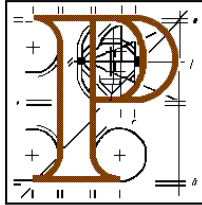


An Bord Pleanála



Inspector's Report

Development: Retention of as constructed commercial building, oil storage tanks and garden display area together with permission for extension and alterations to existing commercial premises, new vehicular entrance, new boundary walls and railings, removal of existing vehicular entrance and associated site works at Unit 10, Rivertown Business Park, Tramore, Co. Waterford

Planning Application

Planning Authority: Waterford City & Co. Co.
Planning Authority Reg. 15/211
Applicant: Thomas and Ashley McCarthy
Type of Application: Permission
Planning Authority Decision: Split Decision

Planning Appeal

Appellant(s): Thomas and Ashley McCarthy
Type of Appeal: 1st Party- V- Condition
Observers: None

Date of Site Inspection: 24/04/2016
Inspector: Caryn Coogan

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The site is located within Rivertown Business Park which is at the northern end of Tramore Strand. The Business Park is accessed off a new Rivertown Relief link road which leads to the beach and then the service road of the Business Park sweeps southwards to serve residential development, and the tramore Treatment plant site.
- 1.2 The subject site is at the front of the Business Park on the first site beside the junction with the Rivertown Relief Road. It contains a large portal frame structure and an outdoor yard area which sells bulky good associated with gardening and solid fuel.

2.0 PROPOSED DEVELOPMENT

Planning permission is been sought for the following:

- 1) An extension and alterations to the existing commercial premises;
- 2) A new vehicular entrance;
- 3) New boundary walls and railings;
- 4) Removal of existing vehicular entrance;
- 5) All associated site works.

The new entrance is onto Rivertown road and there will be 19No. carparking spaces proposed to the front of the new extension.

3.0 SUBMISSIONS RECEIVED

There were none received during the assessment of the case.

4.0 TECHNICAL REPORTS

The **planning report** of 11/12/2015 states a special contribution shall be attached for the section of the new access road to the entrance of the site. The rate has been provided by the Roads section. It is €32,000.

The **Roads Section** stated in a report dated 17th of June 2015 that there will be a new Tramore Roads Depot contiguous to the subject site. A common entrance to both sites would be preferred off the Estuary Road. The proposed entrance may interfere with sightlines of the new access into the Council Depot off Estuary Road.

5.0 FURTHER INFORMATION

There was further information requested by the planning authority regarding the use of the site, parking, timber storage area, and pedestrian movement.

The submission received on the 15th of November 2015 referred to an informal request for an alternative access to the subject site and the adjoining lands in Waterford Co. Co's ownership. There were two options presented and Option 1 was the favoured access for a future date when the new access road would be put in place. Drawing No. 8879.SK09 was stated to be an alternative option for the planning authority to consider, however this

may require a possible transfer of a triangular piece of land (0.02Ha) along the western site boundary. It was a sketch and not an actual proposal.

6.0 PLANNING AUTHORITY'S DECISION

Waterford City and County Council made a SPLIT DECISION on the proposed development.

The storage tanks were **REFUSED** because they are positioned beside a public sewer wayleave.

The remainder of the development was granted retention subject to 13No. conditions. The Condition relevant to this appeal is No. 3:

In accordance with the Development Contribution Scheme adopted by Waterford City and County Council on 12th of February 2015 the developer shall prior to the commencement of the development or in such phased payments as the planning authority may facilitate, a Special Contribution of €32,000 to the planning authority in order to facilitate the new access road to the rear (south) of the site which will provide access to the site once the said road is completed.

Reason: It is considered reasonable that the developer make a contribution in accordance with the terms of the development Contribution Scheme adopted by Waterford City and County Council on the 12th of February 2015, towards expenditure incurred or that is proposed to be incurred by the local authority in respect of works which facilitate the development.

7.0 APPEAL GROUNDS

7.1 Peter Thomson Planning Solutions has taken this appeal on behalf of the applicants. A summary of the appeal submission is as follows:

Background

There was planning permission granted on the site in 02/1159 for a unit on the site. The unit was not constructed strictly in accordance with the plans, and the use deviated from the permitted use, plus the petrol filling station was not constructed. The current application was to regularise the development on the site and to extend the unit. The proposed development also included the relocation of the permitted entrance.

Since the previous permission in 2002 a new link road from Riverstown Road to the promenade was developed, it was completed in 2014. There was no objection from the Council during pre-planning meetings regarding the closure of the existing access and a relocation of same. The further information raised the issue of the new entrance. There was a meeting held with the local authority whereby a future access road to Council lands to the south of the application site was discussed with the applicant and the potential for the road to serve the subject site in the future. There were two options submitted for the consideration of the planning authority, and the planning authority had indicated the preferred option for the new access was off the lands to the south of the site, however this would be the subject of the future application when the road

was in place. There was no formal arrangements made, it was a meeting to discuss assisting the planning authority in determining if access to their site could be achieved should a new access be developed to assist the local authority's development land.

The applicants believe the discussions were misleading and that they were entrapped into submitting plans that have ultimately cost them dearly in terms of development contributions.

The original proposed access is acceptable to serve the development. It is not necessary for the applicants to provide an alternative access. If the planning authority decides to develop the lands to the rear of the subject site and a suitable access can be made available, the applicants can discuss arrangements with the planning authority at such time.

The applicants will not be in breach of Condition 1(a) as the access road is not developed. There is no such road, and the applicants and the planning authority will require planning permission for same. There is no guarantee the road will proceed, or that a suitable access to the site can be provided.

The proposed access is acceptable and it is in line with the further information requested and discussions with the Director of Service prior to submitting the planning application.

The alternative means of access is not a specific requirement of the development. The entire site and development proposal will function perfectly well with the proposed new access which was not objectionable to the planning authority. The potential access road which condition No. 3 seeks to partially fund will provide a means of access to undeveloped local authority lands.

The Roads Design section did not impose this Special Development Contribution as is stated in the planning report on file.

It is requested Condition No. 3 be deleted.

8.0 PLANNING HISTORY

- 8.1 02/1159 – Thomas McCarty granted planning permission for 1 No. Industrial unit, 1No retail service station with 4No. petrol pumps, diesel pump, forecourt canopy and all associated site works.

9.0 DEVELOPMENT PLAN

The land is zoned Industrial and Mixed Enterprise in the Tramore LAP 2014-2020

10.0 ASSESSMENT

- 10.1 The applicant received planning permission for a development on the subject site in 2002, for a shed and a petrol filling station. The development was not

constructed in accordance with the submitted plans as the filling station was not developed on the site, and the existing use of the site involves the sale of bulky goods, solid fuels and building supplies. In 2015, following the completion of a new link road serving Rivertown Business Park, called the Rivertown Relief Road, the applicants applied to Waterford City and County Council for retention of the as-constructed building and an extension to same, with a new access off the relief road and additional carparking along the southern axis of the site which is to the rear of the existing business.

10.2 During the course of the assessment of the planning application, it came to the attention of the Roads Design Section that Waterford City and County Council own the contiguous site to the south west and are planning to construct a new Roads Depot on the contiguous site, along with a new access road to serve the new Roads Depot, development lands and the subject site. There was a meeting held between the local authority, the applicants and their agent regarding a revision to the proposed development involving a new access from the southern boundary of the site, off the future access road as opposed to the proposed access off the Relief Road.

103 I note as part of the Further Information submission dated 19th of November 2015, in a Sketch Scheme Drawing No. 8879.SK09 included an illustration of the relationship of the subject site, the proposed new Waterford City and County Council Road Depot site, and the proposed access road the subject of the Special Development Contribution. It is clear this is only an illustration as there is a residual triangular portion of land to the west of the subject site, which may be transferred to the applicant, and development lands to the south which may be owned by the local authority as large land holding to the further west of the subject site contains the Tramore Treatment Plant. The drawing is indicative only, and the local authority has presented no detailed or future road design layout for the area on the appeal file. In my opinion, there are plans to erect a Road Depot office at this location, however, this has not been formalised and the plans are aspirational at the present time.

10.4 The Board should note Condition No. 1 of the decision to grant which is directly related to Condition No. 3 which is under appeal.

The development shall be carried out in accordance with the plans and particulars submitted to the Planning Authority on the 21st of April 2015 and as amended on 19th of November 2015 except where altered or amended by conditions in this permission.

(a) The entrance to the site from Rivertown Relief Road as indicated on the subject plans stamped the 21st April 2015 is a temporary entrance only. Within 6 months of the completion of the access road to the rear (south) of the site, a new entrance shall be provided in accordance with Condition 1(b) and the entrance from the Rivertown Road should be closed. Details of boundary treatment, works to public footpath and programme of works at the location of the entrance onto Rivertown Road shall be agreed in writing with the planning authority. The works to the public footpath shall be agreed with the District Engineer, Metropolitan Area, Waterford City and County Council and shall be carried out by the developer.

(b) Prior to the commencement of the development a revised site layout shall be submitted to, and agreed in writing with, the Planning authority indicating access to the site via the proposed access road to the rear

(south) of the site as indicated on the submitted drawings No. 8879.SK09. The location of the access, the finished road level and finished levels of the site, car park etc shall be agreed with the Planning Authority.

- (c) Prior to the commencement of the development a revised site layout drawing shall be submitted to, and agreed in writing with the Planning authority indicating revised car parking layout taking into account the revised access as per conditions 1(a) and 1(b) and in accordance with the car parking standards contained in the Tramore Local Area Plan 2014-2020.*
- (d) Any new timber storage area or relocation of existing timber storage area shall be maintained at a height of 2metres, save with a prior grant of planning permission.*

The applicant did not appeal this condition and therefore I conclude they accepted in principle the revised entrance onto the southern site boundary. I would support the planning authority imposing this condition, I firmly believe the investment of public moneys into the new Rivertown Relief Road should not be undermined by granting planning permission for a proliferation of entrances to individual businesses along the short stretch to the north of Tramore Strand, as this would ultimately undermine the purpose of the new road. In my opinion, the granting of the permission may have been premature until the access road to the south of the subject site was in place or had been formalised.

- 10.5 A Special Development Contribution –Section 48(2)(c) of the *Planning and development Act 2000 (as amended)* provides for a contribution to be payable where exceptional costs not covered by the general contribution scheme are incurred by the local authority in the provision of a specific public infrastructure or facility. These Special Contributions do not have to be adopted by the council. The payment of the Special Development Contribution can be required in addition to a contribution under the General Scheme. They will only apply to a development which will benefit directly from the public structure in question.
- 10.6 On appeal the applicant has argued that it is not necessary for the applicants to provide an alternative access, and if the road to the south is not developed to date. It is submitted the applicants can discuss an alternative access, which will require planning permission when the road is provided. There is no guarantee the road will proceed. At present there is no access road therefore the applicants will not be in breach of Condition 1 (a). It is requested Condition No. 3 requiring the Special Development Contribution of €32,000, be deleted by the Board.
- 10.7 As the access road is not in place and there is no formal arrangement to construct the road at present, I consider the planning authority is unreasonable in expecting the applicants to pay €32,000 towards the costs of providing the road at this preliminary stage and prior to the commencement of the permitted development. I do consider compliance with Condition No. 1 is necessary when the road is provided, as the applicants will benefit from the provision of the access road to the south, as they are benefitting from the provision of the new Rivertown Relief Road to the east under the proposed access

arrangements. The permitted access onto the Rivertown Relief Road is only a temporary access. I agree with the principle of the Condition No. 3 and believe it should remain, however the payment of the Special Contribution should not be required until the access road is commenced.

- 10.8 The method of calculation of the €32,000 is not clear from the appeal file. There is a detailed Calculations Sheet of the general development contributions applicable to the proposal. The sum of €32,000 originally appeared in an email from personnel in the Roads Design Office dated 10th of December 2015. The sum of €32,000 was not disputed on appeal by the applicants, it was the principle of the condition. Given the junction layout, footpath provision and road specification for the future access road, I believe €32,000 is a reasonable amount to pay towards the overall costs of providing the infrastructure.

11.0 RECOMMENDATION

The wording of Condition 3 should be amended.

REASONS AND CONSIDERATIONS

Condition No. 3

The developer shall pay the sum of € 32,000 (Thirty Two Thousand Euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of a new access road to be provided to the south of the site and shall provide access to the subject site in line with condition No. 1 of the permission. This contribution shall be paid prior to commencement of subject access road or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Caryn Coogan

Planning Inspector

29th of March 2016