



An
Bord
Pleanála

Inspector's Report PL08.247186.

Development	Construct a 219 sq.m. detached warehouse unit.
Location	Ballycasheen, Killarney, Co. Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	16/135.
Applicant	Nocwerdna Limited.
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party versus decision.
Appellant	Brian Bowler.
Observer(s)	None.
Date of Site Inspection	2 December 2016.
Inspector	Stephen Rhys Thomas.

1.0 Site Location and Description

- 1.1. The appeal site is located within an existing small scale light industrial estate at the eastern side of Killarney in County Kerry. The site is approached via the Ballycasheen Road, off the N72. The surrounding area is characterised by warehouse units, light industrial units and a motor car dealer. The Flesk River is located across the road from the appeal site and a heavily wooded railway embankment is located to the rear. The Tralee to Mallow rail line runs along the rear of the site.
- 1.2. The appeal site is triangular in shape and conforms to the eastern tapered end of the existing four unit warehouse development. The exterior of the existing terrace of warehouse units comprise a smooth plaster finish and a green architectural steel cladding to the upper portion and roof. The appeal site is currently unoccupied and provides overflow car parking associated with the existing four units. The appeal site is fenced off from the overall site. The four units are in use as follows: motor factors retail unit, cash for clothes storage, fashions for children storage and a car repair workshop. A 1.2 metre high stone clad boundary wall topped by an ornate railing bounds the front of the site. There is a small gated pedestrian entrance at the eastern extremity of the site. The main vehicular entrance to the site is open to traffic, being without a gate.

2.0 Proposed Development

- 2.1. The construction of a detached warehouse unit, 8.2 metres in height and a stated floor area of 219 sq.m.
- 2.2. The proposed warehouse is similar in design and building finish to the existing terrace of four units to the west. The proposed warehouse will be located at the eastern corner of a triangular site, between railway embankment and public road.

3.0 Planning Authority Decision

Decision

The planning authority decided to grant permission subject to 11 conditions.

Relevant conditions are summarised below:

- Condition 3. The proposed warehouse unit shall be for storage purposes only ancillary to the adjacent car repair and service garage.
- Condition 4. The proposed flood resilience measures received on the 11 July 2016 shall be carried out in full.
- Condition 9. Prior to the commencement of development a drawing shall be submitted confirming that the existing sight distance at the entrance to the development is not impacted upon by the construction of the warehouse unit.

3.1. **Planning Authority Reports**

3.1.1. **Planning Reports**

The initial Planner's report is summarised as follows:

- The main issue with the site is traffic congestion and car parking on the site.
- Further information was requested with regard to flood risk, a car parking assessment, likely traffic movements and revised floor plan.
- An EIA Screening Assessment was completed, no EIA required.

The second Planner's Report accepted the material submitted by the applicant and concluded that a warehouse unit would generate less traffic than the existing permitted car sales business.

3.1.2. **Other Technical Reports**

Area Engineer Report. Recommends the attachment of standard technical conditions and a condition with regard to confirmation of adequate sight distance.

Flood Risk Report. The first report requires further information with regard to the intended use of the warehouse and details of flood resilience measures. I cannot locate the final report with regard to flood risk details submitted as further information.

Biodiversity Officer Report. Recommends best practice environmental management during the construction phase of the development and management of surface water run-off.

3.2. **Prescribed Bodies**

Irish Water Report. Recommends the attachment of standard conditions with regard to connection to services.

Inland Fisheries Ireland Report. Recommends standard technical conditions with regard to good site management during construction, surface water drainage and certification of correct connections to public services.

An Taisce Report. Recommends the attachment of conditions with regard to the proximity of the site to the Flesk River (SAC).

3.3. **Third Party Observations**

A submission was received by the planning authority and refers to a number of issues which are repeated in the grounds of appeal.

4.0 **Planning History**

Appeal site

Planning authority register reference 12205334, permission for a change of use of existing bottled gas & distribution compound to car sales ancillary to the existing garage.

Adjacent site

Planning authority register reference 12205309, permission granted to retain a change of use of part of the existing warehouse unit from warehousing to incorporate use as a garage.

5.0 **Policy Context**

5.1. **Development Plan**

Killarney Town Development Plan 2009 – 2015

The Killarney Town Development Plan 2009 – 2015 is the statutory Development Plan for the town of Killarney. The subject site is located within an area of the town which has been zoned as 'Industrial Warehousing'. The objective within such areas

is to provide for industrial and related uses. In accordance with Section 12.3.11.1 of the Plan, use as a 'warehouse building' is permitted within this land use zoning.

Chapter 5 deals with Enterprise and Development, the following section is considered relevant:

5.6 Light industry and related uses

5.6.2 Uses associated with light industry include the manufacture of physical products and shall also incorporate the following uses:

- Warehousing and distribution.

Policy ED-02, it is a policy of the Council:

a. To promote the expansion of light industrial uses through the provision of appropriate land use zonings in suitable locations that are accessible and sensitive to nearby existing land uses.

b. To encourage a balance in the provision of small, medium and large industrial business.

Chapter 9 deals with Natural Heritage, Biodiversity and Conservation, the following extracts from policy NH-08 are considered relevant:

c. To request flood risk assessments as part of planning applications in the areas indicated on the Flood Zone Area Map that are at risk from flooding to enable their proper consideration with regard to flood risk.

e. To ensure that planning applications in close proximity to all water courses are assessed in accordance with the provisions of the Flood Risk Management Guidelines for Planning Authorities and future related publications and assessments by the Office of Public Works.

f. To ensure that planning conditions are imposed on all planning applications for new (or extensions to existing) development within the Flood Zone Area Map in particular which minimises significant hard surfacing and paving. Conditions imposed will require the use of sustainable drainage techniques include permeable paving or surfaces such as gravel or slate clippings.

g. To ensure that all planning applications within the Flood Zone area includes proposals for sustainable drainage techniques include permeable paving or surfaces such as gravel or slate clippings.

h. Implement the recommendations and provisions of the Planning Guidelines on the Planning System and Flood Risk Management (DoEHLG 2009), and the OPW Flood Risk Appraisal Maps and Catchment Flood Risk Management Plans (CFRAM) when available and ensure that flood risk assessment policies, plans or projects are compliant with Article 6 of the Habitats Directive and avoid or mitigate negative impacts on Natura 2000 sites.

Chapter 12 details Land Use Zoning Objectives and Development Management Standards, section 12.53 sets out car parking standards.

Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019

The appeal site is located across the road from the Flesk River. The maps which accompany the LAP indicate that the river is located within a Fluvial Indicative Flood Risk Assessment Area.

Kerry County Development Plan 2015-2021

The appeal site is located within the Killarney Town Boundary, map 12.1k.

5.2. Natural Heritage Designations

The appeal site is located across the road from the Flesk River, which is part of the Killarney National Park, Macgillycuddy's Reeks And Caragh River Catchment SAC (Site Code 000365).

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal has been lodged against Kerry County Council's notification of decision to grant permission. The main grounds of appeal can be summarised as follows:

- The appellant states that a right of way in his favour is located in the location of the proposed development, a map has been submitted. The applicant will not allow any development on this right of way and wonders why the Council did not take in to account his concerns during the planning application stage.
- The site is located within an area of flood risk. The applicant did not submit a flood risk assessment and only recommended flood resilience measures.
- The site is overly developed and an adequate assessment of car parking requirement was not made, despite a request for further information. The overall plot is over congested and this results in traffic conflicts. A proper traffic impact assessment was not submitted and a reduction in traffic on foot of this development is unlikely.
- The attachment of a condition with regard to the confirmation of sight distances prior to the commencement of development is not enough to deal with any issues which may arise.

6.2. Applicant Response

This can be summarised as follows:

- The issue of legal title and ownership is fictitious. The applicant has submitted an updated Land Registry map which shows actual rights of way and which show a yellow marked right of way area which does not include the appeal site. The applicant cites the Development Management Guidelines and reminds the Board that a planning application is not the arena for settling legal disputes concerning title and ownership.
- The applicant reiterates their response to the further information request which concerned flood risk matters and confirm that they have followed all

procedures as outlined by The Planning System and Flood Risk Management 2009 document correctly.

- The applicant maintains that they have complied with Town Development Plan standards for car parking spaces to accompany a warehouse unit. In addition, given the proposed use for the storage of materials associated with the existing garage, it is not anticipated that car park generation will be an issue.
- Given the nature of the proposed development in an existing light industrial area, it is not anticipated that any Natura 2000 sites will be affected.
- Given the design of the existing entrance onto the Ballycasheen Road, it is not anticipated that the proposed development will have any impact on traffic.

6.3. Planning Authority Response

None.

6.4. Observations

None.

6.5. Further Response

The appellant submitted a response to the applicant's rebuttal of the grounds of appeal. The contents of the submission reinforce matters to do with legal title and dissatisfaction with the outcome of the application. The appellant also details press articles about past flood events and the Flesk River and is not confident that adequate flood risk assessment has taken cognisance of such events. The lack of any formal traffic impact assessment is raised again and the appellant reaffirms his contention that congestion and safety is a problem. Finally, a point of detail concerning a previous planning permission is disputed with reference to condition which regulated the use of a permitted car sales business.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Rights of Way
- Flood Risk
- Traffic and Car Parking
- Planning conditions
- Appropriate Assessment

7.2. Rights of Way

7.2.1. The appellant has raised an issue over the ownership of the lands the subject to the appeal and issues to do with rights of way over the said lands. The appellant has stated that they do not intend to allow the applicant to develop the lands in question. The applicant has submitted material which disputes title, ownership and rights of way. Issues to do with ownership, title and rights of way are legal matters and access to sites and any contractual consents required are for agreement between relevant parties. This assessment will not address matters to do with legal issues.

7.3. Flood Risk

7.3.1. The appellant raises concerns about the adequacy of the flood risk assessment that was carried out by the applicant. An assessment was not completed in accordance with the 2009 Guidelines for Planning Authorities - The Planning System and Flood Risk Management. There are doubts that the report that was submitted to the planning authority was prepared by a competent person and the flood resilience measures are inadequate.

7.3.2. I understand the appellants concerns with regard to flood risk, given the location of the site across the road from the Flesk River. The Killarney Environs Zoning

Provisions Amendments Map 2, indicates that the Flesk River is located in a fluvial indicative flood risk assessment area. Policy NH-08 of the Town Development Plan sets out flood risk assessment and resilience measures which are required to be considered as part of development proposals. I would note that a report on the file from the Executive Planner outlines that the site is at risk of flooding in a 1 in 1000 year (0.1% AEP) event. The current flood risk associated with the site renders it in Flood Zone B. In considering the flood risk of the proposed development I have had regard to the further information submitted by the applicant. In short, the applicant stated that the flood resilience of the proposed building will include a finished floor level which is 300mm above the level of the public road and that internal storage will be arranged as off floor racking. This was considered acceptable to the planning authority and condition 4 requires the implementation in full of the proposed flood resilience measures.

- 7.3.3. The Planning System and Flood Risk Management 2009 Guidelines for Planning Authorities was prepared to enable planning authorities to better understand and plan for flood risk. The key principles of a risk-based sequential approach to managing flood risk in the planning system are set out in chapter 3. The site is located in Zone B, moderate probability of flooding. Warehousing is considered to be a less vulnerable development and is not required to meet the justification test. This is reasonable given the urban location and the existing condition of the site and development in the vicinity. The guidelines advise that less vulnerable development should only be considered if flood risk assessment to the appropriate level of detail can demonstrate that flood risk to the development will be adequately managed. In this instance the applicant specified flood resilience measures. I am satisfied that the applicant has followed the guidelines, the flood risk assessment is adequate and the measures proposed are acceptable given the nature and design of the warehouse development.

7.4. Traffic and Car Parking

- 7.4.1. The appellant has concerns that the proposed development will add to traffic congestion and lead to car parking deficiencies for the estate. In addition, he is dissatisfied with the way in which the planning authority dealt with the matter of traffic impact assessment and car parking. The planning authority considered that the

proposed storage usage of the warehouse was acceptable and attached a condition with regards to its use being tied to the adjacent car repair and maintenance garage.

- 7.4.2. On the day of my site visit I noted that there were available car parking spaces in the vicinity of the terrace of warehouse units. A small number of cars were parked in the cordoned off area which corresponds with the appeal site. During my site visit a number of vehicles entered and exited the site and availed of the services provided by the car repair workshop or the motor factors retail unit. By far the busiest unit in the terrace is the motor factors which attracts delivery vehicles and customers, though in general the stays are short. Traffic congestion appears to occur in the immediate vicinity of the motor factors as cars and vans park and turn around to exit. In my experience competition for car parking spaces was not intense and a space could be found with ease. Given the nature of the businesses present in the vicinity (motor factors, storage warehouses and car repair workshop), the volume of traffic generated is not so great that it impacts upon the availability of car parking. Although, I suspect that if another retail type use was permitted then traffic volumes would become a problem. In this instance, I do not anticipate that a warehouse unit would generate such a degree of traffic that would result in competition for spaces and traffic problems.
- 7.4.3. Appendix 3 of the Town Development Plan sets out car parking standards. The land use 'warehousing' has a requirement for 1 car parking space per 100 sq.m. of floor space and 1.5 loading bay spaces per 1,000 sq.m. of gross floor area. The existing warehouse units on the site amount to approximately 1,000 sq.m. Based upon Council requirements there should be in excess of 13 car parking spaces and 2 loading bays available for the entire site, inclusive of existing and proposed development. I note that the appeal site is not provided with any car parking or loading bay spaces and relies on car parking spaces throughout the existing scheme. In addition, the Plan sets out minimum dimensions of 4.8m x 2.4m for car parking bays and 6.1m x 3.0m for loading bays. I am not convinced that the site layout submitted by the applicant shows spaces which conform to these dimensions. In order to avoid deficiencies and provide an appropriate standard of car parking and loading bay spaces, a revised car parking layout should be submitted prior to the commencement of development.

7.4.4. The planning authority sought to clarify the issue of car parking and traffic generation through a request for additional information and were satisfied with the applicant's response. I concur with the planning authority's view that a warehouse use is likely to result in a low level of traffic generation. In addition, I note that the planning authority sought to control the use of the proposed unit and tie it to that of the adjacent car repair and service business. This is a reasonable and balanced view to take and I consider that any change of use or additional floor area should be a matter for a future planning application. This will allow a fresh assessment of the car parking and traffic generated by the site. In this respect I am satisfied as to the acceptability of the proposed development from a car parking and traffic generation perspective. I do not consider however, that it is necessary to tie this unit to the existing car repair business and it is sufficient simply to restrict its use to warehouse/storage only.

7.5. Planning conditions

7.5.1. The appellant challenges the appropriateness of attaching a condition to a permission which requires clarity on the impact or otherwise of sightlines from the overall warehouse development. The appellant wonders what the outcome would be if subsequent drawings showed that the proposed development would impact upon sightlines and what the response of the planning authority would be.

7.5.2. I note that the Ballycasheen Road is an urban road with a central single white line and double yellow lines in both directions. The road is relatively straight and level in the vicinity of the entrance to the small industrial estate and a skew railway bridge and road junction are located to the east. Traffic volumes at the time of my site visit were low and traffic speeds were also quite low. As a result of the number of vehicular entrances to other units along the road, the junction and skew bridge to the east of the site, traffic speeds and driving behaviour are moderated. There are no established building lines in the wider vicinity, with warehouse and industrial buildings being set back at varying distances from the road with parking courts to the front. Though the proposed warehouse unit will be forward of the established building line associated with the terrace of units in this portion of the estate, the

building will still be one metre back from the existing boundary and 15 metres away from the site entrance.

7.5.3. At present high sided vehicles such as delivery trucks are free to park adjacent to the existing vehicular entrance and potentially block sight lines. I observed that vehicles leaving the site had to tentatively move forward in order to exit the site. My own experience of exiting the site meant that I too had to pull slowly forward in order to gain sufficiently clear sight lines and safely join the flow of traffic. My view eastwards being obscured by the existing stone clad gate pier. The addition of the proposed warehouse building will have no greater impact upon sight lines than parked vehicles or the situation as is. In addition, given the alignment of the road and the position of the proposed building back from the roadside boundary I do not anticipate any impact upon available sight lines. Finally, the proposed development does not include any alteration to the position or configuration of the existing and permitted vehicular entrance.

7.5.4. The need to maintain sightlines, in my mind, should have been clarified by the planning authority through further information. The imposition of a compliance condition in this instance would essentially decide on the overall merits of the planning application and would not be appropriate. The position of the proposed building is either acceptable or not and in this instance I consider its position to be acceptable. From my observations of the site and my experience of exiting in a vehicle, I see no reason to attach a condition that requires further clarification of sight lines, when in my opinion sight line distance will not be impacted upon by the proposed development.

7.6. **Appropriate Assessment**

7.6.1. The appeal site is located approximately 10 metres and across a public road from the boundary of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365), the Flesk River. I have reviewed the available information, including the screening exercise undertaken by the Planning Authority in respect of the proposal and the comments of the Council's Biodiversity Officer. I note a reference in the final Planner's report that refers to the submission of an AA Screening report, this was not a requested further information item. I cannot find the AA Screening Report that was submitted by the applicant either with the

initial application or as further information. I do however, note the AA Screening comments made by the applicant in their response to the third party's grounds of appeal.

- 7.6.2. Having regard to the brownfield nature of the site and the scale of the development that is proposed within an established urban environment, the availability of public services, 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 that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the established use on the appeal site and the pattern of development in the area and the extent of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of the property in the vicinity, would not result in a traffic hazard and 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 as amended by the further plans and particulars submitted on the 11th day of July 2016, 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 proposed development shall be used for warehousing storage use only. No general retail or retail warehousing use shall be permitted.

Reason: To limit the use of the development, having regard to the availability of car parking and in the interest of the proper planning and sustainable development of the area.

3. The development shall include all proposed flood resilient construction measures detailed in the Flood Risk Assessment submitted to the planning authority on the 11th day of July 2016.

Reason: In the interest of orderly development.

4. No additional floorspace shall be formed by means of internal horizontal division within the building hereby permitted unless authorised by a prior grant of permission.

Reason: In order to control the intensity of development and to ensure that adequate car parking will be provided.

5. Details of the materials, colours and textures of all the external finishes to the proposed building shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

6. The existing stone clad wall and railing boundary with Ballycasheen Road shall be retained along the site frontage.

Reason: In the interest of visual amenity.

7. 13 no. car parking spaces and 2 no. loading bay spaces shall be provided within the overall site. The layout of these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate off-street parking provision is available to serve the proposed development.

8. Water supply and drainage arrangements, including attenuation and the

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.

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

10. No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site and adjoining lands under the control of the applicant unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

11. 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, 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. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

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.

Stephen Rhys Thomas
Planning Inspector

5 December 2016