



An  
Bord  
Pleanála

## Inspector's Report ABP-307322-20

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<b>Development</b>	Retention and completion of a ground floor extension to an existing supermarket.
<b>Location</b>	Supervalu, Loughrea Shopping Centre, Loughrea, Co. Galway.
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	191910
<b>Applicant(s)</b>	Greenstream ULC
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	First Party vs condition
<b>Appellant(s)</b>	Greenstream ULC
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22/07/20
<b>Inspector</b>	Adrian Ormsby

## 1.0 Site Location and Description

- 1.1. The site is located within the existing Loughrea Shopping Centre development approximately 1km to north west of Loughrea town centre. The shopping centre is bound by the R446 Regional Road from Loughrea to Craughwell to the south, the Athenry Road to the west, an access road to the north and the large area of car parking for the centre to the east.
- 1.2. The Shopping Centre appears to be anchored by two large retail operators, 'Aldi' to the south and 'SuperValu' to the North.
- 1.3. The application site has a stated site area of 0.36 hectares approx. and includes the SuperValu unit and a small unit directly adjoining the SuperValu with its own door to the public plaza area.
- 1.4. On the day of my site inspection it was noted a new internal opening has been breached between the SuperValu and the smaller unit to the south. This area was being used for the storage of trollies for the supermarket.
- 1.5. A retail unit 'Born' is located between the Aldi and the unit to which it is proposed to incorporate into the SuperValu site.

## 2.0 Proposed Development

- 2.1. This application is for retention and completion of works to facilitate the extension of the SuperValu into the area of an adjoining retail unit.
- 2.2. The extended area is 64 sq.m and there are no external works proposed.
- 2.3. The area will be accessed externally from an existing door to the plaza area and carpark. There will be two internal links providing access to main SuperValu entrance lobby area and the main supermarket area.
- 2.4. In response to a request for Further Information the applicant clarified the townland of the site, the proposed use for the retail sale of comparison goods and confirmed the structure was constructed in accordance with pl ref no 08/2805 with subsequent internal amendments as exempted development under 4 (1) (h) of the Act. The response to Further Information also submitted a Floorspace Drawing and detailed the following existing calculations-

- Gross Supermarket Floorspace - 2,822 sq.m
- Storage - 703 sq.m
- Net Convenience Retail Space - 1,426 sq.m
- Net Comparison Retail Space - 179 sq.m

The total existing Net Retail Floorspace is therefore 1,605 sq.m.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission on the 19/03/20, subject to four conditions including the following:

**C.1 and 2** standard planning conditions,

**C.3** The proposed development shall be for comparison retail sales space and storage only and shall not be used for the sale of comparison goods which would normally be found in town centre locations. This excludes the sale of clothing, footwear, food, books/music/toys, small goods, all service activities including personal services, financial services. In the event of confusion regarding the appropriateness of a proposed retail activity, the written confirmation of the Planning Authority to the proposed retail activity at this location shall be obtained prior to the commencement of trading of that activity on site.

Reason: To control the amount of convenience and comparison goods floor space and to regulate the potential impact on existing retail activities in the established town centre.

**C.4** Development Contribution

## 4.0 Planning Authority Reports

### 4.1. Planning Reports

- 4.1.1. Following an initial request for further information the Planner's report raised no major concerns over the development subject to the attachment of condition 3. The report recommended that permission be granted subject to conditions which is consistent with the Notification of Decision to Grant Permission.
- 4.1.2. Condition 3 appears to have been applied on the basis of parent permission 08/2505 (the overall shopping centre) where a similar condition was applied. The Planners report states this *"condition is applicable having regard to the development as advertised under the public notices and the previous planning history on the site"*.

### 4.2. Other Technical Reports

- None

### 4.3. Prescribed Bodies

- None

### 4.4. Third Party Observations

- None

## 5.0 Planning History

- 17/889- the further subdivision of the original unit 2 for the incorporation and extension of the Supervalu retail use at unit 1 for department retail use ancillary to the use of unit 1 (e.g. bakery & product retail) including associated shopfront, signage and ancillary storage at the Loughrea Shopping Centre (pl. ref. no. 08/2505). Permission **Refused** (09/08/17) on the grounds of retail impact and development would undermine vitality and viability of the town centre.

- 17/840- The subdivision of unit 2 and construction of a mezzanine level and use of the new unit for electrical goods retail and ancillary storage, including associated shopfront and signage (548sqm) at the Loughrea Shopping Centre. Application **withdrawn**
- 09/42, **PL 07.233364** - permission for internal alterations to unit 1 (previously granted under Pl. Ref. No. 07/2139 and 08/2505). **Grant** (08/06/09), ABP removed 15 conditions and amended 1 condition relating to development contributions.

Condition 1, 3 and 4 are standard conditions

Condition 2 states- *“Unit 1 shall be used for supermarket purposes only and the floor space shall be divided between convenience and comparison goods as follows: 1711 square metres of convenience retail sales space/ balance for comparison retail sales space and storage. The remainder of the floorspace shall be used for the sale of bulky goods only and shall not be used for the sale of comparison goods which would normally be found in town centre locations. This excludes the sale of clothing, footwear, food, books/music/toys, small goods, all service activities including personal services, financial services. The retailing of white goods, furniture, carpets, electronics and bulky and other retail warehousing type retail activities will be considered as suitable retail activity at this location. In the event of confusion regarding the appropriateness of a proposed retail activity, the written confirmation of the Planning Authority to the proposed retail activity at this location shall be obtained prior to the commencement of trading of that activity on site.*

*Reason: To control the amount of convenience and comparison goods floor space and to regulate the potential impact on existing retail activities in the established town centre.”*

Condition 5 was development contribution.

- 08/2505- for the construction of a new retail/commercial development comprising two buildings. The larger building will consist of 5 units. Unit 01 to be a supermarket, net total retail selling space 2408sqm. **Grant** of permission (11/11/2008), Condition 2 states- *“Unit 1 shall be used for supermarket*

*purposes only and the floor space shall be divided between convenience and comparison goods as follows: 1711 square metres of convenience retail sales space/ balance for comparison retail sales space and storage. The remainder of the floorspace shall be used for the sale of bulky goods only and shall not be used for the sale of comparison goods which would normally be found in town centre locations. This excludes the sale of clothing, footwear, food, books/music/toys, small goods, all service activities including personal services, financial services. The retailing of white goods, furniture, carpets, electronics and bulky and other retail warehousing type retail activities will be considered as suitable retail activity at this location. In the event of confusion regarding the appropriateness of a proposed retail activity, the written confirmation of the Planning Authority to the proposed retail activity at this location shall be obtained prior to the commencement of trading of that activity on site.*

*Reason: To control the amount of convenience and comparison goods floor space and to regulate the potential impact on existing retail activities in the established town centre.”*

- 07/2139- construction of a new retail / commercial development incorporating a supermarket and other retail units. **Grant** of permission (01/10/07), Condition 2 stated- Unit 1\* shall be *“used for supermarket purposes only and the floor space shall be divided between convenience and comparison goods as follows: 2298 square metres of convenience retail sales space/ balance for comparison retail sales space and storage. The remainder of the floorspace shall be used for the sale of bulky goods only and shall not be used for the sale of comparison goods which would normally be found in town centre locations. This excludes the sale of clothing, footwear, food, books/music/toys, small goods, all service activities including personal services, financial services. The retailing of white goods, furniture, carpets, electronics and bulky and other retail warehousing type retail activities will be considered as suitable retail activity at this location. In the event of confusion regarding the appropriateness of a proposed retail activity, the written confirmation of the Planning Authority to the proposed retail activity at this*

*location shall be obtained prior to the commencement of trading of that activity on site.*

*Reason: To control the amount of convenience and comparison goods floor space and to regulate the potential impact on existing retail activities in the established town centre.”*

*\*Note- The location and size of Unit 1 in this permission differs to Unit 1 in subsequent applications.*

## 6.0 Policy Context

### 6.1. Local Policy

The Galway County Development Plan 2015-2021 and Loughrea Local Area Plan 2012-2018 refer. The following objectives are particularly relevant-

#### **Development Plan-**

Objective R2 – Retail Hierarchy

*Actively promote a hierarchy of retail functions in the County that complements the settlement hierarchy of this plan:*

- (a) To retain and further develop the higher order shopping functions in Tuam, Ballinasloe and Loughrea as the main retailing centres in the County;*
- (b) To encourage appropriate retail provision in the other key towns of the County as per the settlement hierarchy in order for them to realise their potential;*
- (c) To retain and further develop local shopping facilities in other towns, villages and settlements in the County and encourage appropriate new retail development in centrally located sites.*

#### **Local Area Plan-**

Landuse Zoning Objective LU2 – Commercial and Mixed Use (C2)

*Promote the development of commercial and complementary mixed uses on suitable lands that can provide focal points for the provision of services to surrounding neighbourhoods/areas and opportunities for commercial enterprises, retail developments and employment creation and which do not undermine the vitality and viability of the town centre.*

The Landuse Zoning Matrix details that-

- Shops Comparison are permitted in Principle,
- Shops Convenience are open for Consideration
- Shops– Large Scale Convenience/ Comparison Centre are open for Consideration

Objective ED3 – Retail Development

*Support the development of appropriate types, scales and patterns of retail development in suitable locations within the town and high quality designs that:*

- *Support the vitality and viability of the existing town centre and associated main streets and/or do not undermine their vitality and viability.*
- *Protect investment in strategic roads and infrastructure and that are easily accessible, Loughrea Local Area Plan 2012 Page 26 particularly in terms of public transport.*
- *Comply with the provisions of the Retail Planning Guidelines 2012, including the application of a sequential approach to retail development, the policies and objectives of any future Retail Strategy for Galway that may be adopted in the lifetime of the Local Area Plan and the guidance in the Retail Design Manual 2012 (and any updated/superseding documents).*
- *Contribute to the creation of a high quality retail environment.*

*The Town Centre (C1) zoning will remain the primary focus for the location of new retail development and on Commercial/Mixed Use (C2) zoning*



*where appropriate. The Planning Authority will ensure that the location of future retail development is consistent with the key policy principles and order of priority as set out in the Retail Planning Guidelines 2012 (and any updated/superseding document) and will require Retail Impact Assessments, including details of the sequential approach, and, where considered necessary, Transport Impact Assessments and/or Design Statements, for retail developments in accordance with the Retail Planning Guidelines, the Retail Design Manual and DM Guideline ED1 and ED2.*

## **6.2. Ministerial Guidelines**

Guidelines for Planning Authorities Retail Planning 2012. Annex 1 provides a Glossary of Terms including-

### A 1.1 Types of Retail Floorspace

Net Retail Floorspace – *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.*

### A 1.2 Types of Retail Goods

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 (Further defined in guidelines)

### A 1.3 Types of Retailing

Supermarket                      Single level, self service store selling mainly food, with a net retail floorspace of less than 2,500 M2.

## 6.3. **Natural Heritage Designations**

The Lough Rea SAC (000304) and the Lough Rea SPA (004134) is approximately 550m south of the site.

## 6.4. **EIA Screening**

Having regard to the limited nature and scale of the proposed development it is considered that 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.

## 7.0 **The Appeal**

### 7.1. **Grounds of Appeal**

A first-party appeal has been lodged only against condition no.3, which was attached to the Planning Authority's notification of a decision to grant planning permission.

The following is a summary of the main issues raised:

- The proposed development is for an extension to unit 1 to accommodate comparison retail sales floorspace which is entirely ancillary to and in keeping with the wider permitted use of Unit 1.
- Unit 1 is permitted to sell convenience goods as well as comparison goods
- The proposed extension with existing comparison space does not result in limits set down by conditions of existing permissions being exceeded.

- Condition 3 improperly limits the use of the subject area
- The applicants were 'abundantly clear' the proposed extension was for retail sale of comparison goods (i.e. non bulky comparison goods)
- The applicant intends to utilise the area for the sale of pharmaceutical products i.e. an instore pharmacy. This is ancillary to and in keeping with the permitted use of the supermarket as per 08/2505.
- The proposed extension area will be accessible from the existing shop floor.
- Pharmacies can be found in a host of retail settings i.e. supermarkets and in edge of centre or out of centre locations.
- The proposed use for sale of comparison retail goods would not unduly impact the town centre.

## 7.2. **Planning Authority Response**

- No response received to the grounds of appeal.

## 7.3. **Observations**

- none

## 8.0 **Assessment**

- 8.1. This is a first-party appeal against Condition No.3 attached to the Planning Authority's decision to grant permission. Having regard to the nature and scale of the proposed development to be retained and completed and the nature of condition no.3, it is considered that the determination by the Board of the application, as if it had been made to it in the first instance would not be warranted. Therefore, the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act 2000, as amended.
- 8.2. Condition No. 3 restricts the use of the extension to be retained for comparison retail sales space and storage only and shall not be used for the sale of comparison goods which would normally be found in town centre locations. The condition goes on to

exclude the sale of clothing, footwear, food, books/music/toys, small goods, all service activities including personal services, financial services.

- 8.3. Based on the information submitted with the application and the appeal it is clear the applicants have applied to retain and complete an extension of 64 sq.m to the existing permitted supermarket. The area to be retained is being taken from the unit directly adjoining to the South which appears to be restricted to bulky goods only as per 08/2505.
- 8.4. The applicants propose using the extended space ancillary to the supermarket and have indicated in the appeal for the purposes of 'an instore pharmacy'.
- 8.5. Planning reference number 08/2505 permitted the development of the overall Loughrea Shopping Centre in two blocks. The first block was to house 5 units of which unit 1 appears to be the current application site. Condition 2 of this permission states unit 1 shall be used for supermarket purposes only with 1711 sq.m for convenience retail sales space and the balance for comparison retail sales space and storage.
- 8.6. Planning reference 09/42 permitted internal alterations to unit 1. Condition 2 of this permission (as retained by the Board under PL.07.233364) set out the same restrictions as detailed above for Condition 2 of 08/2505. It is noted that the site boundary for this application appears to generally align with the site boundary of 08/2505. In this regard it is considered that this may explain why the same condition was attached for the overall development when 09/42 appears to be an application for internal alterations to unit 1 only.
- 8.7. My interpretation of Condition 2 of planning permission 08/2505 and 09/42 allows the balance of the floor space for Unit 1 to be used for comparison retail sales space and storage and there does not appear to be any cap or restriction on this space within the footprint of the development. It is the floorspace of the other units in the overall development permitted under 08/2505 that are restricted to the sale of bulky goods only and excludes comparison goods which would normally be found in town centre locations.
- 8.8. It is clear from the development description that the applicants have applied for an extension to the existing supermarket and not an independent unit. Based on the information submitted with the application through Further Information the proposed

'net convenience retail space' will remain 1,426 sq.m and the proposed 'net comparison retail space' will be c.243 sq.m (179 sq.m + 64sq.m of extension area). As such both proposed floor spaces appear to remain within the limitation of condition 2 of planning reference numbers 08/2505 and 09/42.

Accordingly, I concur with the arguments made by the appellant that condition 3 would limit the use of the area from that applied for and that which would reasonably be expected from a Supermarket. The small scale of the extension, ancillary to the existing supermarket, would be insignificant in the context of the overall floor space as set out in condition 2 of 08/2505 and 09/42. However, a condition should be attached in order to manage the overall use of the supermarket as regards to comparison retail sales space in the interest of the vitality and viability of the town centre as follows-

The extension to be retained and the existing supermarket shall be used and operated for supermarket purposes only and the floor space shall be divided between convenience and comparison goods as follows:

- convenience retail sales space shall not exceed 1,711 sq.m (as per parent permission)
- comparison retail sales space shall not exceed 243 sq.m (as applied for through further information)
- The extension area and the existing supermarket shall be used and operated as a single retail unit, and no subdivision or change of use shall take place without a prior grant of planning permission.

## 9.0 Recommendation

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the Planning Authority under subsection (1) of section 139 of the Planning and Development Act, 2000 (as amended), to **AMEND** condition number 3 as follows-

3. The extension to be retained and the existing supermarket shall be used and operated for supermarket purposes only and the overall floor space of the supermarket shall be divided between convenience and comparison goods as follows:

- a. Convenience retail sales space shall not exceed 1,711 sq.m
- b. Comparison retail sales space shall not exceed 243 sq.m.
- c. The extension area and the existing supermarket shall be used and operated as a single retail unit, and no subdivision or change of use shall take place without a prior grant of planning permission.

Reason: To manage the layout and scale of the development in the interest of protecting the vitality and viability of the town centre.

## 10.0 Reasons and Considerations

Having regard to the nature and scale of the development proposed for retention and completion, the planning history of the site and in particular the conditions attached to 08/2505 and 09/42, the provisions of the Galway County Development Plan 2015-2021, the Loughrea Local Area Plan 2012-2018 and the Guidelines for Planning Authorities Retail Planning 2012, it was considered that condition number 3 as attached by the Planning Authority was unwarranted and should be amended as set out above in order to manage the layout and scale of the development in the interest of protecting the vitality and viability of Loughrea's town centre.

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Adrian Ormsby  
Planning Inspector

26<sup>th</sup> of August 2020