



An
Bord
Pleanála

Inspector's Report ABP-303119-18

Development	Construction of a two storey flat roof extension of 345sq.m to the rear of the existing SuperValu store.
Location	SuperValu, Strand Street, Kanturk, Co. Cork.
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	18/04930
Applicant(s)	P. Twohig and Sons Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	Ned McCarthy
Observer(s)	None
Date of Site Inspection	12.04.2019
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1. The appeal site, which comprises an existing 'SuperValu' Supermarket, (stated site area of 0.67ha), is located on Strand Street, Kanturk, Co. Cork. Kanturk is situated at the confluence of the rivers Allow and Dallow. The town is located in north west Cork, to the west of the N20, approx. 25 Km north west of Mallow, to the north of the N72 and approx. 40 Km north west of Cork City.
- 1.2. The subject site is situated to the west of the River Allow and c. 50m to the west of the River Blackwater SAC. The front of the SuperValu store addresses Strand Street to the east and the rear of the store, to where the extension is proposed, extends westwards towards Bluepool Upper. There is an entrance to the store from both streets.
- 1.3. The site encompasses a SuperValu supermarket, its car park and a public car park, both of which are located to the west and southwest of the supermarket. A through road runs through the site from Bluepool Upper to Watergate Street. The recently permitted mart car park (17/4416) is located to the west adjacent to the site, which is under construction. A café is located to the north adjacent to the site, with a tyre centre and tool hire premises located to the south opposite. A funeral home, dwellings and retail premises are located to the east. There are single storey garages and stores located to the south and south east of the private car parking area. The existing stores / delivery area serving the SuperValu is located to the east of the car parking area. The private car park is segregated from the public car parking area by way of a low block wall. There is a gated galvanised entrance gate, with a notice stating: 'No parking' 'Gate in Use 24/7' bordering the appeal site to the southeast. The appellants property directly abuts the SuperValu store to the south east, next to the delivery area.
- 1.4. The town has a compact core which contains an attractive traditional building stock. Part of the appeal site (i.e. the SuperValu store) is located within an Architectural Conservation Area (ACA). The appeal site is located on land that is identified in the Kanturk Municipal District Local Area Plan 2017 as forming part of the town centre of Kanturk.

2.0 Proposed Development

2.1. Permission to:

- Construct a two storey flat roof extension of 345sq.m to the rear of the existing SuperValu store to provide a new entrance foyer to the existing store at ground level from the adjoining car park, and staff training facilities, managers office, store area, toilets and meeting rooms at first floor level.

Note: It is not proposed to extend the net retail sales area

- The rearrangement of the existing public and private car park, including ancillary site works, and landscaping necessary to complete the development.

The Planning application form states:

- GFA of existing buildings 2,382 sq. m
- GFA of proposed works 345 sq. m

Cork County Council have consented to the application.

3.0 Planning Authority Decision

3.1. Decision

Planning permission was Granted following a request for Additional Information in respect of (i) additional car parking spaces required to make up for the loss of 10 car parking spaces (ii) clarification for staff car parking (iii) autotrack drawings (iv) detailed drawing of the pedestrian crossing (v) additional pedestrian crossings required (vi) clarification of the extent of the works (vii) proposed bollards at the rear entrance to the pharmacy should be relocated to the edge of the roadway (viii) identification of proposed trolley bay location (ix) storm water network (x) public lighting, subject to 10 number conditions. Conditions of note include:

Condition 1. Standard.

Condition 2. Finishes

Condition 3. Signage lighting and landscaping.

Conditions 4. All articulated lorry deliveries to be made to the SuperValu store before 8.00 am on any morning.

Condition 5. Detailed design drawings of the proposed resurface of the car park, the public realm works, landscaping and drainage to be approved with the p.a.

Condition 6. Proposals to provide site car parking for 16 staff members.

Condition 7. The applicant shall provide and install the trolley bays in the locations as outlined in the planning docs.

Condition 9. Special contribution of €41,700 in respect of works proposed to be carried out for the provision of resurfacing of new car park area, new buildouts as outlined, road lining new car park, construction of POS and relocation of public lighting.

Condition 10. Development contribution of €16894.65

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planning Report: The planning report supports the draft decision to grant planning permission. It concludes that having regard to the location of the site within the town centre of Kanturk and to the established retail store thereon, it is considered that subject to condition, the proposed development would not be prejudicial to the amenities or heritage of the area and would be acceptable in terms of vehicular and pedestrian safety.

3.2.2. Other Technical Reports:

- Area Engineers Report; initial report requested A.I. subsequent report indicates the response following discussion and A.I is acceptable subject to condition.
- Conservation Officer: No objection subject to condition
- Environment Report: No objection subject to condition

3.2.3. Inspectors Note: An Bord Pleanala referred the file to An Taisce, Inland Fisheries Ireland (IFI), Failte Ireland, An Chomhairle Ealaion, The Heritage Council and DAU Department of Culture Heritage and the Gaeltacht, no response was forthcoming.

3.3. Third Party Observations

One number objection was submitted to the planning authority concerns raised include:

- Concern with respect to physical segregation of the proposed footpath and roadway.
- Concern with respect to pedestrian safety, esp. for visually impaired.
- Bollards across a paved area would prove to be obstacles to pedestrians.

4.0 Planning History

4.1.1. None of relevance.

4.1.2. Inspectors Note:

ABP-302833-18 Application for Leave to Appeal was Granted in the subject case on the 12/11/2018 by reason and considerations as follows:

(i) the development, in respect of which a decision to grant permission has been made, will differ materially from the development as set out in the application for permission by reason of condition number 1 imposed by the planning authority (which conditioned the development to be in accordance with revised drawings received following a request for further information), and

(ii) the imposition of condition number 1, by virtue of the implications for access to third party lands arising from the revised parking layout serving the supermarket in question, will materially affect the applicant's enjoyment of the land adjoining the land in respect of which it has been decided to grant permission or reduce the value of the land.

5.0 Policy Context

5.1. Development Plan

5.2. The appeal site is located within the development boundary and is zoned town centre in the 2017 Local Area Plan. The operative plan for the area is the Cork County Development Plan 2014 and the Kanturk Municipal District Local Area Plan 2017.

5.2.1. The site has a zoning objective KK-T-02, which makes provision for town centre expansion, provide a new road to Percival Street connecting with the existing relief road serving Strand Street and high-quality pedestrian linkages to residential/school lands and amenity walk to the west.

5.2.2. The is located within an ACA and within Flood Zone B as outlined in the County Development Plan. The River Allow which forms part of the Blackwater River SAC is located c. 40m to the east of the site. Protected structures are located opposite and to the north of the site.

5.3. Natural Heritage Designations

Blackwater River (SAC) (site code 2170) is located over 40 m distant.

5.4. Environmental Impact Assessment (EIA)

5.4.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- The appellant is the owner of the immediately adjoining property to the south east of the subject property on Strand Street
- The appellants property has a rear access to its rear yard
- This rear access is vital to the success of the working of the appellants property for deliveries, pedestrian access and parking access
- The access and parking would be restricted by the new layout approved by Cork County Council, specifically the inclusion of 8 additional staff car parking spaces.
- Cork County Councils letter dated 8th June 2018 requesting staff car parking to be provided, as per attached site plan referenced Map 2, dated 31st August 2018 will have a direct negative impact on the appellants property.
- The applicants have provided 3 staff car parks in what has always been a public thoroughfare through the car park. It is also a direct vehicular route to the rear of the appellants property.
- The rear entrance will also be hindered by deliveries and parking of articulated lorries to the rear of appellants property.
- Pedestrian access would also be hindered.
- Condition 5 requiring deliveries before 8 am is questionable and questions arise regarding enforceability.
- Query the legal standing of an extension granted on what has been a public road for the past 100 years.
- Query who owns the road serving the car park to the rear of SuperValu will it be taken in charge ?

Appeal Accompanied with:

- Solicitors letter stating that the appellants property has always had front access to Strand Street and rear access onto a vehicle laneway,

- It has had the benefit of a long standing vehicular / pedestrian right of way over the said laneway at the rear of the building leading from there to Watergate Street
- The laneway is a public right of way (RoW)
- Regular use of the rear area by large vehicles and articulated trucks will block the rear access and this is unacceptable.

6.2. Planning Authority Response

No response received.

6.3. First Party Response

6.3.1. A response was received from Meitheal design partners Architects on behalf of the applicant, P. Twohig & Sons Limited, it is summarised as follows:

- The appeal is not genuine and should be dismissed.
- The first party has been in long standing negotiations with the appellant for purchase of his premises. Offers ranging from €100,000 – €400,000 have been rejected.
- The appellants sought leave to appeal on the grounds that he was unaware of the plans for redevelopment. This is not the case.
- A public consultation meeting was held.
- Numerous email exchanges between the parties
- The appellants motives are commercial
- The proposed development is for a significant improvement and expansion of the public car park and improvements to the public realm and a small extension to the rear of the SuperValu store.
- The rear access to the appellants property is ill defined, is dependent on the parking behaviour in the existing car park, and if the appellants map 4 is to be believed relies upon trespassing lands held in private ownership by the Applicant.

- What is referred to as being a public road by the appellant was historically a meandering laneway which was always open to and used by the public serving the rear of both commercial and residential properties.
- The question of ownership is key. The Council have commenced a process of the transfer of the subject lands to the Applicant.
- The Council are happy that they hold adequate title to the lands to facilitate this conveyance and the lands do not comprise a 'public road for the past 100 years'.
- The appellant has a right to access the rear of his property. This right is improved, not compromised, by the proposed development.
- It is disingenuous of the appellant to represent the proposal as an impingement of his property rights. Of the c. 45 individual properties adjacent to and neighbouring the proposed development, Mr. McCarthy is the only individual voicing concern.
- 4 other property owners, all of whom could be said to have the same grievance, have not made an observation in relation to this matter.
- The parking and access issue is at present haphazard and compromised by fragmented ownership, inadequate vehicle turning circles and radii, poor pedestrian mobility management, poor surfacing and lack of signage and lighting.
- The proposal represents a significant planning gain
- The appellants assertion in relation to proposed delivery protocols and parking arrangements impacting on his property are without foundation.

Response Accompanied with:

- Solicitors letter which refers to exhibit correspondence between the parties and their solicitors.
- Copy of texts messages between parties
- Copy of e.mail from Meitheal design partners architects, dated 21st Feb 2018, to appellant.
- Letters from Cork County Council to applicant's solicitor, in relation to the appeal.

- Letter from James Lucey & Sons Sol. To County Solicitor dated 8th October 2018 re transfer of lands.
- Letter from Meitheal design partners architects, dated 7th December 2017, to SEP Cork County Council.
- Letter from James Lucey & Sons Sol. To appellants solicitor dated 22nd August 2018 re transfer of lands.

7.0 Assessment

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

- **Principle of the Proposed Development**
- **Impact Upon Appellants Property**
- **Appropriate Assessment (AA)**

7.1. Principle of the Proposed Development

7.2. The operative plans for the area comprise the Cork County Development Plan 2014 and the Kanturk Municipal District Local Area Plan 2017. The site is located within the development boundary of Kanturk, centrally located within the town and is zoned town centre in the Kanturk Municipal District Local Area Plan 2017.

7.2.1. The site has a zoning objective KK-T-02, which makes provision for town centre expansion, provide a new road to Percival Street connecting with the existing relief road serving Strand Street and high-quality pedestrian linkages to residential/school lands and amenity walk to the west.

7.2.2. The proposal has two aspects, (i) permission being sought to extend the existing SuperValu store to its rear (with non-retail uses) and (ii) permission sought to rearrange existing public and private car park, incl. ancillary site works and landscaping.

7.2.3. The third-party appeal relates, solely, to the second element of the proposal. The first party urge the Board to, in the first instance, consider the dismissal of the appeal. It is submitted that the appeal is an attempt to frustrate the development and encourage the applicant to conclude a commercial transaction in favour of the appellant. Given the leave to appeal granted on foot of ABP-302833-18, see section 4.1.2 of this report above I do not recommend that the appeal be dismissed. This matter has been duly decided upon under the leave to appeal application and it is the decision of the Board that there are grounds for leave to appeal.

7.2.4. I agree with the planning authority that the first element of the proposed development which comprises a rear extension to the existing established SuperValu store,

incorporating a new entrance area to the existing store from the adjoining car park, ancillary space at first floor level, providing for a training room, managers offices, a meeting room, store area and toilets is acceptable in nature and principle given the location of the appeal site within the town centre. It's design and finish will enhance the overall aesthetics of the building and is visually acceptable.

- 7.2.5. The second element of the subject proposal seeks permission for rearrangement of both the public and private areas of car parking and seeks to incorporate improved pedestrian circulation, introduction of areas of soft landscaping and provide for improved pedestrian safety. The planning authority supports proposed reconfiguration of the public and private car parking arrangements at this location within the town centre of Kanturk.
- 7.2.6. The existing parking and access through the car park is at present haphazard and compromised by fragmented ownership, inadequate vehicular turning circles and radii, poor pedestrian mobility management, poor surfacing and lack of signage and lighting.
- 7.2.7. I agree that the subject proposal, amended by way of further information represents a significant planning gain by consolidating a single town centre car park, addresses pedestrian connectivity and safety and provides a civic amenity in the center of the town. It improves and formalising defined delivery movements and improves surfacing and public lighting inadequacies.
- 7.2.8. I note the public consultation carried out and collaborative approach taken between stakeholders in the overall design and layout of this proposal. I consider the proposal will significantly improve and expand public car parking, improve public realm and safety and is therefore acceptable in principle and is to be welcomed.

7.3. Impact Upon the Appellants Property

- 7.3.1. The appellant is the owner of the immediately adjoining property to the south east of the subject property on Strand Street. The appellants property has a rear access to its rear yard. It is submitted that the access (pedestrian and vehicular) and parking to the appellants property would be restricted by the new layout approved by Cork

County Council by way of further information, in particular by the inclusion of 8 additional staff car parking spaces.

- 7.3.2. It is argued that Cork County Councils requirement for staff car parking, will have a direct negative impact on access to the appellants property. Concern is raised that deliveries and parking of articulated lorries to the rear of appellants property will restrict access. It is submitted that the proposal seeks to build upon and provide car parking on what has been a public road for the past 100 years.
- 7.3.3. The first party submit that the existing rear access to the appellants property is ill defined and is dependent on the parking behaviour in the existing car park. It is contended that what is referred to as being a public road by the appellant was historically a meandering laneway which was always open to and used by the public serving the rear of both commercial and residential properties.
- 7.3.4. The first party appeal response contends that four other property owners could be said to have the same grievance as the appellant, however, they have not made an observation in relation to this matter. It is held that the proposal represents a significant planning gain to the wider area. It is acknowledged that the appellant has a right to access the rear of his property. It is submitted that this right is improved, not compromised, by the proposed development.
- 7.3.5. Cognisance being had to both arguments and from my site visit I wholly agree with the first party on this matter. The appellants right to access the rear of his property will not be omitted and I agree that this right is improved, not compromised, by the proposed development.
- 7.3.6. It is submitted that the Council have commenced a process of the transfer of the subject lands to the applicant. This is collaborated by means of documentation / correspondence on the file.
- 7.3.7. I note at the outset that property rights, ownership and title are a civil matter between the parties and are not generally within the remit of An Bord Pleanala. Cognisance is had to the solicitor's letter submitted with the third-party appeal, which states that the third party has had the benefit of a long standing vehicular / pedestrian right of way over the said laneway at the rear of the building leading from there to Watergate Street. The right of access from the appellants property to the south / car parking area is not disputed by the first party. It is noted, however, that no legal evidence by

way of property deeds or land registry maps have been submitted to demonstrate a legal RoW.

- 7.3.8. I agree with the planning authority on this matter. I consider that the applicant has submitted sufficient legal estate or interest in the land for the purpose of a grant of planning permission. I highlight that it is also not the role of An Bord Pleanala to adjudicate on civil property disputes, this is a matter for the courts. Section 34(13) of the Planning and Development Act 2000, as amended, sets out that a person shall not be entitled solely by reason of a permission to carry out any development.
- 7.3.9. I am of the opinion that the proposed layout, incl. delivery route to the SuperValu store is an improvement on the existing situation. Regard is had to Condition 5 of the notification of decision to grant planning permission which requires that articulated lorry deliveries are confined to pre-8.00 am.
- 7.3.10. I recommend that Condition 5 be reiterated in any grant of planning permission forthcoming from the Board and that a condition be attached requiring bicycle parking spaces to be provided within the site, in the interest of sustainable transportation.

7.4. Appropriate Assessment (AA)

- 7.4.1. The closest European Site is the Blackwater River (SAC) (site code 2170) located over 40 m distant.
- 7.4.2. The planning report on file concludes that appropriate assessment is not required.
- 7.4.3. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest Natura 2000 sites. No Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.0 Recommendation

- 8.1.1. I recommend that the decision of the planning authority be upheld and planning permission be Granted to the proposed development.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the location of the site within the 'Town Centre' of Kanturk the established pattern of development on the site and in the vicinity it is considered that subject to compliance with the conditions set out below, the development, would be acceptable in terms of traffic safety, access, impact upon adjoining property and visual amenity. The proposed development would, therefore, 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 particulars lodged with the application, as amended by the further plans and particulars submitted on the 31/08/18, 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. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

3. Details of all external shopfronts, signage and lighting shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the amenities of the area/visual amenity.

4. External roller shutter shall not be erected, any internal shutter shall be only of the perforated type, coloured to match the shop front colour.

Reason: In the interest of visual amenity and to maintain the retail character at street level.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

6. That all necessary measures be taken by the contractor, including the provision of wheel wash facilities, to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

7. (a) The construction of the development shall be managed in accordance with a Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

(b) Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 09.00 to 14.00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interests of public safety and residential amenity

8. Fifteen number bicycle parking spaces shall be provided within the site. The layout and demarcation of these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

9. Precise location and layout of trolley bays shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of orderly development.

10. (i) All articulated lorry deliveries to the SuperValu Store shall be made before 8.00 am on any morning.

(ii) The applicant shall submit and agree in writing with the planning authority details to provide off site car parking for 16 staff members.

Reason: In the interest of orderly development and public safety.

11. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:-

(a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;

(b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;

(c) details of proposed street furniture, including bollards and lighting fixtures;

(d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

12. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

13. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

Reason: In the interest of public safety and visual amenity.

14. The developer shall pay the sum of € 41700.00 (forty one thousand seven hundred euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of resurfacing of new car park area, new bollards, road lining new car park, construction of public open space and relocation of public lighting. (Specify the particular works of public infrastructure and facilities to which the specific exceptional costs relate.) This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition 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.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

15. 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 prior to the 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 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.

Fiona Fair

Planning Inspector

22.05.2019