



An
Bord
Pleanála

Inspector's Report

ABP-304185-19

Development	Part demolition of commercial stores. Single storey extension to retail shop. Part change of use of first floor area from commercial to student accommodation. External access to first floor.
Location	Topaz Service Station, Dublin Road, Dundalk, Co Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	18529
Applicant(s)	Niall Clarke Oils.
Type of Application	Permission.
Planning Authority Decision	To refuse.
Type of Appeal	First Party
Appellant(s)	Niall Clarke Oils.
Observer(s)	None.
Date of Site Inspection	Monday 1 st July 2019.
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The 0.32ha appeal site is situated in Dundalk Town. It lies to the south of the town centre, on the eastern side of Dublin Road (R215), in an urban area that is characterised by a mix of land uses, principally housing on each side of Dublin Road, interspersed with large scale institutional land uses and smaller commercial development. Louth County Hospital lies opposite the site and Dundalk Institute of Technology c.500m to the south. North of the site alongside the public road in small clusters are takeaways, a petrol filling station (with small shop), tyre repair shop, barber's, laundrette and a public house (The Malthouse).
- 1.2. The appeal site comprises an existing fuel station, with forecourt, canopy, fuel pumps, car wash, two-storey building with retail at ground floor. To the east of the site is two-storey residential development, Glenwood, with nos. 266 and 251 lying immediately east of the application site. Properties are side on to the appeal site and are separated from it by their own side gardens and a narrow laneway. To the south of the site is an area of open ground.

2.0 Proposed Development

- 2.1. The proposed development, as modified by further information submitted in February 2019, comprises:
 - Part demolition of the existing commercial storage areas at first floor.
 - Part change of use of the existing first floor area from commercial storage to student accommodation (5 no. bedrooms with communal kitchen/living and ancillary facilities). It is proposed to truncate the forecourt canopy to provide a minimum 1.5m gap to the front face (west elevation) of the first-floor accommodation.
 - A single storey ground floor extension (114sqm) to the rear of the existing retail shop for use as a sit-down deli, food preparation area and storage area. The rear extension will provide a new shared boundary wall with the properties in Glenwood adjoining the development (see drawing no. 3730-FI-007).
 - A new external access to first floor area.

- Five no. bicycle parking spaces.
- Associated site development works.

2.2. The application is accompanied by plans and drawings and a series of shadow projections showing the impact of the proposed development on residential properties to the east of the site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 14th March 2019 the planning authority decided:

1. To grant permission for the part change of use of existing first floor area from commercial storage to student accommodation, subject to 7 no. conditions. Condition no. 2 states that it does not include part demolition of the existing commercial stores¹ or single storey ground floor extension to retail shop. Condition no. 3 and 4 require the truncation of the forecourt canopy and proposed bicycle stands, respectively, to be in place prior to occupation of the student accommodation. Condition no. 6 requires that the air handling units be retained in situ as existing.
2. To refuse permission for the part demolition of existing commercial stores¹ and single storey ground floor extension on the grounds that the development constitutes an extension to an existing retail element of an established non-conforming petrol filling station (where the use already exceeds the 100sqm net retail area for petrol filling stations), on land zoned for residential development and removed from the nearest designated Neighbourhood Centre at Muirhevna (Today's Local/Malthouse) and would conflict with policy EC12, Table 3.2, of the Dundalk and Environs Development Plan, the zoning objectives for the site and the government's Retail Planning Guidelines.

3.2. Planning Authority Reports

3.2.1. Planning Reports

¹ NB At the time of site inspection I did not observe any commercial store to the rear of the existing ground floor shop and, as stated, the drawings for the development indicate demolition of internal stores at first floor.

- 20th August 2018 – This report refers to the history of the site, its policy context and submissions made. It considers that:
 - i. The **retail use** is contrary to the zoning objectives for the site and does not meet the requirements for extensions to non-conforming uses as it is not within a designated retail centre/area and is located within a petrol filling station where the maximum permitted net floor area is 100sqm. (Existing filling station is c.220sqm and would be extended to c.310sqm). Development would be contrary to policy HC 12, Table 3.2 of Dundalk and Environs Development Plan, 2009-2015 (as extended) and Retail Planning Guidelines.
 - ii. The **student accommodation** is consistent with the zoning objective; drawings do not reflect existing built form; development may impact on amenity of adjoining residential property (increase in height of common boundary wall) and provide a poor level of amenity for residents (front windows would be under canopy, 3 of 5 rear windows positioned over air handling units); no impacts on Natura 2000 sites; is acceptable in terms of roads and parking and no known risk of flooding.

The report recommends further information to address the above matters.

- 11th March 2019 – Considers that the retail element of the development remains inconsistent with Development Plan policy and national Retail Planning Guidelines. It also expresses some concerns regarding the residential amenity value of windows provided in the student accommodation, in particular those looking toward the truncated canopy and if existing ventilation fans are moved upward to facilitate the rear extension, but otherwise considers the development to provide adequate spatial accommodation . The report recommends (a) refuse permission for the retail element of the development and (b) grant permission for the part change of use of existing first floor accommodation to student accommodation, subject to conditions.

3.2.2. Other Technical Reports

- Infrastructure (9th August 2018) – No objections subject to condition.

3.3. Prescribed Bodies

- Irish Water (14th August 2018) – No objections.

3.4. Third Party Observations

- None.

4.0 Planning History

4.1. A number of planning applications have been made in respect of the appeal site and these are listed in the Planning Report dated 20th August 2018. In the last 10 years, these include the following, copies of which are on file:

- PA ref. 05520069 - Retention of two no. wash bays and storage area to office, toilet facilities, stock room and permission for extension and internal alterations to existing convenience store, change to front elevation to include new shopfront.
- PA ref. 09520139 – Permission granted for the demolition of an existing house and extension of forecourt area of existing service station, to include car parking, car wash facilities, landscaping and site development works.
- PA ref. 14398 – Extension of the above (to expire in 2020).
- PA ref. 16268 – Retention granted for postage kiosk unit, car valeting store, car wash store, advertising signage, staff car parking, carwash service control cabinets, secure gas storage cage, clothing collection bank, alterations to front elevation of neighbourhood shop and site development works.

4.2. On file are the following ABP history files in respect of petrol filling stations in south Dundalk, referred to by the appellant:

- PA ref. 14215/PL15.244191 – Permission granted for a new forecourt shop, including ATM, deli, ancillary stores, offices, internal and external seating areas, new forecourt canopy, with all associated site works at Southend Services Station, Dublin Road, Dundalk. This service station lies c.700m to the south of the appeal site on the R215/Dublin Road.
- ABP-304608-19 – Permission granted for a new petrol filling station with 3 no. food offerings (including drive-thru), retail area, seating area, back of house

area for storage, toilets and food preparation, storage yard, signage, 6 no. pump islands and associated site works at Dundalk Retail Park, Inner Relief Road, Marshes Upper, Dundalk. This site is situated on the R132, c.1.2km due east of the appeal site on the R132.

5.0 Policy Context

5.1. National Guidelines

5.2. The government's document '*Retail Planning - Guidelines for Planning Authorities, 2012*' sets out guidelines on assessing specific categories of retail development, including local retail units (section 4.11.6) and motor fuel stations (section 4.11.9).

5.3. Louth Retail Strategy/Louth County Development Plan 2015 to 2021

5.3.1. The Louth Retail Strategy is set out in Appendix 12 of the current Louth County Development Plan 2015 to 2021. It identifies Dundalk town as a Level 2 Centre, a Major Town Centre and County Town Centre. Policies of the county Development Plan seek to support the development of the town as a regional shopping centre (Policy EDE 34), to maintain the vitality and viability of town and village centres and their role as primary retail core areas (Policy EDE 33) and to promote provision of local retail centres serving small, localised catchment populations in new residential areas, commensurate with locally generated needs (Policy EDE 36).

5.4. Dundalk and Environs Development Plan 2009-2015 (as extended)

5.4.1. The appeal site is zoned RES 1, the objective of which is '*To protect and improve existing residential amenities and to provide for infill and new residential development*'.

5.4.2. Policy EC 10 of the current Dundalk and Environs Development Plan requires implementation of the policy recommendations set out in the Louth Retail Strategy in so far as they relate to Dundalk and its environs. Policy EC 12 requires provision '*of retail services to meet local based need subject to compliance with the established retail hierarchy and where it can be demonstrated that such development will not damage the existing retail function of the town centre*'. The established retail

hierarchy is set out in Table 3.2 of the Plan and this includes reference to a Neighbourhood Centre at Muirhevna. From the information on file, this comprises a Today's Local store (now closed) and Malthouse public house.

5.5. Natural Heritage Designations

5.5.1. Approximately 2km to the east of the appeal site is Dundalk Bay and it is designated as a proposed Natural Heritage Area, Special Protection Area and Special Area of Conservation.

5.6. EIA Screening

5.6.1. The proposed development is of a type that constitutes an EIA type project (involving construction works and demolition). However, it is not of a scale likely to give rise to significant environmental effects to warrant environmental impact assessment (Class 10, Part 2, Schedule 5, P&D Regulations, 2001 (as amended), urban development).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The first party grounds of appeal are in respect of the planning authority's refusal to grant permission for the partial demolition of an existing commercial rear store and construction of a new single storey extension for sit down deli, food preparation area and store:

- The site is located on a major thoroughfare to and from the town centre and is one of several separate businesses providing a range of services and facilities, collectively comprising a de facto conglomerate Neighbourhood Centre. This type of local service provision, outside of designated Neighbourhood Centres occurs elsewhere in Dundalk e.g. Newry Road, Castletown Road (see Appendix 2 of appeal).
- Most of the applicant's business comes from the shop and hot food deli serving existing and expanding areas along Dublin Road, the student population of DKIT and staff and visitors to Louth Hospital. With the

introduction of electric cars, this aspect of the business will increase in importance. The appeal site has increasingly assumed the role and function of a neighbourhood centre, in lieu of any comparable retail provision along Dublin Road.

- The existing premises are cramped. The proposed development will provide a more spacious and open layout but no increase in the quantum of retailing. The proposal will underscore the premises function as a Local Store/Shop comparable in scale to that defined in the Retail Planning Guidelines and one that would be appropriate with the premises' de facto role within the linear Neighbourhood Centre serving the Dublin Road community. Petrol station use would be further relegated to a secondary/subservient use.
- The planning authority's assessment of the development is predicated on its categorisation of the appeal site as a petrol filling station when it comprises several component elements that work collectively, but which are not dependent on each other.
- The planning authority's decision refers to the designated Neighbourhood Centre which comprises the Today's local retail unit, which has been vacant for over 7 years and has a restricted floor area, and Malthouse Bar and Lounge, which provides a very specific facility to the local population. It is an unreasonable expectation that either would be comprehensively redeveloped. The Neighbourhood Centre, Map 3.7 of the Development Plan and Map 4.2 of the Core Strategy, is defunct.
- The Retail Planning Guidelines do not state a Neighbourhood Centre is limited to one designated area (i.e. it could be spread out). This narrow definition of Neighbourhood Centre is not supported by the Louth Retail Strategy, County Louth Development Plan or Dundalk and Environs Development Plan.
- The proposed development will serve a local population and provide for daily or casual convenience retailing and will not damage the retail function of the town centre (Policy EC12 of Development Plan).
- As stated in the Retail Planning Guidelines, the planning system should not be used to inhibit competition. By uncompromisingly applying Table 3.2 of the Development Plan and insisting that the Dublin Road Neighbourhood

Centre should only apply to one ill-equipped site, denies the local population the diversity and commensurate level of services required from the Louth Retail Strategy.

- Other non-conforming land uses have been granted planning permission in the RES zoning on the appeal site e.g. PA ref. 05520069; 09520139; 14398 and 16268. The most recent decision contradicts this established position.
- The proposed development will not materially compromise the integrity of the RES 1 zoning i.e. no impacts on residential amenity will arise.
- The proposed development may be a non-conforming use, but the application represents an extension of an activity which is already present on site and which has and will continue to operate with no significant or detrimental impact on neighbouring properties and without undue influence on the RES 1 zoning.
- The planning authority's decision materially conflicts with previous decisions they and the Board reached in relation to development proposals for service stations, approved under similar zoning and planning policy considerations e.g. PA ref. 14215/PL15.244191; 15777²; 19210/ABP-300250-17. In these cases, the retail element of the scheme fell within the 100sqm limit set out in the Retail Planning Guidelines and floorspace for food preparation, seating etc. were excluded from the calculation (see Appendix 4 of appeal).

6.2. Planning Authority Response/Observations/Further Responses

- None.

7.0 Assessment

- 7.1. The appellant has appealed the planning authority's decision to refuse permission for the part demolition of commercial stores and single storey extension of the existing retail shop for use as sit-down deli, food preparation and storage area. There is no appeal in respect of the decision to grant permission for the change of use of first floor accommodation to student accommodation or external access to first floor area.

² Permission granted for the redevelopment of an existing service station, north of Dundalk town centre, at Newry Road which included a convenience retail store of 100sqm.

From my inspection of the site and details on file, regarding this aspect of the development, I consider that it is consistent with the zoning policy of the site, current spatial standards for student accommodation, as set out in the government's guidelines on Sustainable Urban Housing: Design Standards for New Apartments (*Shared Accommodation*) and is generally acceptable.

7.2. Having regard to my inspection of the appeal site and surrounding area, the information on file and matters raised by the appellant, I therefore consider that the key issues for this appeal relate to the following matters:

- Consistency with zoning of the site, development plan and national policy in relation to petrol filling stations and retail development.
- Precedents.
- Impact on amenity.

7.3. I also comment on the implications of any decision to grant permission for the extension to the retail unit, for that part of the development comprising the change of use of first floor accommodation to student accommodation.

7.4. **Consistency with Zoning and Policy Context**

7.4.1. The appeal site comprises an established petrol filling station and associated retail store. It is situated on land zoned RES 1 and I note that a petrol filling station is 'open for consideration' within this zone i.e. it is one that by reason of its nature and scale would not be in conflict with the primary zoning objective for the area (page 24, Dundalk and Environs Development Plan).

7.4.2. The government's guidelines on petrol filling stations (section 4.11.9, Retail Planning Guidelines) acknowledge that convenience shops are part of the normal ancillary services provided by a motor fuel station, but that such shops should remain on a scale appropriate to the location, and their development should only be permitted where the shopping element of the station would not seriously undermine the approach to retail development in the development plan. In addition, the guidelines state that the floorspace of the shop should not exceed 100sqm net and where permission is sought for a greater floor area, the sequential approach to retail development shall apply i.e. *'the retail element of the proposal shall be assessed by*

the planning authority in the same way as would an application for retail development (without petrol/diesel filling facilities) in the same location'.

- 7.4.3. Net Retail Floorspace is defined in the guidelines as *'the area within the shop or store which is visible to the public and to which the public has access including fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaires, customer service areas, and internal lobbies in which goods are displayed, but excluding storage areas, circulation space to which the public does not have access to, cafes, and customer toilets'.*
- 7.4.4. The applicant's Plan of the existing retail space does not indicate how the c.220sqm of floorspace is broken down to provide a net retail floorspace i.e. that are which is visible to the public and two which they have access etc. Further, it is evident from my inspection of the site that some of the floorspace would be excluded from this calculation e.g. café area and the area behind the checkout.
- 7.4.5. I note that the applicant states that there is no intention to increase the retail sales area, with the extension to provide a sit-down deli, food preparation area and storage area. The plans submitted of the proposed floorspace (with extension), do not clearly demarcate the proposed net retail floorspace and I would estimate from the Proposed Plans (drawing no. 3730-FI-004) that it would be in excess of 100sqm. Whilst it may be possible to configure the space, to restrict the net retail floor area to 100sqm, in its current form, the proposed development is not in compliance with the Retail Planning Guidelines and indicated ceiling on retail space that is permissible with a petrol filling station. In this regard, I note the appellant's references to the **precedent** cases determined by the Board (and the planning authority), all of which have had regard to this ceiling and the adequate demarcation of net floor area.
- 7.4.6. Consequently, it is appropriate to assess the proposed development within the policy context for a retail development. In this regard, I note that 'Local shop' use is open for consideration within the RES 1 zoning. This is defined as *'a convenience retail unit of not more than 200sqm in net floor area unless otherwise stated in the retail hierarchy in Table 3.2'*. Restaurant/café uses are also open for consideration in the RES 1 zone, as part of a local centre (neighbourhood/civic and commercial/small district etc.).

- 7.4.7. The government's guidelines on retail planning and the County Retail Strategy advocate a plan led approach to retail development and the identification of local retail units in development plans:

'Local retail units such as corner shops or shops located in local or neighbourhood centres serving local residential districts perform an important function in urban areas. Where a planning authority can substantiate the local importance of such units in defined local centres, they should safeguard them in development plans, through appropriate land-use zoning. Development management decisions should support the provision of such units, particularly where they encompass both food-stores and important non-food outlets such as retail pharmacies, and have significant social and economic functions in improving access to local facilities especially for the elderly and persons with mobility impairments, families with small children, and those without access to private transport' (Retail Planning Guidelines, section 4.11.6, Local Retail Units).

'Corner shops, shops located in local or neighbourhood centres serving residential districts perform an important function in urban areas and where appropriate, should be safeguarded in relevant Development Plan/Local Area Plan through appropriate land use zoning'. (County Retail Strategy, 9.5.6, Local Retail Units).

- 7.4.8. The retail hierarchy for Dundalk set out in Table 3.2. It provides for 'Neighbourhood Centres', 'Local Stores' and 'Local shops'. Map 3.7 shows the location of the various centres and these include a Neighbourhood Centre at Muirhevna, north of the appeal site. Table 3.2 states that 'Local Shops' are located at 'various locations within development areas', provide small scale local facilities where there is an identified need and are subject to a maximum permitted net floor area of 200sqm. I note that no locations are identified for local shops in Map 3.7 of the Plan. I would infer from this, that there is scope for a 'Local Shop' outside of the identified centres.
- 7.4.9. At the time of site inspection, I noted that the Muirhevna Neighbourhood Centre comprised one vacant unit and a public house. I would accept, therefore, the appellant's arguments that currently it does not function as an active Neighbourhood Centre and that in practice retail and commercial activity in the area, and in the

vicinity of other Neighbourhood Centres referred to by the appellant, is more dispersed.

7.4.10. The current Development Plan for Dundalk identified hierarchy of centres, does not therefore include the appeal site. However, given the established use of the site as a small retail outlet, its location close to Louth County Hospital, Dundalk Institute of Technology and residential development and the applicant's submission that the retail offering serves a local market, I consider that there is scope to consider the existing, and proposed development, as a 'Local shop', subject to a maximum net floor area of 200sqm. As stated above, the applicant has not provided information on the net floor area of the existing or proposed retail floorspace. However, I would estimate that if the areas that are not visible and accessible to the public etc. are removed from the gross floorspace, net floorspace may well fall below 200sqm. Notwithstanding this, the proposed development comes forward with a café element i.e. sit-down deli, a use which is only open for consideration in the RES zone as part of a local centre e.g. Neighbourhood Centre.

7.4.11. Consequently, as presented the proposed development does not comply with the retail hierarchy set out in the Dundalk and Environs Development Plan. As stated, I note the comments made by the appellant on the Muirhevna Neighbourhood Centre and I would accept that it currently does not provide this function in practice. However, national guidance on retail planning advocates a plan led approach to retail provision and this is a matter that needs to be addressed through the forward planning process.

7.5. Residential Amenity

7.5.1. If the Board are minded to grant permission for the retail component of the development, there are consequences for the planning authority's decision to grant permission for the first-floor change of use. If the rear extension is permitted, air handling units will have to be relocated from the rear wall of the property (as indicated in the Existing and Proposed East Elevation, drawing no. 3730-FI-007), which would make the units more visible from the gardens of Glenwood and potentially impact on the residential amenity of the first-floor accommodation. Given that the amenity of west-facing bedrooms will also be affected by direct views of the forecourt canopy, this will further reduce the overall amenity of the accommodation.

Technical specification of the air handling units is covered under another code, however, if the Board are minded to grant permission for the development, I would recommend that this matter be addressed to minimise visual amenity impacts and to demonstrate that there will be no significant impact on residential amenity.

- 7.5.2. Having regard to the shadow projections submitted, the side gardens and passageway separating the appeal site from Glenwood, the proposed wall at ground floor level only, I do not consider that the proposed ground floor extension would otherwise adversely impact on the residential properties at Glenwood.

8.0 Appropriate Assessment

- 8.1. Having regard to location of the proposed development, within an established urban area, and the modest nature of the proposed development which comprises a change of use and small-scale building works, 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.

9.0 Recommendation

- 9.1. Having regard to the matters discussed above, I recommend for the reasons and consideration set out below that:
- i. Permission be granted for the change of use of first floor accommodation to student accommodation, and
 - ii. Permission be refused for the ground floor extension to the retail space,

10.0 Reasons and Considerations 1 (Change of use of first floor)

1. Having regard to the zoning of the appeal site, and the nature, scale and form of the proposed development, it is considered that the proposed development would be in accordance with the zoning of the site, would provide an appropriate standard of accommodation and would not injure the amenity of properties in the vicinity of the site and would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1.	<p>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 27th day of February 2019, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>This permission does not include the single storey extension at ground floor to the existing retail shop.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>Prior to the occupation of the development, the following shall be in place, to the written satisfaction of the planning authority:</p> <ul style="list-style-type: none">i. The truncation of forecourt canopy, andii. The bicycle stand, <p>As indicated on Drawing No. 3730-FI-004, received on the 27th February 2019.</p> <p>Reason: In the interest of residential amenity and sustainable development.</p>
4.	<p>All existing air handling units shall be retained in situ as indicated on Drawing No. 3730-FI-003 received on the 27th February 2019 and shall not be raised into the position indicated on Drawing No. 3730-FI-004 received on the 27th February 2019.</p> <p>Reason: In the interest of visual and residential amenity.</p>

5.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
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12.0 Reasons and Considerations 2 (Extension to retail space)

1. Policies of the Louth County Development Plan, 2015 to 2021 and government policy in respect of retail planning 'Retail Planning – Guidelines for Planning Authorities, 2012' restricts the maximum permitted net retail floor area of a petrol filling station to 100sqm. The proposed development provides in excess of 100sqm of retail floorspace and does not comply with this policy requirement. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. Government policy in respect of retail planning 'Retail Planning – Guidelines for Planning Authorities, 2012' advocates a plan led approach to retail planning including the identification of local retail units in development plans. Policies of the Dundalk and Environs Development Plan 2009 to 2015 (as extended) provide a retail hierarchy for the town and its environs as set out in Table 3.2 and Map 3.7 of the Plan. The proposed development does not fall within the identified locations of retail space within Map 3.7 and fails to comply with the stated requirements for a Local Shop. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Deirdre MacGabhann

Planning Inspector

1st August 2019