



An
Bord
Pleanála

Inspector's Report PL92.248538

Development	Permission for two industrial units and site works.
Location	Ryan's Centra & Fuel Sales, Limerick Road, Portyan, Co Tipperary.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	16600777.
Applicant(s)	Tom Ryan.
Type of Application	Permission
Planning Authority Decision	Grant Permission with conditions.
Type of Appeal	Third Party
Appellant(s)	Hugh Sweeney.
Observer(s)	None.
Date of Site Inspection	4 th August 2017
Inspector	Brid Maxwell.

1.0 Site Location and Description

- 1.1. The appeal site is located on the southern side of Newport town a rural town on the western periphery of County Tipperary, approximately 16 kilometres north-east of Limerick on the R503 connecting Limerick and Thurles. The site lies on the southern side of the R503 on the western edge of the town and circa 0.75 kilometres from the town centre. To the east of the site is a relatively recent housing estate and St Mary's Secondary School and Convent Primary school. To the north of the site are a number of single houses on large sites fronting onto the R503 and to the west is agricultural land. The eastern site entrance is just within the 50kph zone and the western site entrance is within an 80kph zone.
- 1.2. The appeal site is stated to be 0.66 hectares in area. It has a low wall along its frontage and post and rail fencing along the remaining boundaries. The site is occupied by a substantial two storey building which incorporates two apartments, office space and two commercial units. A central supermarket occupying the central ground floor section with petrol forecourt and car parking to front and additional parking to side and rear. The other unit is in use as a delicatessen. There is a car wash on the western side of the site with open storage area to the rear. A 24-hour self-service external laundromat facility is located adjacent to the eastern side of the building and a civic amenity "bring bank" is located to the south east rear of the car park.

2.0 Proposed Development

- 2.1. The application as set out in public notices involves permission for the construction of 2 no commercial / light industrial units each consisting of a ground floor (115 sq.m) and part first floor mezzanine (47sqm) and all necessary ancillary site works.
- 2.2. The proposed structure is located to the rear south western side of the existing building. External finishes include insulated cladding panels roller shutter doors and insulated cladding roof panels.
- 2.3. Whilst the initial application indicated unknown end users, the applicant confirmed, in response to the request for additional information, that the intended use of unit 01 is for car parking and valeting bay and unit 2 will be used for tyre fitting and repair.

Minor amendments were made to the proposal in further information response including a relocation of the structure on site to ensure a 3m setback from site boundary and provision for smooth plaster finish to northern and eastern elevation.

3.0 Planning Authority Decision

3.1. Decision

By order dated 26th April 2017 Tipperary County Council issued notification of decision to grant permission subject to 16 conditions including the following of particular note.

- Condition 1, restricts use to “light industrial building” only. The development shall not be used for retail purposes or ancillary to retailing or any other purpose other than a use compliant with the definition of “light industrial”, save where a grant of permission.
- Condition 4. Prior to commencement of construction the rear southern boundary shall be identified by the erection of a concrete post and plinth wall within timber hit and miss type fencing to a height of 1.8m.
- Condition 7. Car parking to be identified.
- Condition 8. Traffic management plan.
- Condition 11. Any materials or wastes associated with the development shall be stored internally or within the storage compound to the rear of the existing retail development on the site. Prior to the commencement of development, the storage compound to the rear of the existing development shall be bounded by the erection of a concrete post and plinth wall with timber hit and miss type fencing / gate.
- Condition 12. Prior to commencement of development all existing signage other than the Totem sign shall be permanently removed. No signage on Light Industrial Units without prior grant of permission.
- Condition 13. Prior to commencement of development the net floor area of Commercial Unit 2 shall be clearly limited to a maximum of 100 sq.m with the balance of gross floor area being unavailable for sales and customer access and operating only as ancillary to the retail unit.

- Condition 14. First floor layout and use shall be as permitted under 10/51/0481 and shall not be used for purposes ancillary to the central retail unit.
- Condition 15. Financial contribution €5,216.40.
- Condition 17. Special constitution of €12,400 in respect of the extension of the exiting footpath west long the R503 Limerick Road to link to the existing footpath at the boundary of the development site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report sought additional information in regard to include clarification of intended use details of boundary treatment and traffic provisions. Subsequent report recommends permission subject to conditions.

3.2.2. Other Technical Reports

3.2.2.1 Area Engineer's reports notes that as the proposal involves an intensification of use of the existing service station site a special contribution should be levied to fund the cost of extending the existing footpath west along the R503 Limerick road to link up with the existing footpath at the boundary of the site. Special contribution of €12,400 (Calculated as follows: removal and disposal of boundary hedge and rubble wall €2,500. Replacement with 42m of timber post and four rail stock proof fence with mesh wire and three rows of barb wire on the inside €1,500. Construct new 2m wide footpath and kerb line €8,400)

3.2.2.2 Environment Report notes compatibility of proposed use for car valet tyre fitting and repair. Report notes adverse visual state of existing backyard area and recommends a condition to apply in respect of waste storage for existing and proposed use.

3.3. Third Party Observations

Submission by the appellant objects on basis that the proposal will allow the centra shop to unfairly expand floor space by creation of additional storage for the main

shop unit giving it unfair retail advantage over the town of Newport. Proposal is contrary to decisions of An Bord Pleanála which have consistently refused permission for the expansion of the retail use.

4.0 Planning History

05/510011 Permission granted for a petrol filling station retail sales premises, 2 commercial units, two apartments, separate office accommodation and two entrances.

10/5/0191 Change of use of retail unit to take away (unit no 1) refused. Breach of plans 05/510011 and contravention of zoning objectives.

10/510192 Change of use from retail to off licence (unit 3) refused due to breach of plans 02/51/0111.

PL22 233126 (08/51/11209) Board refused permission 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. 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.

PL22.238305 (10/510481) Board made a split decision granting minor alterations to existing shop units, supermarket and filling station as constructed signage and erection of security fence to rear of supermarket but refusing permission for retention of 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 floor space within this retail unit which would exceed that which would reasonably be considered ancillary to the filling station and which would adversely affect the vitality and viability of the town centre.

PL22.240736 (11/51/0299) Board refused permission for the construction of a single storey extension of 136 sq.m of gross floor area to the rear of shop on grounds that it would facilitate the expansion of the shop unit associated with the filling station in

excess of 100 sq.m of net retail floor space contrary to the development plan and retail planning guidelines in the absence of a sequential test.

PL92.247360 (15/601102) Refusal of permission for retention of minor miscellaneous elevational issues and associated ancillary site works. Refused on grounds of negative impact on the vitality and viability of Newport town centre.

PL22.243115 (13/510410) Refusal of permission for retention of 31.9 square metres net retail floor space and minor miscellaneous elevational issues. Single storey extension to rear of store with a 76 square metres gross floor area comprising of storage back house and staff facilities and all ancillary site works. Refused on grounds of impact on the vitality and viability of the town centre.

16/600736 Application for retention of use of first floor offices permitted under 10/51/0481 for purposes ancillary to the central ground floor retail unit. Deemed withdrawn following failure to respond to request for additional information.

Adjoining Site to the west.

PL22.235944 (09/510650) The Board refused permission for four commercial / retail units with storage and associated signage, crèche and relocated site entrance. Refused on grounds of adverse impact on vitality and viability of the town centre.

5.0 Policy Context

5.1. Development Plan

5.1.1 The **North Tipperary County Development Plan 2010-2016** and **Newport Local Area Plan 2010-2016** refer.

- Within the County Development Plan Newport is designated a Service Centre.
- 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 focussing development in them and

encouraging a wide range of services in a good environment which is accessible to all.

- Within the Local Area Plan the site is within the town boundary zoned commercial. The Local Area Plan states that peripheral development should not be allowed to undermine the future vitality and viability of the town centre.

5.2. **Natural Heritage Designations**

Lower River Shannon SAC

Silvermine Mountains SAC

Clare Glens SAC

Glenomra Wood SAC

Bollingbrook Hills SAC

Slieve Bernagh Bog SAC

Silvermine Mountains West SAC

Keeper Hill Sac

Glenstal Wood SAC

Lough Derg Shannon SPA

Slievefeilim to Silvermines Mountains SPA

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The appeal is submitted by Hugh Sweeney, Portnacasky, Black Road Newport.

Grounds of appeal are summarised as follows:

- Concern is that use will be for storage associated with the centra shop allowing retail business to exceed permitted floorsapce.

- Issues related to the existing building should be resolved prior to further development.
- Restriction on use will not be adhered by the developer nor enforced by the local authority.
- Conditions 12, 13 and 14 are not relevant to this application and are a matter of enforcement.
- Question whether light industrial use is appropriate within commercial / retail zoning.
- Ongoing irregularities on the site in contravention of previous Board decisions.

6.2. Applicant Response

The First Party did not respond to the appeal

6.3. Planning Authority Response

The Planning Authority expressed its desire to make no observations regarding the grounds of appeal.

7.0 Assessment

- 7.1. The elaborate planning history on the site is detailed in the planning history (section 4.0) above. The Board has heretofore consistently determined that the shop unit in excess of the 100 sq,m net retail floor space established on site is contrary to the provisions of the North Tipperary County Development Plan, the Newport Local Area Plan and the Retail Guidelines. The third party appellant essentially questions the appropriateness of facilitating a further expansion of uses on the site in light of the ongoing unauthorised elements of the retail use on the site and asserts that the proposed development might be used to provide storage space to serve the existing retail use thereby potentially facilitating the provision of a net retail floorspace which

would exceed that which would reasonably be considered ancillary to the filling station and which would consequently adversely affect the vitality and viability of the town centre.

- 7.2. The potential for an unauthorised future use of the proposed light industrial units is conjecture however the deliberations in terms of the planning merit of the current appeal case is nevertheless taken in the context of the ongoing unauthorised expansion of retail services on the appeal site which is a material consideration in terms of the proper planning and sustainable development of the area. I noted on the date of my site visit that an automated external self-service laundromat facility is provided on the site adjacent to the eastern side of the existing building. This appears to be a recent development which is not referenced in documentation on the appeal file and having interrogated the Local Authority planning website I can find no evidence of a planning permission pertaining to same. In light of the established uses on site I consider that the development would indeed facilitate the consolidation and intensification of this use for which permission has not been granted, and that it would, therefore, be inappropriate for the Board to consider the grant of a permission for the development in such circumstances.
- 7.3. I note that the Local Authority in its decision imposed conditions which attempt to achieve a regularisation of a number of existing elements on the site (conditions 11, 12, 13 and 14) however I would tend to concur with the third party appeal that such matters are not relevant to the development to be permitted and therefore may be *ultra vires* and unenforceable.¹
- 7.4. The appeal as made is presented as a pair of stand-alone light industrial units not associated with established development on the site. Whilst the initial application appeared speculative deeming the precise end occupiers to be unknown, the response to the request for additional information indicated that unit 1 will be used for car servicing and valeting and unit 2 for tyre fitting and repair. I note that such

¹ Basic Criteria for Conditions 7.3. Development Management Guidelines for Planning Authorities. Department of the Environment Heritage and Local Government June 2007.

uses would be considered to be *sui generis* mixed industrial / retail activities. Whilst such uses might indeed be considered complimentary to the established service station use on the site, I would be concerned that the provision of such uses on the site would further 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. On the basis of information provided on the appeal file it is evident that the proposed development is speculative, and there has been no justification for this development on this site.

- 7.5. As regards the issue of Appropriate Assessment, having regard to the nature and scale of the proposed development and nature of the receiving environment and proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European Site.

Recommendation

- 7.6. It is considered that the proposed development is unsustainable and would undermine the viability and vitality of the town centre of Newport. Furthermore the development would facilitate the consolidation and intensification of this use for which permission has not been granted, Therefore I recommend that permission is refused for the following reasons and considerations.

8.0 Reasons and Considerations

1. 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 would be contrary to the Retail Planning Guidelines for Planning Authorities to the North Tipperary County Development Plan 2010 as varied and the Newport Local Area Plan 2010-2016.

2. On the basis of the submissions made in connection with the planning application and the appeal and having regard to the planning history of the site, the Board is not satisfied that permission has been granted for the development carried out on the site. Accordingly, it is considered that the development would facilitate the consolidation and intensification of this use for which permission has not been granted, and that it would, therefore, be inappropriate for the Board to consider the grant of a permission for the development in such circumstances.

Brid Maxwell

Planning Inspector

25th August 2017