



An
Bord
Pleanála

Inspector's Report

ABP-308212-20

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| Development | Change of use of part of retail warehouse to a local shop, change of use from retail warehouse to a wholesale distribution warehouse. |
| Location | Unit 5 , Eastpoint Retail Park, Ballysimon Road, Limerick |
| Planning Authority | Limerick City and County Council |
| Planning Authority Reg. Ref. | 20589 |
| Applicant(s) | Wilsa Polish Goods. |
| Type of Application | Retention |
| Planning Authority Decision | Refuse permission to retain |
| Type of Appeal | First party v refusal |
| Appellant(s) | Wilsa Polish Goods. |
| Observer(s) | None. |
| Date of Site Inspection | 22 October & 27 th November 2020. |
| Inspector | Bríd Maxwell |

1.0 Site Location and Description

- 1.1. The appeal relates to Unit 5 within the Eastpoint Retail Park at Ballysimon Road, approximately 3km from Limerick City Centre and circa 800m to the west of the M7. The entrance to the Eastpoint Retail Park is circa 150m west of the roundabout with Garryglass Road and the retail park also has frontage onto the Old Ballysimon Road to the south.
- 1.2. The appeal unit is one of six retail warehouse units facing onto the Ballysimon Road with a large tarmac surface car park fronting the building. The unit extends to 839sq.m in total and consists of a rectangular shaped double height single level structure. The unit has been operating for some time as a wholesale distribution warehouse for the sale and distribution of Polish goods, and also is used as a wholesale shop and shop. I note that the floor plan as depicted in submitted drawings does not accurately represent the observed operation of the unit as the shop and retail /wholesale occupy the same floorspace.
- 1.3. Other uses within the Eastpoint retail park include a tile showroom, furniture showroom, pet supplies and used car dealership. Unit 6 as depicted on the submitted plans adjacent to the northeast of the appeal unit has been subdivided and is partly vacant and partly in use as a HSE clinic. The immediate area is characterised by mixed development principally industrial / commercial uses with the Garryglass Industrial Estate to the east, the Delta Retail Park and Eastway Business Park to the south and south west and the Eastlink Business Park is to the north of the Ballysimon Road R528 to the northwest.

2.0 Proposed Development

- 2.1. The application as set out involves permission for retention of change of use of part of retail warehouse to a local shop (40 sq.m)¹ b) retention of change of use from Retail Warehouse to a wholesale distribution warehouse (380.56 sq.m) and c)

¹ As outlined at 1.1 on the date of my site visit, I observed the operation at the premises and noted that area indicated on submitted plans as Retail Area B and Retail Warehouse A operate as one.

retention of external identification signage. The remaining 418.53 sq.m will remain in retail warehouse use as approved.

3.0 Planning Authority Decision

3.1. Decision

By order dated 25th August 2020 Limerick City and County Council issued notification of its decision to refuse permission for the following reason:

“The development as proposed for retention would materially contravene condition no 26 attached to planning register reference number 05/1452. Overall, the development for which retention is sought including the shop element would set an undesirable precedent for similar type development in the vicinity of the site, which would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner’s report notes that a condition of the parent permission limited use to retail warehousing for the sale of bulky household goods or similar. To permit the development would set an undesirable precedent for supermarket type development and undermine the primacy of Limerick City Centre. Less than 1km from the site and closer to the city centre there is a retail park with significant capacity issues in relation to parking and generally excessive levels of comparison retail outside of the city. The local shop element while open for consideration in the recent LAP would contravene the condition of the parent permission and the intended for the role of this retail park. The wholesale distribution is analogous to a retail warehousing use however the retail warehousing use is not typical of the bulky goods.

3.2.2. Other Technical Reports

Roads report - Further information required regarding traffic assessment, sightlines, parking, public lighting and surface water disposal.

Mid West Roads Design Office – No observations.

Fire and Building Control – No objection subject to standard conditions.

3.3. Prescribed Bodies

Transport Infrastructure Ireland submissions - no observations.

3.4. Third Party Observations

No submissions

4.0 Planning History

20/439 Invalid

07/73124 Refusal 11th December 2007 of permission for change of use from retail warehousing to retail for the following reason:

“The proposed development would materially contravene the zoning of the site which restricts the use of the overall development to the sale of bulky household goods. Further the proposed development would contravene materially condition No 26 of Planning Ref 05/1452. Overall, the proposed development would set a precedent for similar such inappropriate development in the area and would be contrary to the proper planning and sustainable development of the area.”

Adjacent units

19/872 Unit 6. Permission granted for subdivision of portion of the existing ground floor retail warehouse to form a new separate warehouse unit of 753sq.m to include ancillary trade counter sales area of 70 sq.m together with alterations to the existing entrance doors, formation of new fire escape door to side and new external signage.

18/1271 Permission granted for subdivision of portion of existing ground floor retail area and existing first floor retail area to form a new separate two storey retail unit/

Provision of new ground floor entrance to new retail unit. New external signage, (unit 6) **ABP 304272-19** Contribution Appeal in respect of 18/1271.

17/648 Permission granted for extension of mezzanine floor are for retail use and new external signage (unit no 4).

16/971 Permission for change of use from existing retail warehousing to commercial gymnasium and (b) the erection of an additional 449m² first floor mezzanine level and additional signage together with all associated site development works. (Unit 1)

05/1452 Permission granted 3 March 2006 for construction of retail warehousing buildings comprising of 6 no units with customer car parking to front new vehicular access from N24 and associated site works with loading bays, yards, staff parking, security booth and barriers to rear at Ballysimon Road Garryglass Ballysimon.

Condition 26 "The retail warehouse shall be used for the sale of bulky household goods or similar only and details of the first occupants of the units shall be agreed in writing with the Planning Authority prior to the commencement of development."

5.0 Policy Context

5.1. National Policy

5.1 Retail Planning Guidelines for Planning Authorities Department of Environment Community and Local Government. April 2012.

5.1.1 The Retail Planning Guidelines 2012 forms the basis of the national planning policy framework for developments of a retail nature. The guidelines have 5 key policy objectives;

- Ensuring that retail development is plan led;
- Promoting city/town centre vitality through a sequential approach to development.
- Securing competitiveness in the retail sector by actively enabling good quality development proposals to come forward in suitable locations.
- Facilitating a shift towards increased access to retailing by public transport, cycling and walking in accordance with the Smarter Travel Strategy; and
- Delivering quality urban design outcomes.

5.1.2 At 4.11.2 Retail Parks and Retail Warehouses

A retail park comprise an agglomeration of retail warehouses grouped around a common car park selling mainly bulky household goods, requiring extensive areas of showroom space, often with minimal storage requirements.

There is an expectation that most of the goods purchased can be transported off-site by the customer. Home delivery services may also be available.

There are benefits to be gained in grouping retail warehouses in retail parks so that the number of trips by car are minimised. The parks are generally located at out-of-centre locations to facilitate access by car. These locations may also provide relief to congested city or town centres.

However, because the number of retail parks has grown substantially over the past decade, reaching saturation point in some areas, leading to vacancy in some cases, and also because of the blurring of the definition of the goods permitted to be sold in these parks, it is appropriate to reassess the impact of such developments. Due to the fact that the range of goods being sold from retail warehouse parks often includes non-bulky durables, there is potential for a detrimental impact on city/town centres as indicated by the increasing numbers of vacant units in urban centres where retail parks exist on the periphery. It also needs to be recognised that many bulky goods stores such as furniture retailers can and are accommodated in city and town centres.

For these reasons there should, in general, be a presumption against further development of out-of-town retail parks. However, the development plan and any relevant retail strategies should identify whether or not there is a need for the provision of additional retail warehouses in the light of the issues set out above. If a need for additional bulky format retailing is identified by the development plan on the basis of evidence from a relevant retail strategies including joint/multi-authority retail strategies, the size and potential location of the additional units should also be specified. In addition, in the interests of clarity, the development plan should clearly identify the type of bulky household goods which may be sold in these units, taking account of the requirements below.

Types of Goods sold

To minimise potential adverse impacts on central areas, it is important that the range of goods sold in both existing and any future retail parks is tightly controlled and

limited to truly bulky household goods or goods which are not portable by customers travelling by foot, cycle, or bus. See Annex 1 for definitions of bulky goods.

While it is acknowledged that there are ancillary items associated with an otherwise bulky good, e.g., computer software, printing paper, it is recommended that the retail floorspace devoted to such ancillary products should not exceed 20% of the total net retail floorspace of the relevant retail unit and such space to be clearly delineated on the planning application drawings to facilitate future monitoring and enforcement.

Planning authorities should also closely monitor compliance with existing permissions for retail warehouses to ensure that the goods being sold are consistent with the definition of non-portable bulky goods in order to promote and protect the vitality and viability of city and town centres. Enforcement action must be taken where retailing is not in compliance with the requirements above.

5.1.3 At 4.11.6 Local Retail Units. *“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.”*

5.1.4 Annex 1 Provides a Glossary of terms where

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

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.

5.2. **Retail Strategy for the Mid West Region 2010-2016 as extended.**

5.2.1 The central key objective arising from the Retail Strategy is to support the "town centre first" approach in the context of the retail hierarchy, and to promote the vitality and viability of existing centres. With regard to retail centres in the Limerick metropolitan area satisfying the daily needs of a local catchment population through the provision of main food shopping outlets, the strategy advises that these should be supported and reinvigorated where necessary.

5.3. **Development Plan**

5.3.1 The Limerick County Development Plan 2010-2016 (as extended) and Castletroy Local Area Plan 2019-2025 refer.

The site is zoned 'Industrial', The relevant objective seeks "to facilitate general industry bulk retailing/ transport/logistics type uses, thereby facilitating important employment opportunities within the area.

In note in reference to the land use matrix within Appendix 1 of the Local Area Plan local shop is 'open for consideration', retail warehouse is 'open for consideration' while wholesale / warehouse is 'generally permitted'.

Castletroy is identified as a Tier 2 Level 2 centre within the retail hierarchy for the Limerick Metropolitan Area. Policy ED 13 of the County Development Plan seeks to maintain the role and scale of the district centres as primarily convenience shopping centres capable of supporting a main food shopping trip.

5.4. **Natural Heritage Designations**

None

5.5. **EIA Screening**

Having regard to the nature and scale of the development there is no real likelihood of significant effects on the environment arising from the proposed development. The

need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The first party appeal is submitted by Manahan Planners on behalf of the applicant. Grounds of appeal are summarised as follows:

- The unit is divided into three parts. The rear half of the building and yard in use as a wholesale distribution warehouse and yard. The central unit in use as retail warehouse while the front is in use as a local shop.
- Application proposes to retain the change of use of part of the premises to wholesale distribution warehouse. This use is generally permitted within the zoning objective. Local shop is open for consideration.
- Noting the reason for refusal of previous application 07/3124 the proposal is no longer a material contravention having regard to the fact that wholesale /warehouse and local shop retail are permissible uses within the Castletroy Local Area Plan 2019-2025. Current permitted use (retail warehouse) is “open for consideration” on industrial zoned land while wholesale /warehouse is “generally permitted” under the zoning objective. Local Shop is “open for consideration”.
- Current service provides benefits to the large local Polish community living within Castletroy and the wider Limerick area by providing domestic Polish goods to the community.
- The use as a distribution warehouse (a use which is generally permitted) is an appropriate use having regard to the nature of the building with an extensive rear yard and to the zoning objective for the area. The business serves a wide area of Munster.
- A form of retail use – retail warehousing has been approved for the entirety of this premises. The addition of a small quantum of another form of retailing confined to the front of the premises only in association with the existing

approved use of the building would be consistent with the provisions of the Development Plan.

- The existing retail warehouse use in the premises can continue to operate as previously and the two new uses proposed to be retained are appropriate ancillary uses.
- Parent permission dates from 2005. the use and operation of the units needs to be open to review in light of changing circumstances.
- Nature of the use is outlined. Household goods are sourced in Poland and arrive in trucks to the yard and are stored internally in the warehouse where they are broken down into smaller quantities and loaded onto vans for distribution Polish shops throughout the country. A portion of the goods made available to carry out to Polish people living in Limerick where ample parking is provided in the car park.
- The distribution element of the use is more suited to an industrial warehouse type location rather than a typical high street.
- The main part of the unit remains in retail warehouse use with small ancillary part operating as a local shop.
- Recent court cases and the retail planning guidelines have clarified that bulky goods does not involve only goods that are of themselves bulky in size but can consist of collections of items which are themselves small in size but when sold in bulk fall within the definition of bulky goods.
- The local shop element is not a supermarket convenience store as it is not a stand-alone premise but rather is ancillary to the main use within this building.
- Disagree that the proposal would set an undesirable precedent for supermarket development and undermine the primacy of Limerick City Centre. The proposal is a specific and restricted form of retail catering to a particular clientele and not necessarily likely to be repeated elsewhere in the city. The idea of precedent can be guarded against by conditioning the grant of permission to this specific use.

- 15-year-old condition should not be taken to rule out an alternative as each application which should be judged on its merits based on the circumstances in place at the time of the application having regard to the provisions of the development plan and other planning guidance.
- In light of the growth of online retailing accelerated in the current COVID-19 situation retail warehouse parks contain a greater floor area of development than can be filled with the demand for retail warehousing at present.
- Roughly 50% of the floor area is devoted to distribution warehouse which is permissible under the provisions of the development plan. This is the largest element of the business. The current application seeks to retain this use which is permissible under the provisions of the development plan.
- The Council planner incorrectly focussed on the convenience store which is minor and ancillary in the context of the total application.
- Financial turnover of the business is to a significant extent driven from the wholesale distribution element. If this business was to be closed down as a result of enforcement by the council it would have a serious knock-on effect for the other shops and up to 30 employees who rely on supplies and employment by this business.
- Food supply business is considered an essential service during COVID-19 lockdown.
- Proposal is an appropriate development response to the circumstance of this building and retail park. Circumstances have changed significantly in the intervening years at this established industrial zoned site.

6.2. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

7.0 Assessment

7.1. Having inspected the site and examined the associated file documentation the following are the main issues, in my opinion, in relation to the case.

Adequacy of the application

Zoning Policy

Retail Planning Guidelines / Retail Impact

Appropriate Assessment

8.2 Adequacy of the application

8.2.1 I note that as outlined above on the date of site visit, I observed the operation at the premises and noted that the area indicated on submitted plans as Retail Area B and Retail Warehouse A function as one, that is the combined area A and B operates as a shop retail and wholesale. The shop sells a complete range of goods including non-perishables, frozen foods, fresh fruit and vegetables, bakery and includes a delicatessen counter. I also note that the submitted floor plans do not accord with the submitted description outlined in written submissions in that the floor plans suggest that the wholesale distribution warehousing is as originally approved. Thus, questions arise as to the validity of the application as the details and description of development proposed for retention provided does not match the observed operation on the site and there are significant anomalies within the application documentation. However, I propose to assess the development as outlined on its merit.

8.3 Principle of development - Zoning Policy and Planning History

8.3.1 I note that the site is zoned industrial within the Castletroy Local Area Plan 2019-2025. The relevant objective seeks to facilitate general industry bulk retailing / transport / logistics type uses, thereby facilitating important employment opportunities within the area. I note that the zoning matrix within the plan provides that local shops are 'open for consideration', wholesale warehouse is 'generally permitted' while retail warehousing is 'open for consideration'. On this basis I would concur that a material contravention of the development plan does not arise in

respect of the development. As regards the question of the planning history on the site and Limerick City and County Council's decision to refuse permission on the basis of a material contravention of condition 26 of planning register reference 05/1452 I am inclined to concur with the first part appellant that having regard to the time lapse since the original grant of permission (03/03/2006), the fact that the zoning policy does not now explicitly prohibit the types of use and in light of the significant changes in the retail sector and change in national and local policy in the intervening period it is appropriate that the proposal may be considered in the light of the current policy circumstances now pertaining.

8.4 Retail Planning Guidelines – Retail impact.

- 8.4.1 As noted in the Retail Planning Guidelines, Department of the Environment Community and Local Government, 2012, there are five key policy objectives to be progressed in planning for and addressing the development requirements of the retail sector. These objectives relate to the needs for plan led development (retail strategy), a focus on city and town centres for the majority of future development, a proactive approach to enabling city and town centre renewal and development and a high-quality approach to urban design. The guidelines set out a clear presumption in favour of retail development within a central location and the sequential approach to development is supported. The retail planning guidelines generally caution against out-of-town retailing of goods other than bulky goods necessitating car transport.
- 8.4.2 The proposal involves the retention of change of use of one unit in a permitted retail warehouse development located on the outskirts of Limerick City to a combined wholesale and retail outlet and wholesale distribution warehouse. As outlined above the submitted floor plans suggest a limited floor area assigned to retail use however no information is provided in terms of how this area might be separated from the remaining wholesale area and in reality, on the ground there is no such differentiation. I would have serious concerns that the development proposed for retention by itself and by the precedent it would set to change the nature of the development originally granted at this location from retail warehousing to a retail development selling a wide range of convenience goods. The combined retail

wholesale area within the building extends to approximately 412sq.m which represents a not insignificant level of convenience floorspace. I note for reference the trigger 100sq.m net floorspace in respect of the requirement for sequential test in retail proposals associated with motor fuel stations as set out (4.11.19) within the Retail Planning Guidelines for Planning Authorities, Department of the Environment Community and Local Government, 2012.

8.4.3 The submitted application provides no information regarding retail impact. I would consider that changing the nature of retail use away from retail warehousing would be contrary to the recommendations of the retail Planning Guidelines. The development is entirely car orientated and by its nature gives rise to significant trips and unsustainable transport patterns. Having regard to the very extensive range of the convenience goods sold, it is considered that the change of use proposed for retention is not consistent with the policies of the guidelines. Furthermore, I am not satisfied that the proposed development would not materially and adversely affect the vitality and viability of established district centres. The proposal would be at odd with the central key objective arising from the Mid West Retail Strategy to support the "town centre first" approach in the context of the retail hierarchy, and to promote the vitality and viability of existing centres, and Policy ED 13 of the Limerick City and County Development Plan 2010-2016 as extended. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

8.4.4 I consider that the granting of this proposal would set an undesirable precedent that would cumulatively especially when considered with other such developments lead to an adverse impact on the vitality and viability and cohesiveness of established district centres. I consider that the development proposed for retention would not be in the interests of the proper planning and sustainable development of the area.

8.5 Appropriate Assessment

8.5.1 Having regard to the nature and scale of the proposed development, which relates to the retention of a change of use of an existing structure, the nature of the receiving

environment and the distances to the nearest European sites, I am satisfied that 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.

REASONS AND CONSIDERATIONS

Having regard to this out of centre location in Eastpoint Retail Park, it is considered that the development proposed for retention which includes the change of use from retail warehouse unit to wholesale / retail foodstore / distribution warehouse, is not in accordance with planning policy as per the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment and Local Government in 2012. The development proposed for retention would be in conflict with the central key objective arising from the Mid West Retail Strategy to support the "town centre first" approach in the context of the retail hierarchy, and to promote the vitality and viability of existing centres, and Policy ED 13 of the Limerick City and County Development Plan 2010-2016 as extended. The proposed retention of use of this unit for the sale of non-bulky and unrestricted goods would cumulatively lead to the erosion of the Retail Park and would impact adversely on the vitality, viability, and cohesiveness of established district centres. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector
10th December 2020