisfied that a location closer to the town centre of Ennis is not available for the scale of retailing development proposed. The proposed development would, therefore, be contrary to these Ministerial Guidelines, to the overall provisions of the Development Plan and to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

The relevant development Plan is the Clare County development Plan 2017-2023. The appeal site is zoned 'Mixed Use' with a stated objective...

"The use of land for 'mixed use' developments shall include the use of land for a range of uses, making provision, where appropriate, for primary and secondary uses e.g. commercial/retail development as the primary use with residential development as a secondary use. Secondary uses will be considered by the local authority having regard to the particular character of the given area. On lands that have been zoned 'mixed-use' in or near town or village centre, a diverse range of day and evening

uses is encouraged and an over-concentration of any one use will not normally be permitted’.

Volume 3(a) Section 1.7.2 sets out the retail strategy for Ennis including the allocated quantum of floor space at the preferred sites identified for retail development (Table 1).

Section 1.7.5 Edge-of-Centre and Out-of-Centre Retail Development

‘Edge-of-centre’ is defined as a location within easy walking distance (no further than 400m generally) of the primary retail area of the town centre. An out-of-centre location is defined as a location that is clearly separate from the town centre but within the town development boundary, as indicated by this Plan. While it is not the purpose of the planning system to prevent competition or trade diversion, having regard to the plan-led approach to neighbourhood shopping set out below it is not envisaged that edge-of-centre or out-of-centre convenience retail development will be required or permitted during the life time of this Plan.

Goal VI

A County Clare with viable and vibrant town and village centres, that have shopping areas and markets at appropriate scales and locations and which function to serve their communities and rural hinterlands.

5.2. **Natural Heritage Designations**

None in the vicinity.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1 A first party appeal has been lodged by Planning Consultancy Services on behalf of B. Connors, Munnia, Ballyvaughan, Co. Clare. The grounds of appeal are as follows...

- The planning history of the site is noted and the fact that the principle of permitted commercial and retail floor space is long established at this location. It is noted that initial permission for the development provided for (05/102) provided for 4 no. retail units and subsequently permission was granted to change the use of unit 4 to a coffee shop and unit no. 2 to an off-licence.
- It is noted that the proposal will not entail an increase in retail floor space permitted at this location. It is noted that the area of unit no. 2 is to be operated as an off-licence but is to be as part of a larger unit incorporating unit 1 to provide a more efficient layout for the proposed occupier. It is noted that the proposal entails neither an increase in retail floor space or an intensification of retail use and would have no adverse impact on proposal for a neighbourhood centre to the north of the site.
- It is noted that the appeal site is identified as a vacant site under the County Development Plan and the Ennis Plan and the proposal would be viable commercial use in an existing vacant permitted development.
- The proposal would not be contrary Goal VI of the County Development Plan as it does not entail an increase in permitted retail floor space and would have no adverse impact on the vitality or vibrancy of the town centre.
- The proposal would be acceptable in the context of current National Guidelines (20012 Retail Planning Guidelines) and was assessed to be acceptable in the context of the National Guidelines in place at the time of the grant of permission under ref no. 05/102 (2005 guidelines). The proposal is consistent with national and regional policy.
- It is noted that PL03/302966 is not relevant to this proposal as there is no increase in permitted floor space.
- It is noted that off-licence is permitted use on site and that although the proposal is to amalgamate unit no. 2 into unit 1, the area of unit no. 2 will be dedicated off-licence sales and that there are requirements to provide for a degree of separation between the off-licence sales and the main retail space and that such measures will have to be implemented in this case. The

appellant reiterates that there will be no increase in retail floor space as a result of the proposal.

6.2. Planning Authority Response

6.2.1 Response by Clare County Council.

- The decision was based on the out of town centre location, the level of existing retail space in the area and the designation of a site to the north as a neighbourhood centre. It is considered that the proposal would result in an increase in the net area available for retail space by freeing up an area with unit no. 1 that would ordinarily be used for ancillary off-licence sales. It is considered that the increase in scale of unit no. 1 would be out of scale and character with the permitted development.
- In regards to off-licence sales it is noted that such activity could be accommodated within the floor area of unit no. 1 without the requirement for amalgamation of the two units.

6.3. Observations

6.3.1 An observation has been submitted by P. Coleman & Associates on behalf of Luke Ryan, 2 Kilquan, Shanaway Road, Woodstaock, Ennis, Co. Clare.

- The description of the proposal in public notices is inadequate and does not include the fact that the two units are being amalgamated.
- The observer notes that the proposal would entail an increase in the retail floor space of unit no. 1 and refutes the appellant's claims that the proposal does not entail an increase in retail floor space. The observer notes that the development granted under ref no. 19/206 reduced the amount of authorised retail space by the change of use of units no.s 2 and 4.
- It is noted that the amount of retail space has increased significantly over that permitted under 05/102 with additional ancillary spaces increasing the level retail spaces associated with unit no.1 doubled from that originally permitted (547.5sqm to 1054.7sqm).

- The observer notes that the proposal would allow for an increase in net retail floor space in that unit no. 2 on its own would have required ancillary accommodation that would cut into the net floor space possible and that amalgamating it with unit no. 1 allows the entire floor area of the unit to be dedicated to net retail floor space. It is also noted that permission ref no. 19/206 has allowed for an increase net retail floor space in unit no. 1 with the provision additional ancillary accommodation.
- The proposal is an intensification of use as it proposed to provide for a retail convenience use with a wide range of goods that intensifies the retail provision originally granted on site.
- The observer questions the need for the proposed development in that there are currently 9 convenience food stores within 1.6km of the subject site.
- The observer notes that proposal would have an adverse impact on the vitality and viability of the town centre and be contrary to Development Plan policy. The observer notes that the proposal has not been subject to a Retail Impact Assessment and notes that the proposal would fail a sequential test.
- The observer notes the proposal would have an adverse impact on the viability of two proposed designated neighbourhood centres in close proximity to the site.
- It is noted that there is a high level of vacancy in the town and the proposal would exacerbate such. The observer refers to an appeal decision (PL03.300046-17) regarding a refusal relating existing level of retail space and the level of vacancy in the town.

7.0 **Assessment**

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

Level of retail space

Impact on existing retail developments/town centre viability

Appropriate Assessment

7.2 Level of retail space:

7.2.1 The proposal was refused on the basis that the proposed development would create a retail unit of a scale that is not in keeping with adjacent commercial units, would result in an intensification of the retail use not in the keeping with adjacent commercial units, would result in an intensification of the retail use on the site, would create a counter attraction to existing retail provision in Ennis's designated centres and be contrary development plan policy that seeks to protect the vibrancy of Ennis Town Centre as well as undermine the provision a neighbourhood centre at a designated site to the north.

7.2.2 The appellant notes that the proposal relates to a permitted mixed-use development and that the proposal does not entail an increase over existing permitted retail floor space. There is also an observation that refutes the appellant's claims and indicates that the proposal does entail an increase in floor space (net retail floor space) and that the proposal should be refused as per the decision of the Planning Authority.

7.2.3 The main question relates to level of retail floor space that is permitted and what is sought in this case. Permission was granted for a mixed use development under ref no. 05/102 to demolish an existing house and construction of office/medical centre, shop units and crèche. Permission ref no. 19/206 changed the use of part of the first floor level from medical centre to office use and a storage area for Unit no. 1 (334sqm) and a reduction in the floor area of unit no. 2 by 20.8sqm (to 115sqm) to provide a stairwell and toilet to serve unit no. 1. The proposal seeks to amalgamate unit no 1 and unit no. 2 and based on the information on file the unit is to be used as a convenience store with the area of unit no. 2 dedicated to the off-licence portion of the unit. The ground floor area of the unit is 636sqm and such will provide the net retail floor space. There is an area at ground floor dedicated to a stairwell and toilet and a sizeable storage area at first floor level (334sqm). The issue raised relates the intensification of retail activity and the amount of retail floor space being provided. The proposal provides for no physical increase in the floor area permitted over that under ref no. 19/206, which is the most recent permission granted on site. Under this

permission unit no. 1 remains a retail unit with increased first floor storage and unit 2 is reduced in overall floor area (by 20.8sqm) and its use is changed to an off-licence. The permission granted on this site has never featured a layout for the end use for each of the units showing how the space is to be divided between net and gross retail floor space. I would note that by amalgamating the two units the enlarged unit would allow for some increase in net floor space as unit no. 2 does not have to be provided with separate ancillary accommodation to serve the unit. Notwithstanding this fact I would question whether the amount of additional net retail floor space would be that significant in scale above and beyond that permitted under ref no. 19/206. Given the scale of unit no. 2, which has been reduced in size (ref no. 19/206) from that previously permitted (ref no. 05/102) the level of additional net retail floor space is unlikely to be a hugely significant amount. The max net retail floor space possible at this location (ground floor) is 636sqm. This level of net retail floor space is the equivalent of a local shop.

7.2.4 The existing development is a permitted retail development under which there are no restrictions in using unit no 1 as a convenience retail unit. Unit no. 2 already has permission for an off-licence unit. I would question whether amalgamating the two units would have such a significant retail impact over and above the operation of the two units separately (unit as a convenience store and unit 2 as a separate off-licence). As noted above the level of net retail floor space is the equivalent of a local shop. The scale of the unit in the context of the existing development permitted at this location is acceptable with the permitted development being a small neighbourhood centre style development featuring a number of retail units, a crèche and office use. I would consider that the proposal would give a small increase in net retail floor space as a result of the amalgamation of the two units, I would however consider that this would have a negligible impact. I would consider that given the fact that the proposal is a relatively minor alteration of a permitted development, does not entail a change of use over permitted development and entails a modest increase in net retail floor space, that a Retail Impact Assessment would not be required to assess the proposal.

7.3 Impact on existing retail developments/town centre viability:

7.3.1 The reason for refusal notes that the proposal would undermine the provision of a neighbourhood centre to the north and impact on the vibrancy and vitality of the town centre. I would emphasise that the proposal is a modification of an established and permitted development. I would note that although the development appears to have never been occupied, the principle of such is established and must be taken into account. As noted above the proposal provides for a modest increase of net retail floor space over and above that already permitted on site. On this basis I do not accept that the proposal would be detrimental to the vitality or vibrancy of the town centre or impact the status of any designated neighbourhood centres in the vicinity. The decision makes reference to the level of vacancy in the town. I would note that the proposed development is existing retail space that is vacant itself. I would consider that the occupation of part of the development would be a positive factor and does not deviate from the established principle on site. I would consider that a condition should be applied confining net retail floor space to the ground floor area and use of the first floor area as ancillary space. Based on the aforementioned assessment I would consider that the proposal would be acceptable in the context of proper planning and sustainable development of the area.

7.4 Appropriate Assessment:

7.4.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest 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 a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the planning history of the site, the pattern of development and modest increase in net retail floor space that would be provided as a result of the

proposal, it is considered that subject to the following conditions the proposed development would have no significant retail impact over and above the permitted development on site, would be acceptable in the context of Development Plan policy and would have no adverse impact on the retail status of the town centre or the designated neighbourhood centre in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

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

Reason: In the interests of clarity.

2.

(a) The net retail floor space provided in the amalgamated units shall only be provided at ground floor level with all other space indicated as service/storage/office to remain as ancillary floor space.

(b) The extent of area dedicated to off-licence use in the amalgamated units shall coincide with the extent of unit no. 2.

Reason: In the interests of orderly development.

3. Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of the amenities of the area/visual amenity.

4. 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.

5. Site development and building works shall be carried only out between the hours of 08.00 to 19.00 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.

Colin McBride
Planning Inspector

13th January 2020