



An  
Bord  
Pleanála

## Inspector's Report PL92.247557

### Development

Permission for retention for a period of three years of development as previously granted planning permission under Planning Reference PL22.238797 and described as Building Materials and Plant Yard / Compound.

### Location

Racecourse Retail Park,  
Bawntameena, Thurles, Co  
Tipperary.

### Planning Authority

Tipperary County Council.

### Planning Authority Reg. Ref.

16/600805

### Applicant(s)

Stakelum's Hardware Ltd.

### Type of Application

Permission

### Planning Authority Decision

Refuse Permission

### Appellant(s)

Stakelum's Hardware Ltd.

### Observer(s)

Andy Fogarty

### Date of Site Inspection

26<sup>th</sup> January 2017.

### Inspector

Bríd Maxwell.

## 1.0 Site Location and Description

- 1.1. The appeal site is located on the north-western fringes of Thurles Town, just off the R498 Nenagh Road. The appeal site has a stated area of 0.5878 hectares and is situated at the entrance to a retail park known as Racecourse Retail Park which is located opposite Thurles Racecourse. On the opposite side of the retail park entrance is a car sales showroom. Racecourse Retail Park consists of a large retail unit known as Stakelum's which operates as a substantial home and hardware store including garden centre, electrical / white goods and builder's providers. To the east are a number of residential dwelling sites which back onto the retail park site.
- 1.2. The appeal site consists of a former residential site which contains a detached bungalow which has fallen into a significant degree of disrepair. This derelict dwelling is located towards the southern end of the appeal site whilst the northern part of the site is in use as an external storage area for building materials and plant. The boundaries of the appeal site are defined by a mix of hedging, trees and fencing along the eastern boundary with an earthen embankment along the retail park road.

## 2.0 Proposed Development

- 2.1. The proposed development as set out in the application involves permission for retention for a period of three years of development previously granted planning permission under planning reference PL22.238797 and described as Building Materials and Plant Yard / Compound at the entrance to Racecourse Retail Park.

## 3.0 Planning Authority Decision

### 3.1. Decision

Tipperary County Council decided to refuse permission for the following reasons.

*"The site is located within the Bawntameena / Toor Opportunity Site with a Specific Zoning Objective C – Commercial and Employment in the currently Thurles and Environs Development Plan 2009-2015 as varied (Appendix 3) wherein it is identified as being suitable for Retail Warehousing and Employment related development. Having regard to this Specific Objective for the site and to the Development Plan*

*Policy Objective SERV14, which seeks to resist development which would give rise to undue environmental nuisance to residential properties, it is considered that the proposed development by reason of the nature of the use as a building materials and plant yard and to the proximity of the site to a number of residential properties, would be an inappropriate use of the site and would give rise to undue noise and disturbance, dust and fumes which would seriously injure the residential amenities of the adjoining properties. The proposed development would therefore, materially contravene the objectives of the Development Plan, would set an undesirable precedent for similar developments in the vicinity, and would be contrary to the proper planning and sustainable development of the area.*

*The proposed development, by reason of its location on a prominent site at the entrance to a retail park from the regional road R498 and to the absence of adequate screening along the boundaries of the site, and to the nature of the use would give rise to serious injury to the visual amenities of the area, and would militate against the achievement of the specific objective to develop the Bawntameena /Toor opportunity as part of a retail park as set out in Appendix 3 of the Thurles and Environs Development Plan 2009-2015 as varied.”*

### **3.2. Planning Authority Reports**

3.2.1 Executive Engineer Environment indicates no significant environmental concerns though noting negative visual impact. A condition requiring noise mitigation is recommended.

3.2.2 The report of the area planner recommends refusal on grounds of negative visual impact, injury to adjacent residential amenity and non-compliance with the specific zoning objectives for the site.

### **3.3 Third Party Observations**

3.3.1 Submission by Andy Fogarty, resident of adjacent dwelling site to the east of the appeal site objects to the development on grounds of non-compliance with previous

permission, unacceptable noise levels arising, disturbance to residential amenity, negative visual impact and unfavourable impact on property values.

#### **4 Planning History**

**PL22.238797** 31<sup>st</sup> August 2011. An Bord Pleanála overturned the decision of Tipperary County Council to refuse permission and granted permission for retention of the building materials and plant hire yard for period of 5 years. I note that the Board's Inspector recommended refusal of permission on grounds of inappropriate use having regard to the specific zoning objective for the site and to policy objective SERV 14 and injury to visual amenity having regard to the prominent location of the site and absence of adequate screening. I note that the Board (refer to Board Order attached) in deciding not to accept the Inspector's recommendation to refuse permission considered that the proposed use of the site as a building materials and plant yard / compound was acceptable in an area zoned for mixed use, having regard to the uses open for consideration in such areas and to the existing uses within the mixed use zone and having regard to the temporary nature of the proposed use and subject to the mitigation measures conditioned. With regard to the question of material contravention of the development plan in light of the Council's decision to refuse on these grounds, (Section 37 2(b) of the Planning and Development Act 2000 as amended) the Board considered that the objectives of the development plan were not clearly stated insofar as the development was considered in terms of potential conflicts between the mixed use zoning objectives for the site, and the residential zoning objective of the neighbouring lands to the east, and Policy SERV14 of the Development Plan. The mixed use zoning objective for the site is "to provide and improve mixed use activities", The residential zoning objective of the neighbouring lands is "To preserve and enhance existing residential amenity", Policy SERV14 of the Planning Authority as set out in the Development Plan seeks to resist development which would give rise to unacceptable levels of environmental nuisance affecting areas beyond the site boundary, with such restrictions particularly applying to uses sensitive to such disturbance such as housing.

**004/51/1550** Permission granted for demolition of existing private dwelling, infrastructural works including access road, drainage works, sewerage pumping station and associated landscaping.

The Planner's report refers to 5 Enforcement Case History files (Cases closed) in respect of the site.

## **5 Policy Context**

### **5.1 Development Plan**

5.1.1 The Thurles and Environs Development Plan 2009 refers. The site is zoned for mixed use. The Zoning matrix (copy appended) provides for an extensive range of uses which are permitted in principle and open for consideration within this use zone.

#### **Policy SERV 13: Environmental Nuisance**

*"It is the policy of the Councils to resist developments that give rise to unacceptable levels of noise, smell, dust, fumes light or noxious emissions affecting areas beyond the site boundary, or to air or water pollution. Such restrictions will particularly apply to uses sensitive to disturbances such as housing, schools and hospitals."*

The site forms part of Bawntameena / Toor Site 9 a 13.6ha site which identifies the lands as *"suitable for retail warehousing and employment related development, the zoning accommodates 'appropriate business and commercial development' The remainder of the site is ideally located for the provision of enterprise centre (including incubator units) and community facilities such as nursing home and crèche."*

Guidance on design and layout recommends *inter alia* a layout that would provide for: *"A Distinct Sense of Place – Gateway development with landmark entrance feature including public art adjacent to this edge of town site"*.

## **6 Natural Heritage Designations**

- Lower River Suir SAC, (Site Code 002137)

- Slieve Féilim to Silvermines Mountains SPA, (Site Code 004165)
- Kilduff Devilsbit Mountain SAC. (Site Code 00934)

## **7 The Appeal**

### **7.1 Grounds of Appeal**

7.1.1 The appeal is submitted by Healy Partner Architects on behalf of the First Party. Grounds of appeal can be summarised as follows:

- Over the past 8 years severe economic decline has necessitated the consolidation of business to maintain employment at sustainable levels, hence the builder provider centre was transferred to Racecourse Retail Park.
- The proposed three-year permission will allow further consolidation of the business to achieve solutions which are more appropriate for the longer term business management and viability.
- It is acknowledged that the site represents a valuable development opportunity site however the property market in Thurles has not adequately recovered to a position where the sale of the lands could achieve a break even or profitable scenario to allow such development to emerge.
- The site is operated as a builder's materials yard and storage of materials on site is well managed and organised.
- Potential for undue noise disturbance is exaggerated as the yard is predominantly dormant with tightly controlled access. Noise is normally confined to business hours.
- Layout of materials is such to minimise noise.
- In the medium to long terms will undergo some form of appropriate development.
- Set back from boundaries and screening mitigate visual impact.

- Development is supported by Policy ECON 1 Employment Growth and Promotion and ECON 5 Non-conforming uses.
- The reasons for refusal are not consistent with the zoning of mixed use for the site. It is reasonable to assume the future development of the site will contribute both noise and light in excess of the current situation.

## **7.2 Planning Authority Response**

The response of the Planning Authority reiterates the Council's reason for refusal.

## **7.3 Observations**

Submission from Andy Fogarty, Bawntameena, owner of the adjoining residential site to the east, objects to the development asserting that Condition 5 of Previous Permission PL22.238797 (landscaping) was not complied with. Noise levels emanating unacceptable from time to time. Opening hours extend to after 2pm Saturday on occasion in contravention of condition 11. Negative impact on residential property value, visual impact, dust, fumes and noise impact to the detriment of residential amenity. Health and safety implications of open storage.

## **8 Assessment**

8.1 I consider the key issues in determining this appeal are as follows:

- Principle of development and issue of Material Contravention of the Development Plan
- Impact on Residential and other amenities of the area.
- Appropriate Assessment Screening

### **8.2. Principle of development and issue of Material Contravention of the Development Plan**

8.2.1 I note that the principle of development and question of material contravention of the development plan was considered as part of the previous appeal case PL22.238797, decided on 31<sup>st</sup> August 2011, and in which case An Bord Pleanála overturned the decision of Tipperary County Council to refuse permission thereby granting permission for retention of the building materials and plant hire yard for period of 5 years. I note that the Board's reporting Inspector had recommended refusal of permission on grounds of inappropriate use having regard to the specific zoning objective for the site, to policy objective SERV 14 and perceived injury to visual amenity having regard to the prominent location of the site and absence of adequate screening.

8.2.2 I note that the Board in deciding not to accept the Inspector's recommendation to refuse permission considered that the proposed use of the site as a building materials and plant yard / compound was acceptable in an area zoned for mixed use, having regard to the uses open for consideration in such areas and to the existing uses within the mixed use zone and having regard to the temporary nature of the proposed use and subject to the mitigation measures conditioned. With regard to the question of material contravention of the development plan the Board considered that the objectives of the development plan were not clearly stated insofar as the development was considered in terms of potential conflicts between the mixed use zoning objectives for the site, and the residential zoning objective of the neighbouring lands to the east, and Policy SERV14 of the Development Plan. The mixed use zoning objective for the site is "to provide and improve mixed use activities", The residential zoning objective of the neighbouring lands is "To preserve and enhance existing residential amenity", Policy SERV14 of the Planning Authority as set out in the Development Plan seeks to resist development which would give rise to unacceptable levels of environmental nuisance affecting areas beyond the site boundary, with such restrictions particularly applying to uses sensitive to such disturbance such as housing.

8.2.3 On the basis of the foregoing I conclude that the Board has previously determined the question of the principle of development deeming it to be acceptable and furthermore the Board determined that it is not precluded from granting permission on the basis of material contravention of the development plan, in the context of the provisions of section 37(2)(b) of the Planning and Development Act 2000 as



amended in light of the determination that the objectives of the development plan are not clearly stated insofar as the development is considered and having regard to conflicting objectives in the development plan.

### **8.3 Impact on Residential and other amenities of the area.**

- 8.3.1 The issue of visual impact and impact on the residential and other amenities of the area is a key issue in this appeal. I note the concerns of the observer in respect of the visual impact of the development from the adjacent dwellings and other disturbance to residential amenity in terms of noise, disturbance and other nuisance. Having visited the site, I observed that the eastern boundary of the site has well established screening. I noted some gaps in the adjacent timber screen fencing requiring renewal. The most significant negative visual impact arises in relation to the existing derelict dwelling on the southern part of the site which is quite prominent and where I noted some open storage of recyclable materials and goods. I also noted a container adjacent to the dwelling, apparently used for metals recycling storage and which is not detailed within the application drawing and documentation. Clearly such storage or use as recycling / waste storage does not form part of the appeal and as an unauthorised use is an enforcement matter for the planning authority and in this regard is beyond the remit of the Board.
- 8.3.2 I note that as the existing dwelling has continued to deteriorate and resolution of the visual and environmental status of the overall site in the medium term is highly desirable. In light of the negative visual impact currently arising, I consider that additional landscaping and screen planting should be provided to the southern part of the site in particular in the short term. On the matter of noise disturbance to established residential amenity I would accept the assertions on behalf of the first party that subject to the occasional use as a builder's supply storage yard as outlined, the proposed development will not give rise to significant noise, odour, dust or fumes. In my view the continued use of the site for a period of three years can be authorised subject to additional mitigation in respect of the negative impacts currently arising as outlined.

## **8.4 Appropriate Assessment Screening**

8.4.1 As regards the issue of Appropriate Assessment, having regard to the nature of the proposed development and the receiving environment and distance from Natura 2000 sites, it is considered that Appropriate Assessment under the Habitats Directive (92\43\EEC) is not relevant in this case. No appropriate assessment issues arise and it is not considered that the proposed development would be likely to have significant effect individually or in combination with other plans or projects on a European site.

## **9 Recommendation**

9.1 I recommend that planning permission for a period of three years should be granted, subject to conditions, as set out below.

### **Reasons and Considerations**

Having regard to the mixed use zoning of the site as identified in the Thurles and Environs Development Plan 2009-2015 to the uses that are open for consideration in such Mixed Use areas, including general industrial and light industrial uses and to the current permitted commercial uses on adjacent site within this mixed use zone, it is considered that subject to the conditions set out below, the proposed temporary use of the site as a building materials and plant yard / compound would be acceptable in terms of the mixed use zoning would not give rise to significant negative impact on the residential and other amenities of the area.

Furthermore, with regard to the reason for refusal by the planning authority on the grounds that the proposed development would materially contravene the development plan, it is considered that the objectives of the development plan are not clearly stated insofar as this development is concerned, in terms of potential conflicts between the Mixed Use zoning objective for this site, and the residential zoning objective of the neighbouring lands to the east, and policy SERV14 of the development plan. The Mixed Use zoning objective for this site is “to provide and

improve mixed use activities". The residential zoning objective of the neighbouring lands is "to preserve and enhance existing residential amenity". Policy SERV14 of the planning authority, as set out in the development plan, seeks to resist development which would give rise to unacceptable levels of environmental nuisance affecting areas beyond the site boundary, with such restrictions particularly applying to uses sensitive to such disturbance such as housing.

### **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 use of the premises as a building materials and plant yard / compound shall cease on or before the expiration of period of three years from the date of this Order, unless before the end of that period permission for the continuance of use beyond that date shall have been granted.

**Reason:** To facilitate the temporary use of the site as proposed.

3. Use of the site shall be as in accordance with the details as submitted as a building materials and plant yard / compound. No change of that use shall take place without a prior grant of planning permission notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 and any statutory provision amending or replacing them.

**Reason:** To protect the amenities of property in the vicinity.

- 4 Within one month of the date of this order the timber fencing provided along the eastern boundary of the site shall be suitably repaired and reinstated to the requirements of the planning authority.

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

5. (a) Within one month of the date of this order the existing container located adjacent to the disused dwelling on the site shall be removed.
- (b) There shall be no open storage of waste / recyclable materials on the southern part of the site adjacent to the disused dwelling.
- (c) All goods, shall be stored only within the enclosed yard on the northern part of the site. No plant or materials shall be stored above a height of 2m.

**Reason:** In the interest of public health and the visual amenities of the area.

6. Within one month of the date of this order a detailed scheme of environmental improvements and landscaping measures shall be submitted to the planning authority for written agreement. The scheme shall include:

- (a) Details of landscaping to the southern part of the site adjacent to the disused dwelling which shall incorporate planting of indigenous species,
- (b) Planting within the buffer zone adjacent to the eastern boundary of the site.

The scheme shall include the timeframe, specific location and details of screening and details of ongoing care and management of such planting. Landscaping shall be completed in accordance with the agreed scheme within the first planting season following the date of this order. Any plants

which die, are removed or become seriously damaged or diseased, within a period of three years of the date of this order will be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

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

7. No signage, advertisement or advertisement structure, or other projecting elements, including flagpoles, shall be erected or displayed within the curtilage of the site in such a manner as to be visible from outside the site, unless authorised by a further grant of planning permission.

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

8. Site operations, including deliveries, shall be carried out only between 0800 hours and 1900 hours Mondays to Fridays inclusive, between 0830 hours and 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall 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.

9 (a) The noise level arising from the development, as measured at the nearest dwelling, shall not exceed:

- (i) LAeq,30 mins of 55 dB(A) during the period 0800 hours to 1900 hours Mondays to Fridays inclusive, and between 0830 hours to 1400 hours on Saturdays.
- (ii) LAeq,15 mins of 45 dB(A) at any other time.

If the noise contains a tonal element (for example, whine, hiss, screech or hum), or contains distinct impulses (bangs, clicks, clatters or thumps), or if the noise is otherwise irregular in character, a penalty of 5dB(A) shall be applied to the

measured noise level and this increased level shall be used in assessing compliance with the specified levels.

(b) All sound measurement shall be carried out in accordance with ISO Recommendation R 1996 “Assessment of Noise with respect of Community Response” as amended by ISO Recommendations R 1996 1, 2 or 3 “Description and Measurement of Environmental Noise” as applicable.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

10. 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. The contribution shall be paid within two months of the date of this order, 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 the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

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Bríd Maxwell  
Planning Inspector

16<sup>th</sup> February 2017