

## An Bord Pleanála



### Inspector's Report

**Reference:** PL10.245406

**P.A. Reference:** 15/380

**Title:** Combine three units into one large unit and change of use of unit from retail to betting office, in addition to 4 no. satellite dishes, 4 no. condenser units, etc.

**Location:** Loughboy Shopping Centre, Kilkenny.

**Applicant:** Paddy Power Plc

**Appellants:** Paula O'Meara  
Janet McDonald

**Observers:** None

**PA:** Kilkenny County Council

**Type of Appeal:** Third party against grant

**Decision:** Granted with conditions

**Date of Site Visit:** 17<sup>th</sup> December 2015

**Inspector:** Philip Davis

## **1. Introduction**

This appeal is by two individuals against the decision of the planning authority to permit the merger of small units within a neighbourhood shopping centre and a change of use to a betting office, including the addition of satellite dishes and condenser units to the roof.

## **2. Site Description**

Photographs of the site and environs are attached in the appendix to this report.

### **Loughboy Shopping Centre, Kilkenny**

The appeal site is an older single storey neighbourhood shopping centre dating from around the 1960's. It is located on the north side of the Bohernatounish Road, a suburban link road south-south-east of the centre of Kilkenny City and about 1.5 km by road from the city centre. It is within an established suburban area characterised by smaller estates of terraced and semi-detached dwellings, largely dating from the past half century. The shopping centre consists of a mid-sized Supervalu outlet and about a dozen smaller units, including a café, smaller shops, a post office and neighbourhood library. There is a modern church adjoining the centre. Public access to the shopping centre is via the Bohernatounish Road with a number of smaller pedestrian accesses, including one to Laurel Drive to the rear. It is mostly surrounded by carparking. The shopping centre is made up of a single large unit for the Supervalu, a smaller single storey unit including the appeal site, the post office and a library, with a linking unit with covered pedestrian area – in addition to a smaller self-standing unit with a café and pharmacy. The service yard is north (behind) the linking unit and between the two larger units.

### **The site and environs**

The appeal site consists of three, and part of a fourth, small single storey retail units on the eastern side of the shopping centre. It is part of the second largest unit and flanked by either side by the post office and library, which occupy the corner units. The front of the units faces a narrow area of access and carparking and a block wall separating the shopping centre from adjoining houses. To the rear (west) is an internal access corridor to the rear of the various units. All three units are currently vacant. Total floor area of the combined units is given as 191 m<sup>2</sup>.

## **3. Proposal**

The proposed development is described on the site notice as follows:

*Combine unit nos. 9, 10, 11 and part of unit no. 17 at Loughboy Shopping Centre, Bohernatounish Road, Loughboy, Kilkenny into one large unit, measuring 191 sq.m. in area and to change the use of the amalgamated unit from retail use to betting office use. Permission is also sought for 4 no. satellite dishes, 4 no. condenser units mounted on the existing roof, proposed signage, internal modification and associated works.*

#### **4. Technical Reports and other planning file correspondence**

##### Planning application

The planning application, with supporting documentation, was submitted to the planning authority on the 29<sup>th</sup> June 2015.

##### Internal and External reports and correspondence.

A number of objections to the proposed development were submitted.

An **Appropriate Assessment Screening Report** on file indicates that it is not considered to have a significant impact on designated habitats.

**Kilkenny CC Planners Report:** It is noted that the site is in an area zoned 'Neighbourhood Centre', the objective of which is to provide for local shopping, non-retail services, community and social needs – in such areas a betting shop is not included as a 'permitted use' or 'open for consideration', but it is considered that by nature the use is not incompatible with a neighbourhood centre and is thus acceptable in principle. Permission is recommended subject to conditions.

#### **5. Decision**

The planning authority decided to grant permission subject to 4 no. conditions. Three are standard conditions, but condition 2 set that no more than 25% of the shop windows shall be covered in advertising at any one time, and that the logo on the southern elevation is not permitted.

#### **6. Planning Context**

##### Planning permissions – appeal site

None relevant on file.

##### Planning permissions – adjoining areas

None relevant on file.

### Development Plan

The site is in an area zoned as a 'Neighbourhood Centre'. This is indicated as a level 4 neighbourhood centre in the County Retail Hierarchy. Betting shops are not listed under 'permitted uses' or 'open for consideration' in such zoned areas. Betting shops are not subject to any specific policies in the Kilkenny City & Environs Development Plan 2014-2020.

Relevant extracts from the 2014-2020 Kilkenny City & Environs Development Plan are attached in the appendix to this report.

## **7. Grounds of Appeal**

### Paula O'Meara

- It is argued that it is inappropriate to locate the proposed development between a library and a post office, and close to a church.
- It is submitted that the dishes and condensers will be visually intrusive.
- It is argued that the loss of 3.5 retail units will negatively impact on the neighbourhood centre.
- It is argued that the signage will lead to visual cluster.
- It is argued that it will result in a 'dead' frontage to the building.
- It is submitted that it will be a serious traffic hazard due to the absence of a turning circle.
- It is argued that it is a non-conforming use.

### Janet McDonald

- It is argued in some detail (survey figures provided) that the proposed amalgamation would result in a significant reduction in the retail space within the shopping centre and so will have a negative impact on the retail function of the neighbourhood centre and would thus detract from the vitality and vibrancy of the centre.
- It is argued on the basis of the above that it is contrary to the objectives set out in the 2012 Retail Planning Guidelines to retain retailing as a core function in urban centres and to promote competitiveness in the retail sector.
- It is argued that it is contrary to the objective of the Regional Planning Guidelines for the south-east region 2010-2022 to promote the vibrancy and vitality of town centres.
- It is submitted that it will result in additional demand on the provision of carparking on the basis of development plan car parking requirements.

## 8. Applicants response

- It is argued that the appeal is vexatious as it is similar to that in appeal reference PL61.244425, which was (it is alleged) lodged by a betting office manager for Boyle Sports. It is requested that the Board dismiss the appeal under section 138.
- It is denied that there is any reason a betting office can be construed as unsuitable or problematic in this location – it is noted that there are no planning policies in Kilkenny or elsewhere restricting betting offices from locating beside a post office or library.
- It is argued that it will enhance the viability of the centre.
- It is submitted that the signage will be largely invisible to residents of the surrounding housing estates and will be generally unobtrusive. It is also argued that it will be significantly less intrusive overall, with more shop window left exposed than a nearby betting shop operated by a competitor.
- It is denied that the dishes or condenser unit will be visible from public areas.
- With regard to ‘non-conforming uses’ it is noted that a number of possible uses for neighbourhood centres have been left off the list of permitted uses, such as banks. It is argued that a betting office is fully compatible with the zoning objective.
- It is denied that there is an excess of betting shops within the area, specifically as it is within an existing neighbourhood/shopping area. It is also noted that there are no policies in the Development Plan suggesting that betting offices should be restricted.

## 9. Planning Authority’s Comments

The planning authority states that they have no further comments to make on the appeal.

## 10. Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following headings:

- **Preliminary issues**  
Article 22  
‘vexatious appeal’
- **Principle of development**
- **Visual impact**
- **Parking and Traffic**
- **Appropriate Assessment and EIA**

- **Other issues**

### **Preliminary issues**

#### Article 22 of the 2001 Regulations, as amended

I would draw the Boards attention to an apparent anomaly in the submitted plans. The plan entitled 'Site location map' on a scale of 1:1000 shows the relevant site application plan as including a significantly larger area than that described in the site notice, and includes the area occupied by the Post Office (according to submitted documents, the Post Office unit was not part of the area given consent for an application by the landowners). The Post Office unit is not described as part of the site on the address on the site notice. Two other plans – the 'Site Plan & Contiguous Elevation' and the 'Proposed Plan of Betting Office' show different 'red lined' areas. On the basis of the description given in the notice, the area indicated on the 'Site Plan & Contiguous Elevation' would appear to be the most accurate plan of the application site, following the description in the application form and the supporting documentation.

While this anomaly seems to have arisen due to an understandable confusion because of the three different locations for aspects of the planning application, it is questionable if the plans as provided fulfil the requirements for a planning application as set out in Article 22 of the 2001 Regulations, as amended. I would therefore recommend to the Board that it seeks clarification from the applicant and planning authority as to the correct extent of the site as required under those Regulations.

#### 'Vexatious appeal'

The applicant has requested that the Board dismiss the appeals as vexatious. It is noted that the two appellants are not Kilkenny City residents and do not appear to have a direct connection with the Loughboy area. It is argued that the appeals have a similarity to previous appeals which, it is claimed, are associated with a competitor.

While I would note the curious nature of the appeals, they have raised valid planning grounds for the appeal and in the absence of further evidence of other motives I do not consider there are sufficient grounds to dismiss the appeals as vexatious.

### **Principle of Development**

The appellants have raised a number of issues with regard to national and regional guidelines, but I consider that the small scale of the proposed development is such that only development plan policy objectives and guidelines are applicable – the relevant retail policies within the 2014 Kilkenny City & Environs development plan in any event reflect the overall policy objectives set out in the national Retail Planning Guidelines and the Regional Planning Guidelines.

The units are within a site designated as a 'neighbourhood centre', which is considered Level 4 within the county retail hierarchy. The centre is typical of the period, serving it would seem primarily the surrounding suburbs, but not drawing customers from beyond the bounds of Kilkenny City. I noted during my site visit that it was very busy, much busier than the nearby larger and more modern shopping centre in south Loughboy, most probably because of the presence of a convenience goods (Supervalu) outlet, while the other shopping centre is a comparison goods centre only. It seems successful and relatively thriving, although typically for such centres, the smaller units are visibly struggling in comparison to the main anchor store. It is unclear if the three units that are part of this application have been vacant for some time, but I would consider this likely as they are not in a particularly good location to benefit from overspill from the anchor store.

The 'objectives' for areas zoned as neighbourhood centres does not list betting offices under either permitted or open for consideration uses. As the applicant notes, a number of common town centre commercial uses such as banks are not listed either. There are no specific policies within the development plan for betting offices or similar. As betting offices would be a familiar part of normal retail centres, I would concur with the general conclusion by the planning authority that notwithstanding the failure to list them within 'permitted' uses, there would generally not be a presumption against their location within such centres. I would further note that although there are a number of betting offices in the Loughboy area, there is no evidence of a proliferation of such offices in the vicinity.

On a general point, while the loss of small retail units within the neighbourhood centre is less than ideal, I do not consider that it is likely that such small peripheral units are likely to attract uses that would add significantly to the vitality and viability of the centre, and the overall scale of the change of use is not likely to significantly impact upon the other uses.

I would therefore conclude that the proposed change of use is not inconsistent with the zoning designation and is not contrary to any objectives set out in the development plan or other plans or policies. It should be assessed on its own merits.

### **Visual impact**

The Loughboy centre is typical of the period and represents what might at best be described as very functional architecture. Most signage within the site is quite low key, with the largest sign being at the entrance, designed to be seen by passing cars. The individual signs for the existing units are quite modest and not intrusive. I do not consider that the proposed signage over the shops would be out of character or obtrusive. The planning authority set a condition such that 25% of the show windows to be kept free at any one time – I would consider this reasonable as this section of the shopping centre is quite

dark and uninviting (there is a somewhat crudely set out pedestrian link to the adjoining housing area). The planning authority also deleted the proposed sign on the southern elevation (on the post office wall). I also concur with this, as it should be sufficient for the applicant to use the existing permitted large sign at the entrance to indicate that there is a betting shop within the shopping centre. I would consider that allowing large signs which are not directly over the premises or at the entrance to set an undesirable precedent. I would further note that the letter granting consent for the planning application submitted by the landlord did not include this elevation in its description of what was consented.

The application also includes satellite dishes and condenser units on the roof to the rear of the units. These are on the side of the service yard. I am satisfied that these would only be very occasionally visible from public areas or from outside the shopping centre and only then at a distance so I do not consider that they are intrusive.

### **Road safety and parking**

The proposed betting shop will be served by the existing carpark and entrance. While the overall layout is not ideal – during the very busy period I visited the shop there were staff members within the carpark directing and helping car-borne shoppers – I would consider it broadly acceptable. The appellant notes that betting shops require additional parking compared to retail units in the development plan, but having regard to the overall quantum of parking available within the shopping centre I do not regard this as significant.

### **Appropriate Assessment and EIA**

The appeal site is approximately 1km west of the River Barrow and River Nore SAC site code 002162. An AA screening report was carried out by the planning authority. Due to the nature of the proposal, which would not have any discernible impacts beyond the boundaries of the site, I consider it reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 002162, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

Due to the small scale of the proposed development and the absence of any sensitive environmental receptors the question of a requirement for EIA does not arise.

### **Other issues**

The site is not indicated on any available source to be prone to flooding. There are no indications that there are any recorded ancient monuments or protected structures likely to be directly or indirectly



impacted upon. The proposed development is not subject to a development contribution.

## 11. Conclusions and Recommendations

I conclude that the proposed development is not contrary to the objectives of the development plan and would otherwise be acceptable.

I recommend therefore that subject to conditions, planning permission for the proposed amalgamation of units and change of use be granted the reasons and considerations set out below.

### REASONS AND CONSIDERATIONS

Having regard to the nature and scale of the proposed development and its location within an area zoned as 'neighbourhood centre' in the Kilkenny City and Environs Development Plan 2014-2020 it is considered that subject to the conditions set out below the proposed development would not be a material contravention of the development plan, would not seriously injure the visual amenities of the area, and would otherwise be in accordance with the proper planning and sustainable development of the area.

### 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 interest of clarity.

2. The wall mounted sign on the southern elevation is not permitted.

**Reason:** In the interest of visual amenity and to prevent an undesirable precedent for further such signage within the neighbourhood centre.

3. No more than 25% of the shop windows shall be covered in advertising at any one time. Advertising shall not be attached directly to the shop window but shall be set back by at least 30 cm.

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

4. No external security shutters shall be erected on any of the commercial premises unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

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**Philip Davis,**  
**Inspectorate.**  
**22<sup>nd</sup> December 2015**