



An
Bord
Pleanála

Inspector's Report ABP-309856-21

Development	Office building
Location	Killerisk Road, Killerisk, Tralee, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/1081
Applicant(s)	John Lane & Sons Limited
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	John Lane & Sons Limited
Observer(s)	John & Elaine O'Donnell Tommy O'Leary Robert Kandharsingh Theresa Looney
Date of Site Inspection	13 th July, 2021
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The 0.13 hectare site is located to the south-east of Tralee town centre just off Killerisk Road. The landholding is sited behind houses fronting onto Killerisk Road and has a service road off Killerisk Road between established detached houses. The site contains industrial and office development and is in use by a food distribution company (the applicant) and a wind turbine manufacturer (Enercon). An adjacent building to the north of the location for the office development is in use by the applicant. Residential estate development (Castlelawn Drive) is located to the west.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a two-storey building for office accommodation and all ancillary site works. The building would have a stated floor area of 687.4 square metres and would be served by mains water and foul sewer.
- 2.2. A letter from the applicant submitted with the application referred to the requirement for office space at their warehouse and the need to store the larger range of products being sold.

3.0 Planning Authority Decision

3.1. Decision

On 12th March, 2021, Kerry County Council decided to refuse permission for the proposed development for one reason relating to the proposal being contrary to Tralee Development Plan policy on siting of office development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner referred to the site's planning history, development plan provisions, and the report from Irish Water. It was noted that the principle of office development was open for consideration under the zoning provision for the site but that Objective OP03 of the Development Plan prohibited office development outside the town

centre of a type and scale appropriate to the town centre. It was submitted that the planning authority had to be satisfied the proposal would be for use by the applicant and not for sale or lease. It was acknowledged that an office development and a storage building had already been permitted and clarity was required. A request for further information was recommended seeking clarity on the need for the development, differentiation between office and storage space proposed, clarity on the use of a building by a Enercon, and landscaping and boundary treatment proposals.

3.2.2. Other Technical Reports

The Building Control Officer had no objection to the proposal and outlined requirements in relation to Building Control Regulations.

3.3. Prescribed Bodies

Irish Water had no objection to the proposal.

3.4. A request for further information was sought on 18th January, 2021 and a response to this request was received on 15th February, 2021. This included revised floor plans for clarity to denote proposed uses within the building and a landscape plan.

3.5. Following this submission, the Planner noted the applicant's response and submitted that the applicant is seeking to develop additional office space within the holding where office development has already been permitted specifically for their own use but is being leased to a third party. It was further submitted that the configuration of the proposed building would lend itself to be sub-divided into four separate office units with the potential to be used by four separate users. Reference was made to Objective OP03 of the Tralee Town Development Plan and it was considered that additional office space at this location would be contrary to the proper planning and sustainable development of the area. A refusal of permission was recommended

4.0 Planning History

P.A. Ref. 16/464

Permission was granted to the applicant for a single-storey industrial building for detergents, packaging and dry goods storage.

P.A. 18/1048

Permission was granted to the applicant for a two-storey building for office accommodation.

5.0 Policy Context

5.1. Tralee Town Development Plan 2009-2015 (extended)

Zoning

The site is zoned 'Mixed Use M4 Built Up Area'. Office development is open for consideration within this zone.

Offices

Objectives include the following:

OPO1 Encourage the development and growth of the office sector in appropriate areas.

OPO3 Prohibit office development that is outside the town centre that is of a type and scale appropriate to the town centre.

OPO5 Ensure facilities and amenities are provided commensurate with the needs of office users.

5.2. EIA Screening

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. The submission of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

- Under P.A. Ref. 18/1048, the Council granted permission for office accommodation within the same land folio and this was ancillary to the adjacent warehouse permitted under P.A. 16/464. The proposed office block is smaller in area and height than that permitted under P.A. Ref. 18/1048. The proposed office block is the same building type. There is 150m between the two office developments.
- The proposed office space will be used to grow the applicant's business. There is a requirement to utilise existing warehouse space currently occupied by admin staff and staff services. It is not practical to house a staff canteen, toilets, a showroom and the operations managers in a facility in Tralee Town 2.5km away. The proposed development is to be used in tandem with the adjacent warehouse facility. The space will not be let to third parties.
- The office building scale and type was not raised in the planning authority's further information request. The response did not implicate the building scale and type or associate the use of the office area to a use whereby the applicant was competing for letting office space with Tralee town centre.
- The Planner's submission that the only warehouse on the lands was the applicant's warehouse at the time of the previous application for office accommodation is incorrect. The inspection for that application was undertaken when the adjacent warehouse permitted under P.A. 16/464 was already constructed. This should be disregarded.
- The application details state what the space is intended to be used for. The planning authority has deciphered a hypothetical scenario that the office space can be subdivided into four separate office units potentially to be used by four separate users. This theoretical assumption should not be used to refuse a planning application. The planning authority is within its right to

condition a grant of permission that the space be used only in conjunction with the use as outlined in the planning application.

6.2. Planning Authority Response

I have no record of any response to the appeal from the planning authority.

6.3. Observations

The observations from John and Elaine O'Donnell, Tommy O'Leary and Robert Kandharsingh (Nos. 10, 12, and 13 Castlilawn Drive) raised concerns relating to the height of the building impacting on privacy, overlooking, loss of light, loss of view, and noise.

The observation from Theresa Looney of the Irish Kidney Association, who own 11 Castlilawn Drive and who use it for respite holidays for end stage kidney patients and those undergoing dialysis treatment, raised concerns relating to violation of privacy of those staying at the house by the development of the two-storey building.

7.0 Assessment

7.1. Introduction

- 7.1.1. I consider the principal planning issues relating to the proposed development are the principle of office development on the site and the impact on residential amenity.

7.2. The Principle of Office Development

- 7.2.1. I first note the nature and extent of development on the overall landholding at this location and the zoning provisions for this land. It is evident that there are two separate businesses operating on this mixed-use zoned site and that the warehouse associated with the applicant's business is well established. The zoning provisions for this site allow office development to be open for consideration. It is, therefore, determined that an office building may be seen to be acceptable in principle.

7.2.2. I note the intended uses of the office building, identified in drawings submitted by way of further information. Further to this, I acknowledge the appellant's submission on the intended purpose of the building. I submit to the Board that the proposed office building may appear as one intended to function as a development to directly serve the established food distribution business at this location. I further submit to the Board that the use of an office building of this nature as an ancillary use to the warehouse structure and its uses could reasonably be managed by way of a planning condition if there is any concern about the development and use of independent offices at this location. In addition to these considerations, I submit that ancillary office use to serve the needs of the business would be best served at the location of the established business and not remotely placed in the town centre of Tralee. I do not see a necessity to locate such development in the town centre away from the business it serves and there is no reason to determine that office use linked to the established food distribution business at Killerisk Road would undermine the orderly development of suitable town centre office development within the centre of Tralee.

7.2.3. With regard to more recent development of the overall landholding, I first note the permission granted to the appellant for an industrial building for detergents, packaging and dry goods storage under P.A. 16/464. The drawings submitted with the application clearly show the intended uses of the structure which relate to the appellant's business. Condition 5 of the planning permission was as follows:

5. *The use of the unit shall be as per details submitted on 16/05/2016 and no change of use shall take place without prior approval/planning permission.*

Reason: In the interests of orderly development and residential amenity.

I acknowledge that this building has been constructed and is in use by a wind turbine business. I have no record of any planning permission for the current use of the building, which is evidently not in use by the appellant as a food distribution business premises.

7.2.4. Planning permission was then granted to the appellant for a two-storey office building under P.A. Ref. 18/1048. This building has been constructed and is located immediately adjoining (east of) the building constructed under P.A. Ref. 16/464. I note from the planning application details that the applicant (John Lane & Son)

submitted by way of further information that the development would consist of Class 3 office use in connection with the existing warehouse and that the proposed offices are for a single user only in connection with existing warehouse use. I acknowledge that one of the warehouses on the site is in use associated with the appellant's established food distribution business and that the more recently constructed warehouse is permitted for use associated with that business. Condition 3 of Planning Permission 18/1048 was as follows:

3. *The proposed office building shall be used for a single user only in connection with the existing warehouse development on the lands as specified in letter received on 21/01/2019.*

Prior to the commencement of development, the developer shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

Reason: To regulate and control the use of the development.

I note that the applicant submitted a Section 47 Agreement to the planning authority on 17th October, 2019 to meet with the requirements of Condition 3. In response, the planning authority replied by letter on 10th January, 2020, noting the unauthorised use of the new adjacent building by a wind turbine supplier and stating that it could not deal with the agreement submitted.

- 7.2.5. Having regard to the permitted use of the industrial building constructed under P.A. 16/464, which is a use to be associated with the appellant's food distribution business, the established use of the other warehouse unit as part of the food distribution business on the site, and the constructed office building evidently being permitted as a development for the single user of the food distribution business on this holding, it is first reasonable to ascertain that the planning authority has at all times understood that permitted development to date on this site relates to a single user and that this user has been the same applicant for permitted developments relating to its food distribution business. The newly constructed offices have, therefore, been permitted with the understanding that they would serve the permitted established food distribution business on the holding. It may then reasonably be determined that the appellant has clearly failed to determine any need for additional office space on this holding relating to the food distribution business. Finally, with the

lack of any known permission for the use of one of the industrial buildings by a wind energy business, it is apparent that permitting the proposed development would likely be facilitating the continuation of an unauthorised use on this holding.

7.3. Impact on Residential Amenity

- 7.3.1. I note the siting of the proposed development to the rear of Castlelawn Drive, a residential estate of detached houses. The concerns of the observers are also acknowledged. The established business at this location is bounded by residential properties. I note from the planning report relating to P.A. Ref. 16/464 that at that time the land was zoned for residential use and the established use was considered a non-conforming use.
- 7.3.2. The proposed office development would be two-storeys in height with windows at first floor level. There would be a separation distance of significantly less than 20 metres between the proposed building and the nearest neighbouring houses in Castlelawn Drive. I understand the concerns relating to the potential invasion of privacy arising from the potential overlooking that would result and I would also note that the new development would increase the intensity of ancillary uses on the site, particularly with parking and access, albeit that such use is understood to be acceptable in principle under the current varied Tralee Town Development Plan. I observe that there is no issue of overlooking arising from the existing warehouse building adjoining the proposed office site. Given the extent of parking intended, there is limited potential to substantially screen and landscape the proposed development when viewed from the neighbouring residential properties. I acknowledge that the windows on the rear elevation present as high-level windows, above a height of 1.7 metres over the floor at the first floor level. This would significantly reduce the potential for overlooking and should reasonably address the overlooking concerns of the neighbouring properties. I acknowledge the impact of the established warehouse structure and I do not accept that the relatively low, flat-roofed office structure, in accordance with the submitted separation distances, would pose any particular concerns relating to loss of light to neighbouring properties. I finally submit to the Board that a reduction in car parking and a reconfiguration of the

car parking layout could reasonably be pursued which would allow for improved landscaping of the site and for the provision of a tree-lined screen along the rear boundary of the site to enhance presentation and to improve amenity impacts on established residents.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature, scale, and location of the proposed development within the serviced, urban, built-up area of the town of Tralee, the nature of the receiving environment, the lack of any known connectivity with any European sites, and the significant separation distances to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that permission is refused in accordance with the following reasons and considerations:

9.0 Reasons and Considerations

Having regard to the planning history of the landholding and to permitted developments (inclusive of office development) being restricted to a single user food distribution business, it is considered that the requirement for additional office space associated with this business has not been proved. Furthermore, having regard to the range of uses on the holding at this time, which includes unauthorised use, it appears to the Board that the proposed development would facilitate the consolidation and intensification of the said unauthorised use. Accordingly, it is considered inappropriate that the Board should consider the grant of permission for the proposed development in such circumstances.

Kevin Moore
Senior Planning Inspector

8th September 2021