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Bord  
Pleanála

## Inspector's Report PL 08.249296

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<b>Development</b>	Retain windows in warehouse.
<b>Location</b>	Woodlawn Road, Ballycasheen, Killarney, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	17/632
<b>Applicant(s)</b>	Glenaran Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Margaret Pattwell
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	4 <sup>th</sup> & 5 <sup>th</sup> December 2017
<b>Inspector</b>	Michael Dillon

## 1.0 Site Location and Description

The site, with a stated area of 0.525ha, is located within a cluster of warehouse units accessed off the Ballycasheen Road on the eastern outskirts of the town of Killarney, Co. Kerry. The warehouse unit is located at the back of series of such units, the first of which fronts onto the Ballycasheen Road. To the north, the site abuts the Mallow-Tralee railway line. The existing sign advertising “Sweater Market” is visible from the road. This sign covers a window on the southern elevation, but is transparent, and allows light to filter through. When the room is lit from the interior, the sign would appear illuminated (back lit). It was not back lit in the early hours of 5<sup>th</sup> December 2017, when the warehouse unit was closed. The window lights a conference room. This room is lit by a second large window. The other two windows on the northern elevation of the warehouse unit are in place.

## 2.0 Proposed Development

- 2.1. Permission sought on 4<sup>th</sup> July 2017, to retain two first floor and one ground floor windows within a warehouse unit. The application is accompanied by a letter of consent from the owners of the building, to the making of the planning application.
- 2.2. Unsolicited additional information was received from the applicant on 18<sup>th</sup> August 2017, rebutting arguments made by an objector to the development.

## 3.0 Planning Authority Decision

By Order dated 28<sup>th</sup> August 2017, Kerry County Council issued a Notification of decision to grant planning permission subject to one condition, that the development be retained in accordance with the plans and particulars received on 4<sup>th</sup> July 2017.

## 4.0 Planning History

**Ref. 04/204207:** Permission granted to sub-divide existing warehouse to five units.

**Ref. 07/204673:** Permission granted to construct a store shed.

**Ref. 12/205313:** Permission refused for removal of existing warehouse building on this site, and construction of a new biomass combined heat and power plant and

associated distribution pipes through the Killarney road network. On appeal to the Board (**PL 63.240951**), permission was refused on 23<sup>rd</sup> April 2013.

**Ref. 17/899:** Permission granted by KCC to Blue Melon Management Ltd, on 3<sup>rd</sup> November 2017, for construction of loading bay for warehouse unit immediately to the south of the warehouse unit the subject of the current appeal to the Board. [The Planner's Report for KCC noted the dispute between adjoining owner/occupants of warehouse units in relation to signage, but decided that this was a civil matter, and not a planning matter]. This decision is the subject of a 3<sup>rd</sup> Party appeal from Con Duggan to the Board (**ABP-300335-17**), received on 30<sup>th</sup> November 2017. There is no decision to date on this file.

## 5.0 Policy Context

The relevant document is the Killarney Town Development Plan 2009-2015 (as extended). The site is zoned 'Industrial Warehousing'.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The appeal from Blue Melon Management Ltd. (Margaret Pattwell), received by the Board on 21<sup>st</sup> September 2017, can be summarised in bullet point format as follows-

- The appellant is the director and owner of the adjoining warehouse site, including land extending a right of way to the applicant and employees/agents across the site.
- The newly inserted window in the southern elevation is on the appellant's boundary.
- The applicant was issued with an enforcement notice.
- Condition 8 of planning conditions requires that no sign be internally illuminated. This will be an issue in the winter months, and will be out of keeping with other signage in the area.
- The appellant has an application for a loading bay which takes into consideration the relocation of the sign to the forefront of it.

- The proposed development would devalue the appellant's property and would affect its future development potential.

6.1.2. The appeal is accompanied by the following documentation of note-

- Details and timeline of insertion of unauthorised window/sign in southern elevation of warehouse.
- Details of planning application made by the appellant for construction of an open-sided loading bay in front of her warehouse buildings.
- Series of annotated colour photographs of the loading area in front of the appellant's warehouse.

## 6.2. **Applicant Response**

None received.

## 6.3. **Planning Authority Response**

None received.

## 7.0 **Assessment**

7.1. The red line boundary of the appeal site includes a warehouse unit to the south – which appears to be in the ownership of the 3<sup>rd</sup> Party appellant. The 3<sup>rd</sup> Party appellant also claims ownership of the access to the warehouse units from Ballycasheen Road – the applicant having a right-of-way across the land. The 3<sup>rd</sup> Party appellant has recently obtained planning permission from KCC to erect an open loading bay in front of the warehouse unit to the south (ref. 17/899) – which would effectively obscure the window (and sign) which forms part of the current appeal before the Board. I note that there is no objection to the retention of the two windows on the northern elevation of the warehouse unit, and I would see no difficulty with the retention of these two windows.

7.2. The grant of permission for the loading bay to the south (ref. 17/899) has been appealed to the Board by Con Duggan (owner/occupant of the warehouse unit the subject of this current appeal). The appeal was lodged on 30<sup>th</sup> November 2017 (ref.

ABP-300335-17), with no decision to date. In this appeal, the occupant of the Sweater Market indicates ownership of just the warehouse building, with right-of-way from Ballycasheen Road – a site considerably smaller than the red line boundary indicated on the current appeal file. Kerry County Council has acknowledged the dispute between the occupants/owners of the two warehouse units, and has indicated that it considers the matter to be a private property dispute between two neighbours, which is not a relevant planning consideration. The granting of planning permission (ref. 17/899) for the loading bay would effectively obscure the window for which KCC granted planning permission ref. 17/632 (the subject matter of this current appeal).

- 7.3. The first floor window in the southern elevation of the warehouse unit, lights a conference room. There is another large window in the eastern elevation of the warehouse unit which lights this same conference room. There is no reason, on light grounds, to require this second window. The application is for retention – the window having been inserted without the benefit of planning permission. The window in the southern elevation is covered with a transparent sign – designed to be visible from the Ballycasheen Road. It would appear that this window/sign directly abuts the 3<sup>rd</sup> Party appellant's property. The retention of this window would seriously injure the future development potential of the adjoining site to the south, assuming it is in separate ownership.
- 7.4. I would be inclined to the view that this window for retention, and its associated signage, is not necessary for the operation of the warehouse, and that it might compromise the future development potential of the adjoining site to the south. The proposed development would, therefore, depreciate the value of property in the vicinity; and this aspect of the development should be refused permission.
- 7.5. The 3<sup>rd</sup> Party appellant has submitted arguments in relation to illumination of the sign which covers the window in the southern elevation of the building. I would consider that matters of signage are for KCC. The current application is for retention of windows and does not relate to any signage – whether illuminated or not.
- 7.6. There are no appropriate assessment issues arising in relation to this appeal.

## 8.0 Recommendation

I recommend that permission be granted, for the Reasons and Considerations set out below, and subject to the attached conditions.

## 9.0 Reasons and Considerations

Having regard to the pattern of development in the vicinity, and indications of property ownership at this warehouse complex, it is considered that the proposed development, subject to amendment, would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The proposed development shall be retained 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 points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The first floor window, in the southern elevation of the warehouse unit, shall be omitted and closed-up permanently.

**Reason:** To protect the development potential of adjoining property immediately to the south, and because the window would depreciate the value of property in the vicinity.

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**Michael Dillon,  
Planning Inspectorate**

**21<sup>st</sup> December 2017.**