



An  
Bord  
Pleanála

## Inspector's Report ABP-305310-19

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<b>Development</b>	4 retail warehouse units, a garden centre and car parking
<b>Location</b>	Manor West Retail Park, Tralee, County Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	18/1062
<b>Applicant(s)</b>	Ashman Developments Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Grafton Group PLC
<b>Date of Site Inspection</b>	26 <sup>th</sup> November, 2019
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

1.1. The site of the proposed development is located to the south of Manor West Retail Park and to the north of the Tralee Bypass at the south-eastern end of the town of Tralee in County Kerry. The site is bounded to the north by an existing garage within the existing Manor West Retail Park, to the west by Deerpark housing estate, and to the east and south by open fields. The Clashlehane Stream flanks the site to the east. Housing development is expanding to the west in the immediate vicinity of the site. The site comprises a filled area in its northern section, with some stockpiling of stone, and undeveloped heavy ground in its southern section immediately north of the River Lee. There is a storage shed on the south-east corner of the overall site.

## **2.0 Proposed Development**

2.1. The proposed development would comprise the construction of four retail warehouse units, a garden centre, and 330 car parking spaces. The proposal would provide 7,222 square metres of retail floor space at ground floor level and 1,023 square metres at mezzanine level. Vehicular access would be provided from the R875 and the R919 via the existing Manor West Retail Park. The applicants are the stated owners of the 6.873 hectare site.

2.2. Details submitted with the application included a Retail Impact Assessment, a Traffic and Transport Assessment, a Screening for Appropriate Assessment Report, a Flood Risk Assessment, and a Water Services Design Statement.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 6<sup>th</sup> August 2019, Kerry County Council decided to grant permission for the proposed development subject to 20 no. conditions.

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

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

The Senior Executive Engineer noted planning history, development plan provisions, reports received and third party submissions made. The proposed development was considered to be consistent with the site's zoning provisions. A request for further information was recommended based upon reports received and in relation to proposed finished floor levels, and storm water attenuation.

### 3.2.2. Other Technical Reports

The County Archaeologist noted the siting of a recorded monument adjacent to the site and requested an archaeological assessment.

The Environment Section had no objection to the proposal and set out a schedule of conditions.

The Tralee Municipal District Engineer requested clarification in relation to floor area of retail and business parks in the vicinity.

### 3.3. Prescribed Bodies

Inland Fisheries Ireland set out its requirements in relation to protecting the Clashlehane Stream adjoining the site and the Lee River which the stream is a tributary of.

Transport Infrastructure Ireland (TII) requested the planning authority to abide by official policy relating to development on/affecting national roads.

### 3.4. Third Party Observations

Third party submissions were received by the planning authority from Grafton Group PLC, Bryant Park QIAIF, and Michael Horgan. The grounds of the appeal reflect the concerns of the Grafton Group PLC. The other third party submissions raised concerns relating to construction impacts, the precise nature of the end users of the retail units, vacancy, and flooding.

Following the submission of further information, the reports to the planning authority were as follows:

The Tralee Municipal District Engineer requested clarification in relation to the methodology applied to arrive at conclusions drawn in the revised Traffic Impact Assessment.

The County Archaeologist set out a schedule of conditions to attach to any grant of planning permission.

TII stated that its position remains as set out previously.

The Senior Executive Engineer in Planning recommended that clarification be sought on the traffic impact of the proposal. The other responses to the further information request were noted, as were third party submissions.

A third party submission by Grafton Group PLC maintained that a number of fundamental issues had not been addressed by the applicant. A submission by Bryant Park QIAIF reiterated its initial concerns remained valid.

Following the applicant's response to the clarification request, the following reports were received by the planning authority:

The Tralee Municipal District Engineer was satisfied that there would be limited impact on the surrounding public road network. It was noted that there was notable traffic queuing within the retail park and it was considered that this could be addressed with traffic management.

The Senior Executive Engineer in Planning noted the Engineer's response and considered planning issues had been addressed. A grant of permission subject to conditions was recommended.

#### **4.0 Planning History**

ABP Ref. PL 08.247425 (P.A. Ref. 15/1173)

Permission was refused by the Board for traffic safety reasons for the construction of a new access road from the existing N70/N22 roundabout at Camp, Tralee, to connect with the existing Manor Retail Park internal road, at Manor West.

## 5.0 Policy Context

### 5.1. Tralee Town Development Plan

#### Zoning

The site for the proposed development is zoned 'Retail Warehousing' with the objective "To provide for retail warehousing and the sale of bulky goods".

The zoning objective permits retail warehousing, and other structures needed for the sale of bulky goods, garden centres and car parking.

#### Commercial Development

##### *Retail Parks and Retail Warehouses*

The Plan notes that the town has a retail warehouse park located at Manor West and that it is not expected that further retail warehouse space is required within the town boundaries. It is submitted that it is imperative that material impact on the town centre is limited by ensuring that only bulky household goods are permitted in this retail park.

### 5.2. Screening for Appropriate Assessment

It is considered that the relevant potential sources of impact arising from the proposed development relate to the potential effects of pollutant-laden surface water discharges to the adjoining existing watercourses during construction affecting the downstream European sites Tralee Bay Complex SPA (Site Code: 004188) and Tralee Bay and Magharees Peninsula, West to Cloghane SAC (Site Code: 002070). These two Natura 2000 sites are located some 2.7km west of the appeal site and there is very significant urban development between the appeal site and these European sites.

The site for the proposed development comprises lands zoned for retail warehousing within the development boundary of the county town of Tralee and immediately adjoining an existing retail park. The proposed development would be on a fully

serviced site, being served by public mains water supply and the public sewerage system in Tralee.

Having regard to the limited nature and scale of the proposed development, its urban context, and to its significant separation from any European site, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

Finally, I acknowledge the applicant's submitted Screening for Appropriate Assessment Report. The overall conclusions drawn are accepted.

### **5.3. Environmental Impact Assessment**

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The appellant operates a Woodies store to the north-east of the proposed development and submits that there is no basis for effectively developing a "mirror" store. The grounds of the appeal may be synthesised as follows:

#### Submission to Planning Authority

- The public notices were inadequate and misleading.
- The scale of the development is excessive and contrary to the requirements of planning policy, local and national.
- The Retail Impact Assessment is deficient and fails to address adequately the real impact of the proposed development on existing retail in the immediate area and in the town of Tralee.

- The Flood Assessment shows that flooding will occur on the site.
- The Traffic Impact Assessment is deficient and is based on misleading assumptions.
- No archaeological assessment was prepared.

#### Additional Grounds of Appeal

- The Council failed to take account of the real concerns expressed by the appellant in its assessment of the application.
- The Retail Impact Assessment is flawed and inadequate.
- The Traffic Impact Assessment is deficient.
- The issue of flooding has not been adequately assessed.

The appellant elaborated on the reasons the retail, traffic and flooding issues had not been adequately addressed.

## **6.2. Applicant Response**

The applicant's response to the appeal may be summarised as follows:

- It is unsubstantiated and unreasonable of the appellant to state that the planning authority did not adequately address their concerns.
- The appellant does not appreciate the differences between convenience, comparison and bulk retail/warehousing on a site that is zoned for retail warehousing use and not for convenience or comparison retail.
- Objective RS10 of the County Development Plan permits only retail warehousing on lands zoned for this purpose. The primary focus of the proposal has been to assess retail warehousing.
- The traffic issues raised were addressed in the applicant's response to further information and clarification requests. The planning authority was satisfied that there were no traffic safety or congestion concerns.
- The Flood Risk Assessment notes a small part of the site is liable to flooding – Flood Zone A and B. The warehousing is in Flood Zone C. To replace flood plain storage, it is proposed to reduce the level of part of the existing flood

plain within the site. The development will not increase flood risk within or outside of the confines of the site.

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

The planning authority submitted that all of the planning issues were dealt with in the Planner's report. Additional points made may be summarised as follows:

- The applicant's submissions on retail impact are seen to be balanced, reasonable and demonstrate an understanding of the impacts on the existing Manor West Retail Park and on retailing in Tralee and the surrounding region.
- Through responses to requests for further information and clarification, the applicant satisfied the Council that the proposed development would not cause traffic congestion.
- The Flood Risk Assessment acknowledged that part of the site where parking is proposed is in Flood Zones A and B. Having regard to the location and extent of the identified flood risk area, the topography of the land and the location of the river to the south, the Council is satisfied that the proposed mitigation measure comprising the removal of soil from the flood plain area and its deposition within the site outside the flood plain is a reasonable and practical solution that would not increase flood risk.

### 6.4. **Further Responses**

Following a request from the Board, the Department of Culture, Heritage and the Gaeltacht recommended that should the Board decide to grant permission, Condition 10 of the planning authority's decision relating to archaeology be retained in full.

## 7.0 **Assessment**

### 7.1. Introduction

7.1.1 I consider that the principal planning issues relate to the context and scale of the proposed development, retail impact assessment, traffic assessment, flood risk assessment, and the archaeological impact.



7.1.2 I note the appellant has also referenced that public notices were inadequate and misleading. It is my submission to the Board that the appellant, notwithstanding this submission, has been afforded the opportunity to make submissions to the planning authority and to make an appeal to the Board and, thus, has been informed of the nature and extent of the proposed development on the site and permitted to engage in the planning process.

## 7.2. The Context and Scale of the Proposed Development

7.2.1 The site of the proposed development lies immediately to the south of Manor West Retail Park. These are lands that are zoned 'Retail Warehousing' in the Tralee Town Development Plan. The objective for these lands is "To provide for retail warehousing and the sale of bulky goods". This zoning objective permits retail warehousing, and other structures needed for the sale of bulky goods, garden centres and car parking. The Development Plan acknowledges Manor West as being the town's retail park and expressly requires that only bulky household goods are permitted in this retail park.

7.2.2 The proposed development is for the construction of four retail warehouse units, a garden centre and parking spaces. It is very clear that the Tralee Town Plan has designated the appeal site for the further development of Manor West. The proposed development is wholly compatible with Development Plan provisions. Its location is entirely suited, forming a natural extension to the retail park, at a serviceable location, with direct access to the site. Indeed, a short spur road to the site entrance forms part of the internal road network for the retail park. There can be no question that the principle of the proposed development is secure under the Plan provisions.

7.2.3 With regard to the scale of the proposed development, it is evident that the form, bulk and character of the proposed development is wholly in keeping with the structures within the established retail park. Furthermore, it can be seen from the layout and footprint of the proposed development, that consideration has been given to adequate separation from residential properties to the west, from an archaeological monument to the south and from the watercourse to the east. Substantial areas of the plot are given over to surface level parking.

7.2.4 Overall, it can reasonably be determined that the proposed development is suited in its scale to its context on lands zoned for the purpose intended in this proposed development.

### 7.3. Retail Impact Assessment

7.3.1 The appellant has submitted that the applicant's Retail Impact Assessment is deficient and fails to address adequately the real impact of the proposed development on existing retail in the immediate area and in the town of Tralee. The applicant, in response, submits that the appellant does not appreciate the differences between convenience, comparison and bulk retail/warehousing on a site that is zoned for retail warehousing use and not for convenience or comparison retail.

7.3.2 It is first notable that the planning authority, responsible for the oversight of the retail development of Tralee, has definitive provisions in the Tralee Town Development Plan relating to retail warehouse development specifically on this site by way of its zoning provisions and its express requirement to limit a material impact on the town centre by ensuring that only bulky household goods are permitted in this retail park. The proposal sits comfortably with these requirements. Further to this, the planning authority, in response to the appeal, submits that the applicant's submissions on retail impact are balanced, reasonable and demonstrate an understanding of the impacts on the existing Manor West Retail Park and on retailing in Tralee and the surrounding region.

7.3.3 With regard to the applicant's submissions in this application, I note that a Retail Impact Assessment was submitted in accordance with guidance set out in the Retail Planning Guidelines for Planning Authorities, published in April 2012. A sequential approach was undertaken, although it is reasonable to conclude that the site selection was appropriate having regard to the site location and the zoning of this site for the type of development being proposed. The assessment undertaken adequately identified a retail catchment area. The nature of the defined catchment area, expanding westwards into the Dingle peninsula and including parts of West Limerick and North Cork, represents a reasonable understanding of the geographical

area likely incorporating the potential draw to Tralee and to this town's retail park, namely Manor West. The expenditure available within the catchment area was estimated in the applicant's assessment, while the current retail provision in the catchment area was assessed and turnover was estimated. The assessment of the impact of the proposed development was undertaken and reference was also made to trade diversion. In isolation of the availability of comparison spending figures in the retail strategy for Kerry, national per capita comparison sales figures were used to estimate local sales. Furthermore, the calculation of the proportion relating to bulky goods only was sourced from the Metropolitan Cork Joint Retail Study. This approach is considered reasonable in the context of unavailable figures specifically for this location. The applicant's assessment has demonstrated a significant surplus in expenditure in the catchment area. Projected bulky goods expenditure for the catchment area is estimated to continue to rise, likely creating a greater surplus in expenditure. Based on the applicant's Retail Impact Assessment, which in my opinion is founded on reasonable estimations, predictions and on reasonable sources of information, it is accepted that the proposed development would not have a significant adverse retail impact on Tralee town centre or the existing retail park at this location.

7.3.4 In conclusion, I again reiterate that this site is designated for the uses which are proposed in the proposed development. This is plan-led development as espoused by the Retail Planning Guidelines for Planning Authorities (Section 2.5.1). I do not consider that the planned expansion of this retail park will undermine the vitality and viability of Tralee town centre. The nature of the retail use would not be in competition with town centre retail uses. The proposed retail warehousing seeks to trade bulky goods solely and the size of the proposed units is wholly compatible with the provisions set out in the Guidelines.

#### 7.4. Traffic Assessment

7.4.1 The appellant has submitted that the applicant's Traffic Impact Assessment is deficient and that it is based on misleading assumptions. I note that the applicant admitted that it mistakenly referred to retail floor areas in square feet instead of

square metres in its initial Traffic Impact Assessment. The applicant was requested to address this issue by way of further information and was further requested to clarify the estimated increase in vehicle trips in its assessment.

7.4.2 In accepting the errors made in the initial Traffic Impact Assessment, I note that the applicant subsequently addressed concerns raised by the planning authority. The Council's Roads Engineer is satisfied that there would be limited impact on the surrounding public road network and did not have any particular issues with the proposed development after further information and clarification was provided. It is also notable that Transport Infrastructure Ireland had no particular concerns about the impact of the proposed development on the national road network in the immediate vicinity of this site.

7.4.3 The proposed development is on lands zoned for retail warehousing with direct access to the internal road network serving Manor West Retail Park. This area is planned for increased retail warehousing and this internal road network has been developed to accommodate the expansion of retail warehousing at this location. The internal road network serving the retail park links with the public road network via established roundabouts designed to accommodate traffic into and out of the retail park. The applicant's assessment and the Roads Engineer's assessment clearly demonstrate that the increase in traffic volumes and the impact on junctions with the public road network would not result in significant traffic congestion or significant adverse interference with public road users. These conclusions are based upon reasonable assumptions. The appellant's submission does not warrant a review of these conclusions. I, thus, do not accept that the proposed development would have any significant adverse impacts for the public road network in the vicinity. Furthermore, I am satisfied to conclude that the applicant's initial traffic assessment, together with the further information and clarification, allows one to reasonably conclude that the traffic impact was adequately assessed in this instance.

## 7.5. Flood Risk Assessment

- 7.5.1 The applicant submitted a Flood Risk Assessment as part of the application details. This followed Flood Risk Management Guidelines, identifying the flood risk on the site and following up with an assessment of this risk. The main source of potential flooding of this site is fluvial flooding from adjoining watercourses. This assessment demonstrated the various flood zones applicable to the site.
- 7.5.2 It is evident that all of the proposed structures would be sited on lands within Flood Zone C and that a small section of surface parking would lie within areas designated Flood Zone A and B. As the structures lie within an area designated Flood Zone C, which is considered appropriate for all types of development, a justification test is not required. There is clearly no likely potential adverse impact on the proposed buildings arising from flood risk.
- 7.5.3 The part of the car park within Flood Zones A and B are relevant in the context of the reduction of flood plain storage arising from the raising of the ground level at that location. The applicant proposes to address the displacement of this existing flood plain storage area through mitigation by lowering a section of the site within the flood plain to the south of the development. Excavated material would be deposited within the eastern part of the site to the south of the car park. I also note that the proposal seeks to address potential off-site impacts arising from storm water runoff by providing a storm water attenuation system under the car park to prevent an increase in runoff to the river.
- 7.5.4 The above proposals are seen to adequately respond to any potential flood risk within and beyond this site. I do not consider that there would be increased adverse impacts for adjoining properties from fluvial flooding arising from the proposed development due to the manner in which it is proposed to be developed.

## 7.6. Archaeological Impact

7.6.1 The proposed development would be sited on lands to the north of Recorded Monument Ke029-165, an enclosure. An archaeological assessment was requested by the planning authority and an archaeological impact assessment report was submitted as part of the applicant's further information. The planning authority was satisfied with the assessment made and Condition 10 of the planning authority's decision set out archaeological requirements to be met that included the provision and retention of a buffer zone between the proposed development and the recorded monument. Further to this, the Board requested a submission from the Department of Culture, Heritage and the Gaeltacht and correspondence was received by the Board on 11<sup>th</sup> November, 2019. The Department requested the retention of Condition 10 of the planning authority's decision.

7.6.2 It can be seen from the above that detailed considerations have been given to the potential archaeological impact of the proposed development and that no serious concerns arise for the integrity of the monument with the provision of a suitable buffer. It is reasonable to conclude that the proposed development would not likely have any significant archaeological impact.

## 8.0 **Recommendation**

8.1. I recommend that permission is granted in accordance with the following reasons, considerations and conditions.

## 9.0 **Reasons and Considerations**

Having regard to the provisions of *Guidelines for Planning Authorities Retail Planning* (April 2012), to the zoning provisions for this site and to the provisions for retail warehousing set out in the Tralee Town Development Plan, to the established retail park immediately adjoining the site and the linkage of the retail park's internal road network to the site, and to the mitigation measures proposed, it is considered that the proposed development would be compatible with development plan provisions,

would not endanger public safety by reason of traffic hazard, would not pose a significant flood risk, and would otherwise 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 to the planning authority on the 29<sup>th</sup> March 2019 and 12<sup>th</sup> July 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.

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

2. The range of goods to be sold in the proposed development shall be limited solely to “bulky goods” as defined in Annex 1 of the Guidelines for Planning Authorities Retail Planning issued by the Department of the Environment, Community and Local Government in April, 2012.

**Reason:** In order to prevent an adverse impact on the viability and vitality of the area and so as not to undermine the retail hierarchy of the area.

3. 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 visual amenity

4. The applicant or developer shall enter into water and waste water connection agreements with Irish Water, prior to commencement of development.

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

5. 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.

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

6. Noise levels at the operational stage shall not exceed 55 dB(A) rated sound level, as measured at any point along the boundary of the site. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

7. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

8. (a) A 20 metre buffer zone measured from the outermost edge of the uncovered external ditch of Recorded Monument Ke029-165 shall be established on the ground and securely fenced prior to the commencement of construction works. No excavation, landscaping, storage of materials or traffic of construction machinery shall take place within the buffer zone. Proof of the establishment and fencing of this buffer zone shall be submitted to the planning authority.



(b) The limit of the buffer zone shall be planted with shallow rooting native species on completion of the proposed works.

(c) The area of the archaeological monument and buffer zone shall be retained in its current state as specified in the Management Plan received by the planning authority on 29<sup>th</sup> March 2019.

(d) No further development shall be permitted within the area of the Recorded Monument and the surrounding buffer zone.

**Reason:** In the interest of the preservation of archaeological heritage.

9. No signage, advertisement or advertisement structure, other than those shown on the drawings submitted with the application, shall be erected or displayed on the buildings or within the curtilage of the site unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

10. The construction of the development shall be managed in accordance with a Construction 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 and vibration management measures, maintenance of boundaries to be retained, and off-site disposal of construction waste.

**Reason:** In the interests of public safety and residential amenity.

11. 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.

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Kevin Moore  
Senior Planning Inspector

5<sup>th</sup> December 2019