



An
Bord
Pleanála

Inspector's Report

PL92.247360

Development	Development of Land consisting of Minor Miscellaneous Elevational issues and ancillary site works at Ryan's Centra and Fuel Sales forecourt, Limerick Road, Portryan, New Port, Co. Tipperary
Planning Authority	Tipperary Co. Co.
Planning Authority Reg. Ref.	15601102
Applicant(s)	Tom Ryan
Type of Application	Permission
Planning Authority Decision	Grant Permission with conditions
Appellant(s)	Hugh Sweeney
Observer(s)	None
Date of Site Inspection	24/01/2017
Inspector	Caryn Coogan

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The subject site, 0.66Ha, is a large petrol filling station and two storey building which includes two shop units and a store, on the Limerick Road out of Newport village, Co. Tipperary (R503). The site is located to the west of the built up and commercial core of the village. The main shop area is a small general convenience store, a Centra, and the other unit is a delicatessen. There is a massive surface parking area and deliveries area around the large site area.

The first floor units have a permitted use as two apartments, office space and ancillary storage.

2.0 DEVELOPMENT

- 2.1 The retention of minor miscellaneous elevational issues and ancillary site works associated with the above.

The net retail area outlined for the main unit is 127sq.

3.0 PLANNING AUTHORITY DECISION

- 3.1 Tipperary Co. Co. granted planning permission for retention of the development on the 7th of September 2016. There were 4No. conditions.

There were 4 No. conditions. The crux of this appeal relates to Condition No. 3.

Within three months of the date of this order, the net floor area of Commercial Unit No. 2 shall be clearly limited to a maximum of 100sq.m. with the balance of the gross floor area being unavailable for sales and customer access and operating only as an ancillary to the retail unit. Prove of same shall be submitted to the planning authority within the same three month period.

3.2 TECHNICAL REPORTS

Planning Report:

Policy Compliance: - Retail premises operating in association with filling stations should have a net retail floor area not exceeding 100sq.m. The submitted documents shows the central retail units has a net retail floor area of 127.6sq.m. There are inaccuracies relating to retention of a further 31.9sq.m. and reference to a structure been removed from the site. The **further information** requested discrepancies regarding the

floor area to be clarified. Further information was received on 12th of August 2016.

3.3 THIRD PARTY SUBMISSIONS

It was found the applicant exceeded the permitted floor area granted under an earlier permission. The applicant is attempting to combine the ground floor area into one big unit. He has omitted the labelling of commercial units, 1,2 and 3. He is blatantly disregarding the original permissions on the site.

4.0 PLANNING HISTORY

The following planning history relates to the site:

- 4.1 **Reg. Ref. 05/510011** – Permission was granted by the planning authority for a petrol filling station, retail sales premises, 2 commercial units, two apartments, separate office accommodation and two entrances at this location in 2005.
- 4.2 **Reg. Ref. 10/5/0191** – Change of use of retail unit to take-away (unit no.1) was refused due to breach of plans granted under 05/510011.
- 4.3 **Reg. Ref. 10/510192** – Change of use from retail unit to off licence (unit no. 3) was refused due to breach of plans granted under 05/5/0011.
PL 22.233126 (Reg. Ref. 08/511209) – By order dated 17/9/2009 the Board refused permission at this location for a single-storey rear extension consisting of facilities ancillary to retail unit plus ancillary works on the basis that it would facilitate the expansion of the shop unit associated with the petrol filling station in excess of 100 square metres of net retail floorspace. The scale of the resultant retail unit was found to exceed the maximum level of net retail floorspace for retail forecourt development as set out in the Retail Planning Guidelines for Planning Authorities issued by the DoEHLG in January, 2005. In the absence of a sequential test, the Board was not satisfied that the development would not detract from the vitality and viability of the town centre.
- 4.4 **PL22.238305 (Reg. Ref. 10/510481)** – By order dated 19/5/2011 the Board made a ‘split’ decision granting minor alterations to existing shop units, supermarket and filling station at this location as constructed and signage and erection of security fence to rear of supermarket, but refusing permission for retention of a steel container for temporary storage on the basis that it would constitute a substandard form of development which would seriously injure visual amenity and, in the absence of a detailed internal floor plan of the central retail unit, the Board was not satisfied that this element of the proposed development would not facilitate the provision of a net retail floorspace within this retail unit which would exceed that which would be reasonably ancillary

to the filling station and which would not adversely affect the vitality and viability of the town centre.

4.5 **PL 22.240736** – Permission was refused by the Board on 30/11/2012 for the construction of a single storey extension of 136 sq. m. gross floor area to the rear of Ryan's Centra and Fuel Sales Forecourt for one reason relating to the development facilitating the expansion of the shop unit associated with the filling station to in excess of 100 sq. m. of net retail floor space contrary to the provisions of the North Tipperary County Development Plan, the Newport Local Area Plan, and the Retail Planning Guidelines and in the absence of a sequential test.

4.6 **PL22.234115** - The Board REFUSED planning permission for retention of 31sq.m. net retail floor space and minor elevational details, a single storey rear extension with 76sq.m. gross floor area, at Ryan's Centra, because the shop would be in excess of 100sq.m. of net floor retail space which is contrary to the policies of the North Tipperary County Development Plan 2010-2016 (ECON28 and section 10,11) and the Newport Local Area Plan 2010-2016

4.7 **Adjoining Site**

PL22.235944 (Reg. Ref. 09/510650) – By order dated 21/5/2010 the Board refused permission for four commercial/retail units with storage and associated signage, crèche, car parking and relocated site entrance.

5.0 **POLICY CONTEXT**

5.1 **North Tipperary County Development Plan 2010-2016**

Newport is designated a District Service Centre in the Plan. Policy S5 of the Plan states that it is the policy of the Council to enhance, strengthen and conserve the District Service Centres within the County, while ensuring that the appropriate scale of growth is supported.

The Council's Retail Strategy states that the central key objective is to support the 'town centre' first approach in the context of the retail hierarchy, and to promote the vitality and viability of existing centres by focusing development in them and encouraging a wide range of services in a good environment which is accessible to all.

Newport Local Area Plan 2010-2016

The site is within the town boundary, is zoned commercial and is not part of the zoned town centre.

6.0 **THE APPEALS**

6.1 It is stated in the decision the Council considers the development complies with the policies and objectives of Northern Tipperary County Development Plan 2009. This is a mistake as in Schedule 2 which

includes the conditions attached to the permission it has ordered the developer to reduce the net floor area of Unit No. 2 (main Centra store) to a maximum of 100sq.m. Therefore, the development was not complying with the development plan 2009 which states that the net retail floor area associated with petrol filling stations should be less than 100sq.m.

- 6.2 Regarding Schedule 2 Condition 3 while it is encouraging to see the Council impose a limit on the developer's main shop unit, it has not imposed any inclusive condition on the 'deli' located in commercial unit no. 3. Despite a wall dividing it from the main shop in commercial Unit No. 2 it is still an ancillary part of the primary business the Centra store and should subsequently be also included in the reduction of retail floor space to less than 110sq.m. The planners have failed to take this into account in their decision.

6.3 RESPONSES

- 6.4 The **planning authority** has nothing further to add.
- 6.5 The applicant states the appeal is not valid that the third party fails to state any grounds of appeal.

7.0 ASSESSMENT

- 7.1 This third party appeal and the issues raised are very similar to issues raised in the previous planning histories relating to this site. The most recent case is **PL22.243115**, the decision and inspectors report is appended to this report, was refusal of permission for similar reasons to the preceding Board decision on this site. Under planning permission 05/510011 permission was granted for a filling station, a retail sales premises associated with the filling station, two commercial units flanking the filling station, with an office, store and two apartments at first floor level. There have been a multitude of planning applications and appeals relating to the size and scale of the convenience shop, which could be considered a freestanding convenience retail outlet, and yet its function is an ancillary service to the filling station. The Board has been consistent in its approach to continuously refuse permissions for the additional retail floor space, and the applicant is constantly trying to apply for retention of unauthorised retailing floor area.
- 7.2 This application relates to the retention of minor elevational details between the permitted and constructed plans. The elevation alterations include amended fenestration and two raised gables. I would deem these to be acceptable and are not the subject of this appeal. The second element of the application relates to the net retail floor space been applied for, which is specified in the documentation as **128sq.m**. The applicant maintains that no increase in the net retail floor space occurs from the original permitted floor area granted in 2005. The planning authority granted retention of the development requiring the floor area of

Unit 2 to be a maximum of 100sq.m. therefore excluding the 28sq.m. of the floor area applied for under the planning application.

- 7.3 Given the detailed and repetitive planning history relating to the subject site in particular, specifically relating to the net retail floor area associated with the Centra store, i.e Unit No. 2, I find it frustrating that applicant is fully aware of the planning policy and 100sq.m. restriction on the net retail space, and previous refusals relating to this issue and continues to apply for retention of a net floor area exceeding 100sq.m. On this occasion the planning authority granted planning permission subject to Condition No. 3:

Within three months of the date of this order, the net floor area of Commercial Unit 2 shall be clearly limited to a maximum of 100sq.m. with the balance of the floor area being unavailable for sales and customer access and operating only as ancillary to the retail unit. Proof of same shall be submitted to the planning authority within the same 3 months period.

Given the reason for refusal cited under PI22.243115, which is

It is considered that the proposed development and the development proposed to be retained would facilitate the expansion of the shop unit associated with the petrol filling station in excess of 100 square metres of net

retail floor space. The scale of the resultant retail unit would be contrary to the policies, as set out in the North Tipperary County Development Plan 2010

- 2016 (policies ECON 28 and section 10.11) and the Newport Local Area Plan 2010 - 2016 (section 4.21 and objectives R.1 and R.7), in relation to retail development and would exceed the maximum level of net retail floor space for retail forecourt development (section 4.11.9) as set out in the Retail

Planning Guidelines for Planning Authorities issued by the Department of the

Environment, Community and Local Government in April, 2012. Furthermore,

it is considered that the proposed development would reinforce and consolidate retail development at this isolated out of centre location to the detriment of the vitality and viability of the town centre of Newport. The proposed development and the development proposed to be retained would,

therefore, be contrary the said Retail Planning Guidelines for Planning Authorities and to the proper planning and sustainable development of the area.

The Board's reason for refusal under PL22.240736 stated,

It is considered that the proposed development would facilitate the expansion of the shop unit associated with the petrol filling station in excess of 100 square metres of net retail floor space. The scale of the resultant retail unit would be contrary to the policies set out in the North Tipperary County Development Plan 2010-2016 (policy ECON 28 and section 10.11) and the Newport Local Area Plan 2010-2016 (section 4.21 and zoning

objectives R1 and R7) in relation to retail development and would exceed the maximum level of net retail floor space for retail forecourt development (section 4.11.9) as set out in the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in

April, 2012. In the absence of a sequential test, it is considered that the proposed development would reinforce and consolidate retail development to the detriment of the vitality and viability of the town centre at this isolated out of centre location. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 7.4 By way of further information, the planning authority asked the applicant to clarify the net floor area of the main commercial unit. The drawing submitted and shaded would indicate a floor area of circa 130sq.m., which exceeds the current planning policy restriction of 100sq.m. I recommend permission be refused on this basis as there are no new material issues to warrant overturning Board's previous refusals on this issue.

8.0 RECOMMENDATION

I recommend a split decision regarding the elevation details be granted retention, and the internal floor area be refused.

REASONS AND CONSIDERATIONS

Having regard to the zoning objectives for the area and to the planning history and permitted development on the subject site, it is considered that, the elevation included on the submitted documentation, would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of visual amenity. The development would, therefore, be in accordance with the proper planning and sustainable development of the area

REASONS AND CONSIDERATIONS (2)

It is considered that the proposed development and the development proposed to be retained would facilitate the expansion of the shop unit associated with the petrol filling station in excess of 100 square metres of net retail floor space. The scale of the resultant retail unit would be contrary to the policies, as set out in the North Tipperary County Development Plan 2010 - 2016 (policies ECON 28 and section 10.11) and the Newport Local Area Plan 2010 - 2016 (section 4.21 and objectives R.1 and R.7), in relation to retail development and would exceed the maximum level of net retail floor space for retail forecourt development (section 4.11.9) as set out in the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in April, 2012. Furthermore, it is considered that the proposed development would reinforce and consolidate retail development at this isolated out of centre location to the detriment of the vitality and viability of the town centre of Newport. The proposed development and the development proposed to be retained would, therefore, be contrary the said Retail Planning Guidelines for Planning Authorities and to the proper planning and sustainable development of the area.

Caryn Coogan

Planning Inspector

27/01/2017