



An  
Bord  
Pleanála

## Inspector's Report ABP 302325-18

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<b>Development</b>	Car Accessories Store and retail tyre outlet, (former furniture store) and associated works.
<b>Location</b>	Crowe Street, Gort, Co. Galway.
<b>Planning Authority</b>	Galway County Council
<b>P. A. Reg. Ref.</b>	18 - 720
<b>Applicant</b>	Kevin Burke.
<b>Type of Application</b>	Permission for Retention.
<b>Decision</b>	Grant Permission for Retention.
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Michelle and Keith Kilcar.
<b>Date of Site Inspection</b>	22 <sup>nd</sup> October, 2018
<b>Inspector</b>	Jane Dennehy.

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## 1.0 Site Location and Description

- 1.1. The site which has a stated area of 9,600 square metres and it is located off the east side of Crowe Street (N66) at the northern edge of Gort town centre. The existing business is housed in an warehouse structure with a stated area of 1,275 square metres. The structure contains individual bays with car ramps which are accessed via doors from an external forecourt in concrete, hard standing linked to the vehicular entrance between two street frontage buildings on Crowe Street one of which is occupied by Honan's, an antique business. Double yellow lines are located along the road edge in front of the footpath. Honan's antique business was formerly based in the premises subject of the current application.
- 1.2. The site is fenced off on the south side, from a LIDL store and surface carpark to which vehicular and pedestrian access is from a road off the R458, the main street through the town from north to south.
- 1.3. There is a ditch at the eastern edge of the site which flows to the Gort River. The site location is relatively close to the Gort river which has been prone to flooding and it is understood that some of the land was partly filled in 2015 to mitigate potential flooding in the area and some landscaping of this area has also been carried out.

## 2.0 Proposed Development

- 2.1. The application is accompanied by a Road Safety Audit, Appropriate Assessment Screening report, hydrogeology, and hydrology risk assessment report, (revised in May, 2018) and a photographic survey/architectural conservation area report.
- 2.2. The existing building for which permission for retention is sought, is larger than the structure originally permitted in 1998. (See para 5 – planning history) The application provides for improvements and upgrades to the facades and roof and proposals for incorporation of retail car accessories space and ancillary office space within the interior. The proposed new storage facility is for used tyre storage, the intention being that external storage at the site will be discontinued. Proposals for improvements at the access in in the application include provision a pedestrian walkway, removable bollards, additional lighting, dropped kerbs and part removal of footpaths.

2.3. According to the written submission the development does not infringe on the area subject to the 'OS' zoning objective within the site.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

By order dated, 27<sup>th</sup> July 2018, the planning authority decided to grant permission and, permission for retention. The conditions attached to the decision of a standard nature. Condition No 6 requires a compliance submission in respect of details of existing and proposed signage will illuminate signs not being permitted.

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

##### **3.2.1. Planning Reports**

The planning officer having assessed the application indicated satisfaction with the proposed development.

##### **3.2.2. Other Technical Reports**

The report of the Roads and Transportation Department, dated 23<sup>rd</sup> July, 2018 indicates no objections and includes recommendations for conditions to be attached in the event of a grant of permission /permission for retention. It is pointed out the proposal is for use of the existing entrance from the site onto Crowe Street and stated that traffic volumes and movements are established and unchanged and that the proposed barriers preclude access by HGVs.

#### **3.3. Prescribed Bodies**

Transportation Infrastructure Ireland in a letter dated, 26<sup>th</sup> June, 2018 confirms that it has no observations.

#### **3.4. Third Party Observations**

An observation was received from the Appellant party which includes an account of the background to the application and comments on the application submissions.

Concerns are expressed about impact on public safety due to traffic hazard, and a as to potential adverse impact on the appellant's business. (Gort Tyre Centre.)

## 4.0 Planning History

- 4.1. According to the planning officer report, permission for retention was refused, under P. A. Reg. Ref 17/1116 for retention of (1) "existing car accessories store and retail outlet with mezzanine storage area including associated works" , (2) "independent storage building" and, (3)" signage" and, Permission was refused for completion of external ground works, parking area and three additional escape doors at the rear of the building. The stated gross floor area is 1,275 square metres. A similar application had been lodged but withdrawn prior to determination of a decision under P. A. Reg. Ref. 17 25 in 2017.
- 4.2. Permission had originally been granted for a commercial warehousing at the rear of the site under P. A. Reg. Ref. 98 2020, the applicant being, Honan Antiques Ltd.

## 5.0 Policy Context

### 5.1. County Development Plan

- 5.1.1. The operative development plan is the Galway County Development Plan, 2015-2021 which provides for the Gort Local Area Plan 2013-2019, (LAP) according to which the site straddles an area most of which is subject to the zoning objective: C1: '*Town Centre/Commercial*', and small area subject to the zoning objective: OS: '*Open Space, Recreation and Amenity*'.
- 5.1.2. The site location is also within an Architectural Conservation Area within the LAP.
- 5.1.3. The site is within an area at the western edge of an area within Flood Zone A according to Map 3 A within the LAP.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. An appeal was received from Michelle and Keith Kilcar on their own behalf on 15<sup>th</sup> August, 2018 attached to which are copies of correspondence between the planning authority and the appellant party. They state that they have been operating a tyre centre business at Unit 5, The Grove, Gort which is a short distance from the site of the proposed development for the past eleven years.

6.1.2. According to the appeal:

- Complaints have been made in relation to the development over the two years since the applicant set up his business, but the planning authority did not act on the complaints, as required in planning legislation until October 2016 when a Warning letter was issued. The applicant then submitted and withdrew a planning application for permission for retention.
- The 2017 application was rejected because of the location on a flood plain, in an architectural conservation area, near environmental protection areas, and because of public safety concerns at the entrance. (P. A. Reg. Ref 17 1116 refers.) The planning authority the commenced legal proceedings for which a Court Hearing was set for March 2018, but an adjournment was granted to the applicant to enable him to submit a new application.
- The development description is incorrect because the applicant employs a mechanic and is engaged in servicing vehicles. The applicant continues to maintain the development as a car accessories store and tyre centre. Servicing on the site is not addressed in the environmental assessment. Servicing raises concerns about pollution risk. The planning authority has not investigated the nature of the business operation.
- There have been two major flooding events in the area, in 2009 and 2015 and the previous furniture business operators was affected by the flooding. The statement in the application that these floods did not affect the area is incorrect There is risk of pollution from contaminants from the applicant's existing business.

- Removal of safety risk at the entrance/ exit is not possible and there are several issues of concern having regard to risks highlighted in the road safety audit. The site entrance, which is between two tall buildings is narrow and at a busy footpath. It is not equipped for access by large vehicles. Vehicles must proceed forward onto the footpath on exiting the site to avail of a line of sight. The audit conducted on behalf of the planning authority demonstrates that the development plan's required sightlines, at a 2.4 metres setback from the road edge cannot be achieved. The applicant is not in ownership of the two buildings on each side of the entrance. The proposed bollards will make the access narrower. Lighting, road and walkway markings are not provided.
- The proposed development as detrimental impact on the applicant's business and for this reason they communicated their concerns to the planning authority, (initially two years ago) and object to the decision to grant permission.

## 6.2. Applicant Response

6.2.1. A submission was received from Stephen Dowds Associates on behalf of the applicant on 4<sup>th</sup> September, 2017 attached to which is a written statement by Dr. Shane Regan. The submission is considerable in length and includes a description of the planning background and context and an account of the application and planning authority assessment. An outline summary of the response to the appeal issues follows:

- The contention in the appeal that servicing of vehicles takes place on the site is rejected. Tyre fitting, (which is not servicing of vehicles) for fitting of car accessories such as new wiper blades takes place on the site.
- The unauthorised development, (subject of the application) was unintentional on the part of the applicant.
- The appeal should be dismissed because the appellant party is using the planning system to address commercial competition. Permission was granted for industrial premises at the building in which their business is operated so it is unauthorised.

- There is significant planning gain in that the vacant building was restored and renovated and viability and vitality of the commercial centre of the town benefits in that customers visit surrounding businesses.
- There is an existing entrance to the site which is an authorised entrance used by a wide range of vehicles when it which served the former furniture sales operation. The location is within an area where the 50 kph speed limit applies. Traffic generation by the proposed development is not dissimilar and the requirement of the submitted road safety audit and improvements proposed in the current application will be implemented. There is no objection from the planning authority and Transportation Infrastructure Ireland.
- There is no complete ban on development in flood risk zones, including Zone A town centre locations according to, *The Planning System: Flood Risk Management*, 2009 (Section 3.5) The statements about flooding, which does occur in the Gort area, are exaggerated in the appeal. Remediation works to the river have been carried out and there has been no flooding since 2015.

In the written statement by Dr. Shane Regan, who prepared the submitted Hydrology and Hydrogeology risk assessment report it is stated that the proposed development does not pose flooding risk because flooding in the region, which did occur in 2009 ( a one in 250 year event) and 2015 (a one in 500 year event) is driven by a rise in groundwater table contributing to rises in peak flow in the Gort River. He confirms that the development which has a small footprint does to impede subsurface flows and there does not contribute to rises in the water table levels.

- The development is within the area zoned, ' C1', within the site with the area zoned, 'OS' remaining unaltered other than for removal of a concrete slab.
- The proposed development accords with the LAP zoning objectives. It is appropriate because retail use, which is included in the application is a major use for C1 zoned lands; it is not a service garage, a non-permitted use on C1 zoned lands. Tyre services is a dry activity with no liquids, oils or hydrocarbons involved. It is a similar use to motor factors outlets; the backland site is appropriate as regular retailing on a High Street. The structures, which are industrial and do not have street frontage are suitable for



the nature of the proposed use is not a High Street retail use. which is to be found on high streets.

### 6.3. **Planning Authority Response**

There is no submission on file from the planning authority.

## 7.0 **Assessment**

7.1. The appeal party operates a similar business operation, (“Gort Tyre Centre”) to the proposed development subject of the application. These premises are located circa 150 metres to the east of the junction with the R458 on the road which also serves the LIDL store and carpark, a short distance from the site. There is considerable focus within the appeal on the prior enforcement issues that have arisen in connection with the applicant’s business which is a primarily a matter for the planning authority but objections relating to the nature of use are taken into consideration in the following assessment.

7.2. The appellant party through the appeal have also expressed considerable concerns as to potential loss of business to the proposed development both of which are located close to each other at the edge of the town centre. As this issue is not a direct planning matter it has not been taken into consideration in the following assessment.

7.3. The issues that are central to the determination of a decision and are addressed below are:

Nature of use:

Traffic and public safety and convenience at the entrance.

Flooding risk

Environmental Impact Assessment Screening.

Appropriate Assessment Screening.

### 7.4. **Nature of Use.**

7.5. It is considered that the nature of use as indicated in the application is fully acceptable for a location subject to the Town Centre zoning objective. The site

location is particularly appropriate for a tyre centre and pointed out in the appeal because it is in the town centre but at the rear instead of on the street frontage the buildings on which are suitable for high street retail and associated uses. The statement in the appeal as to potential combination of visits to the applicant's business and to the town centre's retail, commercial and community facilities in a single trip as being functional to the one trip contributing to the vitality and viability of the town centre is also of note, Gort being a larger centre in the retail hierarchy for the county with a larger hinterland. It has also been established that the structures within the site are not located within the area that comes under the OS (open space) zoning objective within the Gort Local Area Plan 2013-2019. (LAP.)

- 7.6. It is considered that a satisfactorily clear description of the range of activities that are undertaken at the site has been provided. As such the limited range of activities do not pose significant pollutant risk as could occur with major repair, servicing and dismantling of vehicles or sales of fuels. A condition, specifying that the range of authorised activities are confined to dry garage activities as described in the application, for the purposes of clarity, can be included should permission be granted. Activities can be investigated by the planning authority in the event of any breach of the condition, and the undertakings given in the application as to the extent and nature of activities on the site.
- 7.7. In view of the foregoing, it is considered that the applicant has satisfactorily demonstrated that the nature of use of the proposed development is not in conflict with the town centre zoning objective. It is therefore considered that the proposed development which is primarily a retail, motor factors outlet with a fitting service is in accordance with the policies and objectives of the LAP.
- 7.8. **Traffic and public safety and convenience at the entrance.**
- 7.9. The proposed entrance is an existing entrance off the R458, the main street which passes through the town which is a built-up area in which a maximum speed of 50 kph applies. The entrance is between two, storey street frontage buildings on the road frontage.
- 7.10. As indicated in the report of the Roads and Transportation Department, excessive speed by the traffic that does pass through and into the town centre is not an issue due to limited attainable speed. The existing entrance was previously used

commercial business purposes (Honan's Antiques) in that it served the antiques business which previously operated from the site. The recommendations in the submitted road safety audit for improvement works and safety and management measures which enhance safety and amenity for pedestrians and which prevents HGV access HGV access are considered effective. It is noted that the Roads and Transportation Department has indicated satisfaction with the proposed arrangements subject to standard conditions and implementation of the measures recommended in the RSA. The quantum of turning movements into and out of the entrance by customers, deliveries and staff vehicles and pedestrians generated by the proposed development can be accommodated without significant risk to traffic and pedestrian safety and convenience.

**7.11. Flooding Risk.**

7.12. The site location is in an area designated as a Flood Zone 'A' area according to the Map 3 A and B of the LAP but outside the Flood A, 1 in 100-year flood event zone mapped in the Western CFRAMS study according to the submitted hydrology and hydrogeological study. The area, but not the site was subject to two serious flooding events in recent years, in 2009 and in 2015 according to the application.

7.13. However, remediation works to the Gort River have since been implemented. These works, as indicated in the hydrology and hydrogeological assessment reports included with the application included dredging of the river, improvement works to drains and installation of underground sumps. The location is not on a greenfield site and is within the town centre and the proposed land-use is not a highly vulnerable land use as provided for in the statutory guidelines: *The Planning System: Flood Risk Management*, 2009. The development is linked to the public storm water sewer network. The conclusions arrived at in the hydrology and hydrogeological assessment report that flooding risk in the area during exceptionally extreme rainfall events, particularly due to the location near the Gort river, and increased flooding risk attributable to climate change cannot be eliminated, with some flooding risk remaining are noted. Furthermore it is pointed out that the flooding of the Gort River in 2009 was driven by a rise in groundwater table contributing to rises in peak flow and that the development which has a small footprint does not impede subsurface flows and there does not contribute to rises in the water table levels.

In view of the foregoing, it is considered that the proposed development does not give rise to concern with regard to flooding risk and that it is not in conflict with, *'The Planning System: Flood Risk Management'*, issued in 2009.

#### **7.14. Environmental Impact Assessment Screening.**

Having regard to the minor nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### **7.15. Appropriate Assessment Screening.**

- 7.15.1. A screening assessment report has been included in the application submission which has been consulted in conducting the appropriate assessment screening.
- 7.15.2. The nearest European sites are the Coole Garryland Complex SAC and the Coole Garryland SPA which are one kilometer and 1.4 kilometers from the site location. There are no direct pathways or connectivity between the development's site location and these sites. There is a ditch at the eastern edge of the site which flows to the Gort River. There has been no evidence of Annex 1 or 2 species at or close to the site location.
- 7.15.3. The application provides for improvements and upgrades to the existing facades and roof to include new entrances, for incorporation of retail car accessories space and ancillary office space within the interior. The proposed new storage facility is for used tyre storage, the intention being that external storage at the site will be discontinued. Proposals for improvements at the access in the application include provision of a pedestrian walkway, removable bollards, additional lighting, dropped kerbs and part removal of footpaths. 'Dry' garage activities such as fitting of tyres and other parts take place on the site. Activities such as servicing, repair and cleaning of vehicles does not take place.
- 7.15.4. The scale of the development is small and the nature of use of the proposed development is confined to "dry activities" whereby fluids and contaminants are not required and storage of materials and plant and equipment is internal only, the hard standing having been previously installed, use of water for ancillary staff needs only, and the connection of the development to the public sewer network.

7.15.5. Having regard to the scale and nature of the proposed development and to the serviced central business district location, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

8.1. It is recommended that the planning authority decision to grant permission be upheld and that the appeal should be rejected. Draft Reasons and Considerations follow:

## 9.0 Reasons and Considerations

Having regard to the location of the majority of the site area within an area subject to the zoning objective C1: '*Town Centre/Commercial*', with the remaining small peripheral area within an area subject to the zoning objective OS: '*Open Space*' within the Gort Local Area Plan, 2013-2019, to the location within the town centre, the limited scale and restricted nature of the proposed car accessories and retail tyre outlet the measures for improvements to and management of the use of entrance and possible flooding risk and to the former authorised use of the site for commercial warehousing, it is considered that subject to compliance with the conditions set out below, the proposed development would not endanger public safety by reason of traffic hazard, would not endanger public by reason of flooding risk and pollution. would contribute to the vitality and viability of the town centre and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and lodged with the application except as may otherwise be required 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 shall be confined to a car accessories store and retail tyre outlet with internal mezzanine storage area. Servicing repair and maintenance of vehicles and external storage is not permitted.

**Reason:** In the interest of clarity, orderly development, amenity and environmental protection.

3. The proposed improvement works and pedestrian facilities at the entrance indicated in the road safety audit submitted to the planning authority on 30<sup>th</sup> May, 2018 shall be implemented and completed, at the applicant's expense to the satisfaction of the planning authority, which is to be confirmed in writing, within six months of the date of this order.

4. **Reason** In the interest of clarity, and vehicular and pedestrian safety and convenience.

5. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected the curtilage of the site unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity and orderly development.

6. Drainage and water supply arrangements, including the disposal of surface water shall be in accordance with the requirements of the planning authority.

**Reason:** In the interest of public health.

- 6 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.

**Jane Dennehy**  
Senior Planning Inspector  
19<sup>th</sup> November, 2018.