



An
Bord
Pleanála

Inspector's Report PL92.249024

Development	Temporary use of land (5 years) as a building contractor storage compound and associated works.
Location	Burgagery Lands West, Clonmel, County Tipperary.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	17/600463.
Applicant	Seamus Walsh.
Type of Application	Permission.
Planning Authority Decision	Grant permission with conditions.
Type of Appeal	Third Party
Appellant	Supermacs (Ireland) Ltd.
Observer(s)	None.
Date of Site Inspection	3 rd November 2017.
Inspector	Derek Daly.

1.0 Site Location and Description

- 1.1. The site is located at Burgagery Lands West on a site currently undeveloped to the east of the centre of Clonmel. The site is accessed from the N24 through an existing access which serves a commercial park which includes a number of retail outlets including Tesco and other uses including a Supermacs Restaurant and the Teagasc building.
- 1.2. The site itself is removed from existing established developments and is accessed via a gateway in close proximity to Supermacs and there is a roadway which continues westwards from the gateway to the appeal site.

2.0 Proposed Development

- 2.1. The proposal as submitted to the planning authority on the 28th of April 2017 was for a retention permission for the temporary use of land stated as 5 years as a building contractor storage compound and associated works.
- 2.2. A cover note outlining why the application was made was submitted and indicates a lesser period of temporary permission would be accepted as the proposal is seen as an interim measure until the applicant acquires a more permanent site. There is also reference to sorting and grading and crushing of material on an occasional basis.
- 2.3. The stated area of the site is 0.295 hectares.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to grant planning permission for the development subject to 5 conditions.

Conditions of note;

- Condition no 2 refers to a temporary permission of 5 years.
- Condition no 3 refers to dust suppression measures.
- Condition no. 4 refers to the details of the security fencing.

3.2. **Planning Authority Reports**

3.2.1. Planning Report

The planning report dated the 13th of June 2017 refers to:

- The site's planning history;
- Relevant provisions of the current development plan and a reference to the current proposed use as not categorised in the land use matrix;
- An appraisal of the development where the principle of the use is considered acceptable;
- The report recommends permission be granted.

3.3. **Third Party Observations**

A submission received objecting to the development referring to design and aesthetics; impacts on the adjoining dwelling; health and safety; the intended use of the proposed development; flood risk; impacts on daylight and traffic.

4.0 **Planning History**

ABP Ref No PL 52.238879/P.A. Ref. No. 11/13.

Permission granted for a restaurant with take away facility, parking and associated works.

P.A. Ref. No. 15/600051

Application for similar proposal to current appeal withdrawn.

ABP Ref LV3347

Leave to appeal granted in relation to the current appeal.

5.0 **Policy Context**

5.1. **Development Plan**

The current plan is the Clonmel and environs Development Plan 2013.

The site is located within an area zoned L1 “light industry and employment”, “to provide for light industry and technology, incubation units, general employment and related uses”.

Section 4.5.2 refers to Light and General Industry and it is indicated that “*it is important to retain existing traditional industry based development and also to expand this where appropriate. The industrial zonings set out in Map 1 allow for industrial and a range of related uses such as logistics development, manufacturing and warehousing. The locations of the undeveloped industrial zoned lands adjoining existing industry. This is to facilitate the expansion of existing industry and/or the clustering of new industry with existing which may provide for the development of business networking or linkages between industries*”.

Chapter 9 relates to Development Management.

A land use zoning matrix outlines permitted uses including cap parks, cash and carry wholesale, enterprise employment centre and light industry

6.0 Grounds of Appeal.

The appellant in a submission dated the 1st of August 2017 refers to:

- Reference is made to the deficiencies in the application on which the decision to grant planning permission is based.
- The appellant has concerns in relation to the impact of the development on their property.
- Reference is made to the deficiencies in the public notices and there is no reference to the site used for sorting and grading and crushing of material.
- There appears to be no provision for sanitation facilities for employees at the site.
- No details of surface water treatment.
- No details in relation to the layout of the site.

- No conditions in relation to noise and unspecified requirements in relation to dust.
- Reference is made to the zoning of the site and although there is no reference in the zoning matrix to the use proposed it is reasonable to assume that it would not be generally permitted within a light industry and employment area.
- Reference is made to the definition of light industry.
- The appellant considers it general/heavy industrial rather than light industry.
- The request for a permission for a period of 5 years does not negate the need to restrict development which would be consistent with the zoning and with existing development in the area.
- There should have been clarification in relation to flooding.
- There are concerns in relation to dust and problems have arisen in relation to dust blowing onto the appellant's property.
- The site might be acceptable for a standard surfaced builder's yard containing covered yards but not for the uses proposed.

6.1. Applicant Response

The applicant in a response dated the 6th of September 2017 refers to:

- The applicant refers to the recent planning history and that it is disingenuous for the appellant to make the case now that it was not aware of the nature and extent of the development proposed.
- There was a stone supplier business in operation to the north of the appeal site.
- Quarried limestone is stored on open lands next to the railway line south of Supermacs.
- Reference is made to why the application was made and the need for the applicant to secure a site for his business.
- The applicant is aware of the need to comply with waste management legislation.

- The site has been little used and there has been next to no traffic or noise emanating from the site.
- Any dust arising results from the unmade nature of the ground and the applicant will not import or export any more material until compliant with planning and environmental codes.
- There will be very limited crushing and grading of stone on the site indicated as a number of hours per month and the applicant now has a mobile crusher to carry out this operation on the construction sites.
- Apart from this level of works it is a storage facility.
- Material is already sorted generally before being brought to the site.
- A permanent water supply is not essential on the site.
- Sanitation facilities are not essential as the use is primarily a storage yard and not an operations yard.
- No issues of noise dust have arisen and the site is 120 metres from the appellant's property.
- Reference is made to other uses in the area and the high levels of traffic on the N24.
- The applicant has no objections in relation to conditions limiting dust.
- The applicant has no objection to a condition in relation requiring an environmental management system for the site.
- The development accords with the zoning.
- There is no objection to a shorter duration of planning permission of 3 years.

7.0 **Assessment**

7.1. The current appeal relates to a retention permission for the temporary use of land stated as 5 years as a building contractor storage compound and associated works. In a cover note outlining why the application was made was submitted and indicates a lesser period of temporary permission would be accepted as the proposal is seen as an interim measure until the applicant acquires a more permanent site. There is

also reference to sorting and grading and crushing of material on an occasional basis.

- 7.2. In grounds of appeal refers to deficiencies in the application on which the decision to grant planning permission is based; concerns in relation to the impact of the development on their property referring to noise and dust. An absence of clarity in relation to the nature of the development and the question of whether it complies with the zoning of the site. The site it is indicated might be acceptable for a standard surfaced builder's yard containing covered yards but not for the uses proposed.
- 7.3. Having regard to the submissions received and the documentation submitted the primary issue in relation to this appeal relates to the acceptability of the nature of the use in the context of the zoning and the area generally.
- 7.4. The site forms parts of lands which are zoned within an area zoned L1 "light industry and employment", "to provide for light industry and technology, incubation units, general employment and related uses". The lands are to the west of a partially development commercial/retail area located off the N24.
 - 7.4.1. The development plan would over time appear to envisage a gradual development of these lands subject to demand for these uses. The current proposal is on lands which are removed from the immediate developed area and the application is for the temporary use of the lands pending future development of the lands for the zoned use.
 - 7.4.2. The zoning is limited in relation to the uses considered and open for consideration. Light industry is a permitted use and general industry is open for consideration.
 - 7.4.3. The application is as stated a building contractor storage compound which is not referred to in the land use matrix as stated in chapter 9 of the current plan.
 - 7.4.4. It is not a builder's provider's yard but it also appears to extend beyond use as a storage area as it appears periodically that the site is/would be used for sorting and grading and crushing of stone material. The applicant in the appeal response has indicated that there will be very limited crushing and grading of stone on the site indicated as a number of hours per month and the applicant now has a mobile crusher to carry out this operation on the construction sites. Apart from this level of works it is a storage facility and that material is already sorted generally before being brought to the site.

- 7.4.5. In relation to the proposed use it is for a temporary period. The zoning of the site does permit light industrial use but not general industry. In relation to light industrial a light industrial building as defined by the planning and development regulations means *“an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit”*. It could also be inferred that a light industrial use would have similar limitations and essentially be a use that could located and could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
- 7.4.6. The development is not located in a residential area but is in an area favouring light industrial type uses. It is currently relatively remote from other developments but this could change if demands for additional enterprises arise. The use as proposed is not a use which in the long term is compatible with the zoning and future development of the area and therefore any consideration is based on a limited temporary use.
- 7.4.7. I would not, however, have an issue with a purely storage facility for a limited time period perhaps up to three years but limited solely to storage purposes and not for the crushing and grading of stone on the site however limited these operations are stated to occur. Such a consideration would largely address any issues of noise or dust which I do not consider to be significant given the distance of the site from the appellant’s site and other similar type development in the area. The removal of the crushing and grading of stone would remove any general industrial related activity and make it more compatible to the current zoning. It would also enable the applicant to locate in a more appropriate and suitable location.

8.0 Recommendation

- 8.1. It is recommended that permission for the development be granted.

9.0 Reasons and Considerations

Having regard to the nature of the development and to the pattern of development in the vicinity of the appeal site it is considered that subject to compliance with the conditions set out below, the proposed development would not detract from the character and visual amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be in accordance with the plans and particulars lodged with the application on the 28th of April 2017, 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 interests of clarity

- 2 This grant of permission is for a period not exceeding three years from the date of this order. On or before the expiry of the period of three years all material and plant associated with the use shall be removed from the site.

Reason: In the interest of clarity and orderly development

- 3 The permission is solely related to the storage of building material and the site shall not be used for the crushing or grading of stone or similarly related activity.

Reason: In the interest of clarity and orderly development.

- 4 Details relating to the security fence its height and finishes shall be submitted to and agreed with the planning authority within one month of this order.

Reason: In the interest of pedestrian safety.

- 5 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.

Derek Daly
Planning Inspector

17th January 2018