



An
Bord
Pleanála

Inspector's Report

ABP-308295-20

Development	Change of use from medical practice to pharmacy.
Location	Newtown , Lady's Well Street , Thomastown, Co.Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	20442
Applicant(s)	Westcourt Healthcare Limited
Type of Application	Permission
Planning Authority Decision	REFUSE
Type of Appeal	First Party
Appellant(s)	Westcourt Healthcare Limited
Observer(s)	June Prendergast Ada Doyle V. Maher & Others Murey Healy
Date of Site Inspection	1 st of December 2020

1.0 Site Location and Description

- 1.1. The subject site is currently a building site for a primary care centre that was granted planning permission under planning reference 18/107. The site is located off Lady's Well Street in Thomastown, and it is within walking distance of Thomastown commercial hub.

2.0 Proposed Development

- 2.1. The proposed development is a change of use of the permitted primary care centre from doctor's rooms to a retail pharmacy. The subject floor area is 99sq.m. and the net retail pharmacy floor area is 68.5sq.m.

3.0 Planning Authority Decision

3.1. Decision

Kilkenny Co. Co. Refused planning permission for the proposed development for the following reason:

Having regard to:

(a) The location of the site outside of the designated town centre and Policy REO:1 which states 'To restrict further retail development (convenient and comparison) outside of lands zoned 'Town Centre' within the plan and policy of the Thomastown Local Area Plan and to support the primacy of the town centre as the focus for future retail, commercial activity and community life and to attract activity back onto the Main Street'.

(b) The higher number of existing vacant retail units within the town centre and failure to comply with the sequential approach to retail planning for the centre of Thomastown.

The precedent that a grant of permission for the proposed development would create for other, similar developments in the vicinity, it is considered the proposed development which is located on an out of town centre site would undermine the vitality of Thomastown centre and would be contrary to the policies set out in Section

5.2, 5.4 and 5.6 of the Thomastown Local Area Plan 2019. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The site is located on lands zoned for Mixed Use development where retail uses are considered acceptable in principle. The proposed retail use is located on a site away from the town centre. With the current vacancy rate in Thomastown it could accommodate a pharmacy. The proposed development would not accord with the sequential approach to retail planning. The proposal would have a negative impact on the town centre and go against policy outlined above to enhance the vitality and viability of the town in the LAP in particular REO1.1 to restrict further retail development outside of lands zoned Town Centre within the plan.

It is considered having regard to the existing displacement of town retail services 2 supermarkets, pharmacy and post office out of the town centre, to allow further leakage would have a detrimental impact on the vitality of the town.

3.2.2. Other Technical Reports

Fire Office: No objections

Environment: No objections

Roads: No objections

3.3. Prescribed Bodies

Irish Water: No objections

3.4. Third Party Observations

There were a number of third-party objections to the proposed development. Their concerns can be summarised collectively as follows:

- There are 24 vacant sites in Thomastown
- Contrary to the Thomastown LAP (Sections 5.3, 5.4 and 5.6)

- Will damage businesses in Market St.
- Will impact on the existing pharmacies in town centre – there are 3No. existing pharmacies in the town.

4.0 Planning History

Planning Reference 18/107

Planning permission granted for a primary healthcare centre comprising of a two-storey building with single storey elements. The Primary Healthcare Centre will provide for HSE health and social care services (including dental) General Practice and associated meeting rooms, offices, staff accommodation, reception and ancillary uses.

5.0 Policy Context

5.1. Development Plan

Kilkenny County Development Plan

Retail Planning Guidelines 2012

Thomastown Local Area Plan 2019

TC1: Town Centre Policy

It is the policy of the Council to protect and enhance the role of Thomastown Town Centre as a vibrant and attractive town centre.

Objectives

It is an objective of the Council:

TCO1.1: To support the delivery of the Thomastown Regeneration Project and associated projects.

TCO1.2: To support the relocation of the Thomastown Branch Library to the former community hall and the provision of a new premises for the Thomastown Men's Shed.

TCO1.3: To encourage and facilitate the redevelopment of the Sessions House and Bridewell to accommodate a community arts centre which recognises the local artistic resource in Thomastown.

TCO1.4: To encourage and facilitate the re-use and regeneration of vacant or underused buildings for appropriate town centre uses through incentives such as the Small Business Vacant Premises Scheme.

TCO1.5: To improve the accessibility of the town centre with particular emphasis on creating an environment that is accessible to pedestrians and cyclists through improved car parking facilities and signage to same.

TCO1.6: To facilitate enhancement and improvement of the physical fabric and environment of the town centre through public realm initiatives including footpath and public lighting improvements at Low Street and Logan Street, to assist in making the town centre a more pedestrian friendly place.

5.6 RETAIL

When considering proposals for retail development, the Council will:

Require a sequential approach to the provision of new retail facilities i.e. new retail facilities will be required to locate on lands zoned for mixed uses through the redevelopment and/or reuse of existing vacant premises where appropriate

Restrict further internal retail leakage from the town centre

The overarching objective of the Retail Planning Guidelines (2012) is to enhance the vitality and viability of city and town centres in all their functions through sequential development. Sequential development means that:

Subject to the requirements listed below, only where the applicant can demonstrate and the planning authority is satisfied, that there are no sites or potential sites within a city, town centre or designated district centre should an edge-of-centre site be considered. In addition, only in exceptional circumstances where it can be demonstrated that there are no sites or potential sites available either within the centre or on the edge of these centres should an out-of-centre site be considered.

Retail Objectives

It is an objective of the Council;

REO1.1: To restrict further retail development (convenience and comparison) outside of the lands

6.0 Community & Housing

SO3: To facilitate the development of high quality, integrated residential neighbourhoods that cater for an appropriate demographic mix and deliver, where possible, community, recreation and amenity facilities in tandem with housing.

6.1 COMMUNITY FACILITIES

Thomastown has a wide variety of community facilities, services and active community groups spread throughout the town that provide an important support network to the residential population. Community facilities are an important element in the urban fabric of a town and should form part of an integrated network of resources available to local people. They serve the basic needs of the town and provide a place where people can meet and create a sense of town spirit and pride in their community. Thomastown has a strong sense of community and is relatively well served by community facilities including educational, sporting, cultural and social facilities. The community facilities include a national school, a secondary school, private childcare facilities, community crèche a community hospital, a library and County Council Area Office, a community hall, GAA club, soccer club, outdoor swimming pool (the Weir Pool), paddling club among others.

This LAP acknowledges that the integration of social infrastructure with the development of the town is fundamental to the long-term resilience and sustainability of the community in Thomastown.

Community Facility Objectives

It is an objective of the council:

COMO1.1: To support and facilitate the provision of multi-functional community facilities to meet the needs of the youth population of Thomastown.

COMO1.2: To continue to work with healthcare service providers and key stakeholders, including the HSE, to support their investment in healthcare operations at the St Columba's Hospital Complex in Thomastown.

6.1.1 Healthcare

There are a number of existing healthcare facilities including medical centres, dental care facilities and St Columba's Hospital (nursing home) within the plan area. Since 1952 St Columba's Hospital has been utilised specifically for the care of older people in the region but also accommodates a day care centre which offers services to the community within the grounds of the hospital. Healthcare infrastructure in the town is currently undergoing considerable investment with a new primary care facility at Ladyswell which recently secured planning permission. The Primary Healthcare Centre will provide for HSE health and social care services (including dental) and General Practice and associated meeting rooms, administrative offices, staff accommodation, receptions and ancillary uses.

5.2. Natural Heritage Designations

The site is not located within any designated site or connected to any Natura 2000 site. The site is a brownfield site in a serviced urban area.

5.3. EIA Screening

Having regard to the planning history of the site, the brownfield nature of the subject site, together with the scale of the proposed 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

The grounds of the appeal are summarised as follows:

6.1.1 *Permissible Use on the Site*

The primary care centre is located on a mixed-use zoning immediately adjacent to the Town Centre zoning. Kilkenny Co. Co. had discounted alternative sites for the

location of the primary care centre in Thomastown including a site beside Lidl on the Dublin road, so that the site could be as close as possible to the town centre. It was acceptable by the planning authority that there was no suitable site for the facility within the town centre zoning.

In terms of Retail Objective REO 1, the policy is to restrict further retail development (convenience and comparison) outside of the lands zoned 'Town Centre'. The aim of the policy is to restrict, not to prohibit development outside of the town centre. Under the zoning Matrix, precisely the same landuses are permissible under the Mixed-use zoning and Town Centre zoning.

6.1.2 Sequential Test

- Reference is made in 1(b) of the requirement to comply with the sequential approach to the retail planning centre of Thomastown. As noted, the primary care centre could not be located in the Town Centre but was located as close as possible and is linked by roads and footpaths.
- Under the heading 'precedent' examples are provided for previous Board decisions of pharmacies permitted to be attached primary care centres on the basis they are an obvious complement to the services provided in the primary care. Taken together, the primary care centre and pharmacy cannot be accommodated in the town centre and are located on the most sequentially preferable site.

6.1.3 Site Suitability

Patients and visitors parked at the primary care centre will not have to travel for prescriptions. If there is no pharmacy at the centre the alternatives are:

- a) Walk to the nearest pharmacy in the town centre (400metres)
- b) Drive to the town centre which involves a circuitous route along Lady's Well Street northwards to Dublin Road, Logan Street, Low Street and around onto Market Street where there may or may not be parking spaces available. There may be parking along Station Road, but this is regularly full.
- c) Alternatively. Having done the one-way system again, park in the Supervalu complex of the Dublin road, which is also zoned 'mix uses'.

The facility would be a one-stop health facility, and a pharmacy is an obvious use to compliment the services provided at the primary care centre.

The town centre will benefit from the spin-off of those visiting the primary care centre.

6.1.4 Health Check

Reason 1 (b) refers to the high number of existing vacant retail units within the town centre. A review of the vacant units on Market Street, Pipe Street, Logan's Street and Low Street on 24/09/2020. Thomastown has a very low vacancy rate with only 7 vacant commercial units, 2 of which are expected to re-open. One of the 7 units is derelict. The town centre was vibrant the day of the survey and it does not reflect the planning authority's suggestion that there is a high number of vacant units.

6.1.5 Precedent

An Bord Pleanala Ref: 306023-19 – Upper Main Street, Graiguenamagh

In August 2020, the Board granted permission for a pharmacy 300metre form the town centre and beside an Aldi shop

An Bord Pleanala 19.244684 Church View, Tullamore

In August 2015 the Board granted permission for a primary care centre which include 3No. general practitioners and a pharmacy. It is 500metre form traditional town centre.

An Bord Pleanala PL27.244229, Wicklow town.

6.2. Planning Authority Response

No further comments to make on appeal

6.3. Observations

There were a number of observers who submitted on appeal. The concerns expressed are very similar in each submission, therefore in order to avoid undue repetition, I will summarise the observations collectively.

The following individuals are the observers:

- a) June Prendergast, Market Street, Thomastown
- b) Ada Doyle
- c) Valerie Maher, Roseanne Drea, Morianne Mullins, Henry Healy (Staff of Healys pharmacy)
- d) Murey Healy (Slattery Design)

The following is a summary of the concerns expressed by the observers:

- Kilkenny Co. Co. refused the development because it did not comply with Policy REO 1.1 which restricts further retail development outside of lands zoned Town Centre.
- There is failure to comply with the sequential approach to retail planning in Thomastown.
- In the Local Area Plan, the planning authority acknowledges the damage done to the town centre by granting planning permission for the Super Valu on the Dublin Road
- The applicant did not view a pharmacy should form part of their original application, and this appears to be an after-thought or an attempt to by-pass the Thomastown LAP.
- The proposal represents 99sq.m. of retailing outside of the town centre.
- The health check conducted by the applicant is inaccurate, there are 15No. empty properties on Market Street, Low Street and Logan Street suitable for a pharmacy, and there are 2No. pharmacies in Market Street offering a full service.
- There are 3No. disabled carparking spaces on Market Street close to the pharmacy
- Each precedent case is different, and Thomastown is a small scale town and the impact will be greater compared to larger towns.
- As a café owner on Market street, the business is dependent on footfall for their livelihood, and the survival of the business is fragile. Currently with

COVID-19, the times are challenging to keep the business open. A change in the dynamics of the town and the pattern of the footfall will result in more empty premises.

- The health centre is a huge asset to the wellbeing of the Thomastown community, however an additional pharmacy with 3No. pharmacies already in the town seems excessive
- The Thomastown LAP seeks to support the primacy of the town centre for future retailing and commercial activity and to allow planning only on a sequential approach
- The primary care centre should have been located on the primary care site on Marshes Street which was permitted in 2008 (Planning reference No. 07/2045).
- The combination of a healthcare building and a pharmacy is not a necessity. There are other health services required in Thomastown that would take the precedent over a 4th pharmacy.
- The portion of Lady's Well Street zoned as 'town centre' would not benefit from the increased use/ revitalisation.

7.0 Assessment

7.1. Kilkenny Co. Co. granted planning permission under planning reference 18/107 for a Primary Healthcare Centre in Thomastown, Co. Kilkenny. The new Primary Health Care facility is currently under construction and is at an advanced state. The facility will provide for HSE health and social care services (including dental) and General Practice and associated meeting rooms, administrative offices, staff accommodation, reception and ancillary uses. Since the granting of planning permission for the Primary Healthcare Centre, a new Thomastown LAP 2019 was adopted. The current proposal is for the change of use of 99sq.m. at ground floor level from a private medical practice use to a retail pharmacy use. The appeal will be assessed under the following headings:

- Compliance with Thomastown Local Area Plan 2019
- Sequential Approach

- Precedent
- Appropriate Assessment

- 7.2. The planning authority refused the change of use for one reason which related to Policy REO1:1 of the Thomastown LAP which states '*To restrict further retail development (Convenient and comparison) outside of lands zoned 'Town Centre' within the plan and the policy of the Thomastown Local Area Plan is to support the primacy of the town centre as a focus for future retail, commercial activity and community life and to attract activity back into the Main Street.*' I refer to the Thomastown Local Area Plan Zoning Objectives Map. The subject site is zoned **Mixed Use**, and it is located on the opposite side of the road to Town Centre zoning, and within 400metres of the Thomastown Town Centre core. In addition the Mixed Use zoning objective is *to allow a flexible approach to development that supports the vitality and viability of the town centre.* Under this zoning objective the **Permissible Uses** include 'RETAILING'. In my opinion, this conflicts with the fundamentals underlying Policy statement Policy REO1:1 cited in the reason for refusal. On balance, it is clearly stated that retailing is a permission use under the Mixed Use zoning objective for the subject site.
- 7.3. There were strenuous third-party objections to the proposed development both at the planning application stage and on appeal. I acknowledge the third parties are concerned about the vitality of the town centre and the viability of the existing three pharmacies existing in the town. Given ongoing with restrictions associated with Covid-19, the third parties are justified in their concerns. They are fully supportive of the planning authority's reason for refusal and support the Local Area Plan policy that all future retailing in Thomastown should be located in the town centre particularly having regard to the number of vacant units currently in the town centre.
- 7.4. However, on balance, it has to be acknowledged the subject site is within 400metres of the town centre hub, and Town Centre zoning is on Lady's Well Road on the side of the road to the subject site. The principle Primary Health Care Centre on the subject site will draw people from outside of the town into the town. The town centre of Thomastown will benefit from the staff and patrons of the care facility been located within walking distance of Market Street. Overall, the town will benefit socially and commercially from the entire development, and I do not agree that the proposed

change of use will undermine the viability and vitality of the entire town centre. I would agree it may impact on the three existing pharmacies in the town, however it is not a function of the planning system to regulate competition between businesses.

- 7.5. It should be acknowledged that the retail pharmacy is an auxiliary use to the GP medical rooms within the overall health complex, and I consider this to be a sustainable form of development

7.6 **Sequential Approach**

The sequential test, which forms part of the Retail Planning Guidelines for Planning Authorities (2012)., in the context of this application, means that only where an applicant can demonstrate that there are no sites or potential sites within a town centre should an edge of centre site be considered. The guidelines state that where proposed new retail developments have the potential to significantly undermine and compromise the goal of maintaining the vitality and viability of established town centres, or where there is an application for a new retail development particularly large in scale compared to the existing town centre a retail impact assessment may be requested. I do not consider the sequential test to be applicable in this instance given the small scale of the change of the use to retailing within a large health related complex, that was the subject of sequential testing under the assessment of the parent permission in 2018. The subject site is not an edge of town location, it adjoins the town centre and there is a direct and short physical link from the subject site to the town centre. Having regard to the foregoing I do not consider the proposed development would be contrary to the Retail Planning Guidelines for Planning Authorities (2012).

7.7 **Precedent**

I acknowledge there is a clear precedent for favourable decisions in terms of planning permissions associated with pharmacies and healthcare centres. There have been no cases of refusals cited by any parties of the appeal.

However, each case must be assessed on its own merits, and this case is been assessed in terms of the Thomastown LAP and the planning history of the site.

Appropriate Assessment

Having regard to the small nature and scale of the proposed development, i.e. change of use of medical consulting room to a pharmacy use within a primary care centre, which is located in a built up serviced urban area of Thomastown, and separation distance to the nearest European site, 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 the conservation objectives of any European site.

8.0 Recommendation

- 8.1. I recommend the decision to refuse be overturned by the Board and planning permission be granted for the proposed change of use.

9.0 Reasons and Considerations

Having regard to the provisions of the Kilkenny County Development Plan 2014-2020, and the Thomastown Local Area Plan 2019, to the Guidelines for Planning Authorities - Retail Planning, issued by the Department of the Environment, Community and Local Government in April 2012, the permitted use on the site as a Primary Healthcare Centre and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of the zoning objective and its location within the town, would not be inconsistent with the Retail Planning Guidelines or the Thomastown Local Area Plan. The proposed development would, therefore, 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 10th of July 2020, 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 developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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.

Caryn Coogan
Planning Inspector

11/12/2020