



An
Bord
Pleanála

Inspector's Report ABP-303868-19

Question

Whether operation of a toy shop in a retail warehouse, within a bulky-goods retail park, is/is not development, and is/is not exempted development.

Location

World of Wonder, Unit 3, Limerick Road, Shesherahkeale, Nenagh, Co. Tipperary.

Declaration

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

S5/19/6

Applicant for Declaration

Eanna F. O'Briain

Planning Authority Decision

Is not development

Referral

Referred by

Eanna F. O'Briain

Owner/ Occupier

World of Wonder/Daithí O'Connor

Observer(s)

None

Date of Site Inspection

26th April 2019

Inspector

Michael Dillon

1.0 Site Location and Description

1.1. The site is a unit within the Nenagh Retail Park – at Stereame on the western outskirts of the town. Unit 3 is one of a number of two-storey retail warehouses within an L-shaped block, with a large area of shared surface car-parking in front of the units. The unit is occupied by 'World of Wonder Nursery Outlet Store'. The unit retails mostly toys; but also has cots, play-pens, slides, car-seats, and goal-sets. Other units within the retail park are-

- Euro Car-Parts
- Electrical Superstore
- Tiles & Bathrooms
- Furniture & Bedding
- Woodies DIY & Garden Centre
- Iceland
- Aldi
- Gymnasium

2.0 The Question

Whether the use of Unit 3 as a toy shop is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On 29th January 2019, Eanna F. O'Briain made an application for a declaration under Section 5, to Tipperary Co. Council in relation to the operation of a toy shop at Unit 3. The applicant's legal interest was indicated as being 'Other'.
- 3.1.2. By Order dated 20th February 2019, Tipperary County Council made a Section 5 Declaration to the effect that the operation of a toy shop at Unit 3, was not development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Senior Executive Planner for TCC, can be summarised in bullet point format as follows-

- Unit 3 is within the Springfort Retail and Business Park.
- Permission was granted for this mixed-use development by Nenagh Town Council – ref. N/32/4101. On appeal to An Bord Pleanála (ref. PL 74.204846), permission was confirmed for six retail warehouse units, food store, hotel, commercial & industrial development and residential development on a site of 36.76ha.

Condition 25 stated-

Six retail warehouse units only as indicated on the submitted drawings shall be provided. At no stage shall the units be amalgamated, interconnected or subdivided. Each unit shall provide for not less than 700 square metres gross floorspace.

Reason: To ensure compliance with the Retail Planning Guidelines for Planning Authorities, 2000.

Condition 26 stated-

The range of goods sold in the retail warehouse development shall be restricted to bulky household or other goods generally sold in bulk, including carpets, furniture, automotive products, white electrical goods and DIY items.

Reason: To ensure compliance with the Retail Planning Guidelines for Planning Authorities, 2000.

- The Retail Planning Guidelines for Planning Authorities, 2000, includes a Glossary of Terms at Annex 1. 'Bulky goods' are defined as "Goods generally sold from retail warehouses where DIY goods or goods such as flatpack furniture are of such a size that they would normally be taken away by car and not be manageable by customers travelling by foot, cycle or bus, or that large floor areas would be required to display them e.g. furniture in room sets, or not large individually, but part of a collective purchase which would be bulky

e.g. wallpaper, paint”. ‘Comparison goods’ are defined as- “Clothing & footwear; Furniture, furnishings and household equipment (excluding non-durable household goods); Medical and pharmaceutical products, therapeutic appliances and equipment; Educational and recreation equipment and accessories; Books, newspapers and magazines; Goods for personal care and goods not elsewhere classified”. ‘Retail warehouse’ is defined as “A large single-level store specialising in the sale of bulky household goods such as carpets, furniture and electrical goods, and bulky DIY items, catering mainly for car-borne customers and often in out-of-centre locations”.

- Unit 3 is currently used for the sale of toys.
- The unit has been used for the sale of toys since it was first occupied.
- Condition 26 of permission ref. PL 74.204846, provides that the unit be used for the sale of bulky goods.
- The Retail Planning Guidelines in place at that time, defines ‘bulky goods’ as goods not manageable by customers travelling by foot, cycle or bus and where not large individually are bulky as part of a collective purchase.
- There has been no material change in the use of Unit 3 – so no development has occurred. The question of exempted development does not arise.

4.0 Planning History

Ref. N/32/4101: Permission granted by Nenagh Town Council for a mixed-use residential/commercial development on a site of 36.76ha. On appeal to An Bord Pleanála by 3rd Parties (**ref. PL 74.204846**), permission was confirmed for six retail warehouse units, food store, hotel, commercial & industrial development and residential development on 29th April 2004. The development was carried out – at least as it related to the retail warehouse units. Conditions 25 & 26 stated-

25. Six retail warehouse units only as indicated on the submitted drawings shall be provided. At no stage shall the units be amalgamated, interconnected or subdivided. Each unit shall provide for not less than 700 square metres gross floorspace.

Reason: To ensure compliance with the Retail Planning Guidelines for Planning Authorities, 2000.

26. The range of goods sold in the retail warehouse development shall be restricted to bulky household or other goods generally sold in bulk, including carpets, furniture, automotive products, white electrical goods and DIY items.

Reason: To ensure compliance with the Retail Planning Guidelines for Planning Authorities, 2000.

5.0 Policy Context

5.1. Development Plan

The relevant document is the Nenagh Town & Environs Development Plan 2013-2019. The site is zoned for 'Commercial' use.

5.2. Natural Heritage Designations

There are no natural heritage designations either within or immediately abutting the referral site.

6.0 The Referral

6.1. Referrer's Case

On 6th March 2019, An Bord Pleanála received an appeal against the Declaration of Tipperary County Council, from Eanna F. O'Briain, 'Lisheen', Carrickbrack Road, Sutton, Dublin 13 – stating that it was his opinion that the breakdown of goods offered for sale in this toy shop comprises some 80% low order comparison goods with some 20% bulky goods – rather than *vice versa*.

6.2. Planning Authority Response

The response of TCC, received by An Bord Pleanála on 22nd March 2019, indicated that the PA had no further comment to make.

6.3. Owner/Occupier's Response

An Bord Pleanála sent a letter to World of Wonder (dated 7th March 2019) – requesting comment within four weeks. There was no response received.

7.0 Statutory Provisions & Guidelines

7.1. Planning and Development Act, 2000 (as amended)

Section 2(1) of the Act states as follows:-

In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...

Section 3(1) of the Act sets out the meaning of development as follows:

In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

7.2. Planning and Development Regulations, 2001 (as amended)

7.2.1. Article 9 de-exempts various development that would otherwise be exempted development under Article 6. The various circumstances in which such development is de-exempted includes-

- Contravention of condition of a permission or inconsistent with permitted use.

7.2.2. In respect of Part 4 of Schedule 2, Article 10 provides that changes-of-use within any one of the classes shall be exempted development subject to the following conditions:

- Does not involve works other than exempted development works.
- Does not contravene a condition of a permission.
- Is not inconsistent with any permitted use.
- The existing use is not unauthorised (except where a permitted use is being resumed and has not been abandoned).

7.3. Retail Planning – Guidelines for Planning Authorities 2012

Annex 1 of the Guidelines provides a Glossary of Terms.

Comparison Goods:

- clothing and footwear;
- furniture, furnishings and household equipment (excluding non-durable household goods);
- medical and pharmaceutical products, therapeutic appliances and equipment;
- educational and recreation equipment and accessories;
- books, newspapers and magazines;
- goods for personal care;
- goods not elsewhere classified;
- bulky goods

Goods generally sold from retail warehouses - where DIY goods or goods such as flatpack furniture are of such size that they would normally be taken away by car and not be portable by customers travelling by foot, cycle or bus, or that large floorspace would be required to display them e.g.

- repair and maintenance materials;
- furniture and furnishings;
- carpets and other floor coverings;
- household appliances;
- tools and equipment for the house and garden;
- bulky nursery furniture and equipment including perambulators;
- bulky pet products such as kennels and aquariums;
- audio-visual, photographic and information processing equipment;
- catalogue shops and other bulky durables for recreation and leisure.

The list is not exhaustive – bulky goods not mentioned in the list should be dealt with on their merits in the context of the definition of bulky goods.

Retail Parks:

A single development of at least three retail warehouses with associated car-parking.

Retail Warehouse:

A large single-level store specialising in the sale of bulky household goods such as carpets, furniture and electrical goods, and bulky DIY items, catering mainly for car-borne customers.

8.0 Assessment

It should be stated at the outset, that the purpose of this referral is not to determine the acceptability or otherwise of the toy shop in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development. Likewise, planning enforcement is a matter for the planning authority, and does not fall within the jurisdiction of the Board.

8.1. Is or is not Development

- 8.1.1. The report of TCC states that Unit 3 has been continuously in use as a toy shop since it was constructed. The unit now retails toys and nursery goods – such as cots, play-pens and car seats. These are in the nature of bulky goods. The unit also retails slides and goal post sets – which can be considered to be bulky goods. The referrer states that 80% of the retail offer is non-bulky goods. Certainly, a considerable amount of shelf space within the unit is taken up by the display of non-bulky toys. However, the unit does retail larger (bulky) toys and larger (bulky) nursery items.
- 8.1.2. The Retail Planning Guidelines do not indicate what, if any, percentage of floor area should be given over to bulky items. Many stores within retail parks retail items which could not be considered bulky – particularly in relation to hardware stores, electrical/computer stores and catalogue shops.
- 8.1.3. Condition 26 of the parent planning permission for this development stipulates that the goods sold in the retail warehouse shall be restricted to bulky household goods or other goods generally sold in bulk, including carpets, furniture, automotive

products, white electrical goods and DIY items. The goods on sale within this unit would not appear to come within the list of items set down in the condition – but then the list could not purport to be exhaustive. Bulky household goods are mentioned, but items like bicycles, wallpaper/paint, medical/pharmaceutical products, therapeutic appliances – all of which are listed within the Retail Planning Guidelines 2000.

- 8.1.4. I would be satisfied that the range of goods being sold within this unit, come within the broad definition of bulky goods, and whilst not all of the goods sold are bulky, a sufficient proportion could be classified as bulky goods and would come within the requirements of condition 26 of the parent planning permission. The use of this shop for the sale of toys and nursery goods cannot be considered to be a change-of-use, and, therefore, no development has taken place.

8.2. **Is or is not Exempted Development**

The issue of exempted development does not arise in this instance, as it is considered that no development has taken place.

9.0 **Recommendation**

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the use of Unit 3, Springfort Retail & Business Park as a toy shop, is or is not development or is or is not exempted development:

AND WHEREAS Eanna F. O'Briain requested a declaration on this question from Tipperary Council; and the Council issued a declaration on the 20th day of February 2019, stating that the matter was not development:

AND WHEREAS Eanna F. O'Briain referred this declaration for review to An Bord Pleanála on the 6th day of March 2019:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Article 9 of the Planning and Development Regulations, 200, as amended,
- (d) the planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) condition 26 of the parent planning permission for this retail park confines the sale of goods within the retail park to bulky items – referring to a list which cannot be considered to be exhaustive;
- (b) no change-of-use has occurred at Unit 3, and therefore, no development has been undertaken at this unit:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the use of Unit 3 as a toy shop is not development.

Michael Dillon,
Planning Inspectorate.
10th June 2019.