



An
Bord
Pleanála

Inspector's Report

ABP-310441-21

Development	Retention of two car parking spaces.
Location	Kilmurry, Slieverue, Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	21203
Applicant(s)	Brendan Walsh
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Martin and Deirdre Freyne
Observer(s)	None
Date of Site Inspection	19 July 2021
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The subject site is located at Slieverue, Co. Kilkenny, X91 NW68. It has an area of 800 sq m and is in a small village setting. The site accommodates an existing commercial business, 'Brendan Walsh Fruit and Veg', which is owned by the Applicant. The car parking area for which retention permission is being sought is located next to the existing store unit on its western side. It has a tarmac surface and is sufficient to cater for two vehicles at one time. The applicant states that the car parking spaces are to allow employees associated with the fruit and vegetable business to park within the site rather than on the street. There is no evidence of any food processing or manufacturing taking place onsite.
- 1.2. The site is abutted by an existing detached dwelling ('Journey's End') to the east, the south by the main road that runs through the village, the west by an existing dwelling and the north by open space. There is a stone wall and tall evergreen hedge running along the front of the site. Access is provided via the main road running through the village from the site's southern boundary.
- 1.3. The third party appellant has an address at 16 Bullring, Slieverue, Co. Kilkenny. This property is approximately 20 metres to the south of the site, across the main street running through the village.

2.0 Proposed Development

The proposed development seeks retention permission for two car parking spaces.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission on 11th May 2021, subject to 2 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planner's Report noted that the planning application was lodged to address an ongoing enforcement matter in relation to unauthorised car parking (Warning Letter ENF 20006). (Note: This was in relation to the current appeal case.)

- It was noted that the roadway can be very busy, particularly at school opening and closing times, and the removal of the all-day parking of vehicles associated with the existing fruit and vegetable business on the road is “considered a positive safety improvement”.
- The Planner’s Report recommended that retention permission be granted, subject to 2 no. conditions.

3.2.2 Other Technical Reports

- Road Design: No objection. It was noted that the Applicant indicated that the cars intended for the proposed car parking spaces presently park on the public road. The removal of these cars from the public road is considered a positive safety improvement.
- Area Engineer: No objection, subject to condition (no surface water from the site shall be allowed discharge onto the public road).

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

One third party observation has been received from Martin and Deirdre Freyne (16 Bullring, Slieverue, Co. Killkenny). The concerns raised are in relation to: traffic intensification, public safety, hours of operation, negative impact on residential amenity, nuisance and noise.

4.0 Planning History

- 4.1. There are a number of planning applications on the site that relate to the extant fruit and vegetable wholesale business / store, the earliest dating back to 1984 (Reg. Ref. P.478/84). A series of applications have since been made to improve and regularise the operation, some of which have been invalidated, refused permission or withdrawn. The most recent grant of permission was in 1984 and comprised a lorry garage, including vegetable storage facility (Reg. Ref. P.478/84).
 - There is a current enforcement file on the site, ENF20006, which is for the alleged unauthorised construction of a car park.

- ABP Ref. PL10.240884 (Reg. Ref. 11/638) – Permission to erect a new entrance and boundary wall to commercial premises. The applicant originally submitted plans to widen the existing entrance, however following a Request for Further Information, details were submitted by the Applicant seeking *“permission for a new entrance and boundary wall to commercial premises which will include retention of cold room store and office extension and for permission to build canteen and toilet extension to existing store”*.

The Planning Authority granted permission on 27th June 2012. The Board subsequently refused permission on 25th February 2013 (ABP Ref. PL10.240884) on the basis the proposal was deemed incompatible with the existing character and setting of the village core by virtue of noise and general disturbance potentially caused by traffic movements.

- Reg. Ref. 478/84 – Permission sought for a lorry garage and vegetable storage facility. There is limited information on file and on the Council’s website. The Council Planner’s Report however indicates that permission was granted.

5.0 Policy Context

5.1. Slieverue Local Area Plan 2006 (Zoning)

The subject is zoned ‘Village Centre’ in the *Slieverue Local Area Plan 2006*. The objective of this zoning is:

“To provide for the development and improvement of appropriate town centre uses and allow for the development of Slieverue as a focus for local services, sustaining and strengthening its role as a population centre.

The purpose of the zone is:

“To protect and enhance the centre of Slieverue and to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the centre of a town. It will be an objective of the Council to encourage the development of back lands. Generally two storey buildings will be preferred.”

5.2 County Development Plan (Policy for Smaller Towns and Villages)

The site is located within the settlement boundary of Slieverue Village as identified by Figure 3.11 of the *Kilkenny County Development Plan 2014-2020* ('Development Plan').

Slieverue is recognised as a 'smaller town and village' in Table 3.1 'County Settlement Hierarchy' (Chapter 3 'Core Strategy' of the Development Plan). The Development Plan (Objective 3G) seeks to "*facilitate development of housing, economic development, services and infrastructure in the smaller towns and villages of the county at a scale and character which is appropriate in order to sustain and renew population and services in these areas*".

Section 11.7.9 states that "*all car parking areas should be properly landscaped by the provision of trees, shrubs and grassed areas in order to ensure that damage to the visual amenities is avoided*" and that "*on greenfield sites, parking and service spaces must be located on site so as to prevent street obstruction and should be located where possible to the rear and side of the buildings and in such a manner to ensure minimal impact on the amenity of adjoining properties*".

5.3 Natural Heritage Designations

No designations apply to the subject site.

5.4 EIA Screening

5.4.1 The proposed development falls within the category of 'Infrastructural Projects', under Schedule 5, Part 2 of the Planning and Development Regulations 2001-2020, where mandatory EIA is required in the following circumstances:

10(b) (ii) Construction of a car-park providing more than 400 spaces, other than a car-park provided as part of, and incidental to the primary purpose of, a development.

5.4.2 The proposal is for two car parking spaces on a site with a stated area of 0.08 ha. Item 10(b)(ii) is therefore not applicable as the carpark is less than 400 spaces.

5.4.3 In this case, where the site comprises zoned lands in the centre of an existing settlement, served by public infrastructure, and where the site is not located in or adjacent to any environmentally designated sites, it is considered 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 Appeal can be summarised as follows:

- The Planning Authority did not follow due process and consideration of the *Planning and Development Regulations, 2001*, in assessing the planning application.
- The 'unauthorised structures' on the site were not addressed by the Planning Authority when assessing the planning application.
- The current use onsite is unauthorised and should be regularised and regulated.
- The proposed car parking would facilitate intensification and ongoing use of the public road for deliveries and should be controlled by way of conditions.

6.2. Applicant Response

- None

6.3. Planning Authority Response

- No further comments. The issues raised in the appeal have been covered in the Planner's Report.

6.4. Observations

- None

6.5. Further Responses

- None

7.0 Assessment

The main planning issues that require consideration are as follows:

- Principle of Development
- Relationship with the existing business

- Appropriate Assessment
- Other Issues

7.1. Principle of Development (Zoning)

- 7.1.1. The land use category 'Car parks' is listed as a 'permissible use' in the Slieverue Local Area Plan (2006) under the 'Village Centre' zoning.
- 7.1.2. The car parking is well setback from the street edge and is largely imperceptible from the roadway. The boundary treatment running along the front of the site is a stone wall with a thick evergreen hedge above that is approximately 2.0 metres in height. The car parking spaces would therefore present minimal impact on the amenity of adjoining properties.
- 7.1.3. The car parking spaces would assist in reducing onstreet car parking by allowing staff to avoid having to park their cars on the main street, oftentimes for a full day. The Planning Authority has observed that the roadway can be very busy during particular times of day, for example, during school drop-off and pickup times and that the parking of vehicles on the side of the road often exacerbates the matter. Whilst the street was quiet at the time of inspecting the site, it is noted that there is a school and church nearby. The school is approximately 120 metres to the northeast and the church is 80 metres to the southwest, each of which could potentially generate busy traffic volumes at certain times.
- 7.1.4. In summary, the retention the car parking spaces within the subject site is considered to be acceptable in terms of traffic safety and convenience, and in accordance with the provisions of the Development Plan, including Section 11.7.9, which states that car parking areas should be properly landscaped and screened by the provision of trees, shrubs and grassed areas in order to ensure that damage to visual amenity is avoided. The principle of development is therefore deemed to be acceptable.

7.2. Relationship with Existing Business

- 7.2.1. The Appellant submits that having completed a review of the planning history for the site a number of structures do not have the benefit of planning permission. It is stated that the unauthorised development is well known to the Planning Authority. This allegedly includes a cold store, office extension, canteen and toilet extension, all

of which was refused permission by the Board in February 2013 (ABP Ref. PL 10.240884).

- 7.2.2. The Appellant states that the Applicant has made “*no attempt to regularise the situation*” and notes that as the buildings have been in situ for in excess of seven years enforcement proceedings cannot be initiated on the basis such action is statute barred under the provisions of Section 157 (4A) of the *Planning and Development Act, 2000 (as amended)*.
- 7.2.3. It is noted that this is a separate matter than that which is the subject of this appeal case, and that the Board has no involvement in enforcement matters under *Part VIII* of the *Planning and Development Act, 2000 (as amended)*. The relevant Decision (ABP Ref. PL 10.240884) has been briefly examined as part this assessment however, and it is noted that permission was refused *inter alia* on the basis that the development would facilitate the intensification of use on the site (fruit and vegetable distribution centre) by facilitating increased HGV traffic movements through the village core of Slieverue. This was deemed to be incompatible with the existing character and setting of the village core by virtue of creating potential noise and general disturbance.
- 7.2.4. The subject proposal would not have the same level of residential amenity impact as that assessed under ABP Ref. PL 10.240884. Having considered the proposal and visited the site, it is clear the car parking spaces do not result in any exacerbated noise, nuisance or general disturbance of the surrounding vicinity. Conversely, the provision of 2 no. car parking spaces within the site for the use of employees to park their cars assists greatly in improving public safety and likely helps to reduce any potential traffic hazard caused by vehicles being parked on the street.
- 7.2.5. The Report prepared by the Council’s Road Design Department has been examined. The report states that removing cars from parking on the public road is a positive safety improvement and that there is no objection to the proposed development from a roads and traffic perspective. The provision of onsite car parking in lieu of having additional vehicles park on the road is considered a positive outcome from a traffic, transport, and public safety perspective.

7.3. Intensification of Use

- 7.3.1. The Appellant submits that the provision of additional car parking results an intensification of use. No real justification has been provided however as to why this might be the case.
- 7.3.2. There is no evidence to suggest that the provision of car parking internal to the site would result in any discernible change in terms of additional vehicular movements or traffic, uplift in existing operations or increased business hours. It is therefore considered that the provision of car parking would not result or facilitate an intensification of use.

7.4. Other Issues

- 7.4.1 The Appellant states that the Planning Authority did not follow due process in terms of assessing the planning application. It is submitted that inadequate information was submitted as part of the application for validation purposes, and that the Applicant should have been required to include the alleged unauthorised buildings and works referenced in Section 7.2.1 above (cold store, office extension, canteen and toilet extension).
- 7.4.2 In terms of procedural matters, and the alleged shortfall in information submitted as part of the planning application, there is no obligation for the Planning Authority to instruct the Applicant to include any additional details in relation to that of the wider existing development. The Planning Authority issued a Warning Letter under ENF20006 for the alleged unauthorised construction of a car park. The Applicant duly responded by lodging a retention application to try and regularise these works. It is therefore considered that no procedural or due process issues arise in this case.
- 7.4.3 In the event permission is granted, the Appellant has requested that certain conditions be applied to control the existing operation. The Planning Authority's *Notification of Decision to Grant Permission* for Reg. Ref. 11/658 is referenced within the appeal in this regard. Conditions relating to access requirements (no. 7); control of noise, air and odour emissions (no. 12); loading and unloading of delivery vehicles (no. 14); delivery times (no. 15); and provision of car parking spaces and landscaping (no. 19) are each cited. (Note: As the Board refused permission upon receipt of a third party appeal for this development proposal these conditions were never applied.)

- 7.4.4 Notwithstanding the Appellant's argument that the existing development, or part thereof, is unauthorised, it is noted that enforcement matters are a function reserved for the relevant Local Authority. It would, therefore, be inappropriate to apply conditions to a development that is not the subject of this current appeal case.
- 7.4.5 The *'Development Management Guidelines for Planning Authorities (2007)'* supports this position and states that care should be taken to ensure that standard conditions are used only where they actually apply, that they are properly adapted to meet the needs of particular cases, and that the availability of standard conditions should not lead to the automatic inclusion of unnecessary conditions in particular cases; for example, conditions which are irrelevant to the development in question.
- 7.4.6 The Guidelines are clear in that conditions should be relevant to the development proposed / permitted, and that *"unless the requirements of a condition are directly related to the development to be permitted, the condition may be ultra vires and unenforceable"*.
- 7.4.7 It is acknowledged that Section 34(4)(a) of the *Planning and Development Act, 2000* (as amended) allows a condition to regulate the development or use of adjoining land, where such land is under the control of the applicant (which is the case in this particular instance). This would not be appropriate in this case however, despite, as the Appellant contends, certain aspects of the existing commercial development are potentially unauthorised. The possible existence of unauthorised development is not sufficient reason in itself to refuse permission for the retention of the car parking spaces, and there is no obligation for the Board to determine a dispute that relates to the planning status of a commercial operation that exists on the site. (It is also noted that there is a valid permission for a vegetable storage facility onsite and the car parking spaces could be used in conjunction with this permitted use.)
- 7.4.8 In summary, it is considered appropriate that the assessment of this appeal case should be focused solely on the proposed retention of the two existing car parking spaces. In summary, this is considered to an appropriate form of development for the reasons outlined above and it is recommended that permission be granted.

7.5 Appropriate Assessment

7.5.1 The closest European Site is approximately 2.7km from the subject site. This is the Lower River Suir (SAC) (Site Code 002137). Given the nature and scale of the development proposed (retention of two car parking spaces), the distance from the nearest Natura 2000 site, nature of the receiving environment, and absence of any hydrological link, it is considered that no appropriate assessment issues arise. It is therefore not considered that the proposal would be likely to have a significant effect individually or in combination with other plans and projects on a European site and there is no requirement.

8.0 Recommendation

It is recommended that permission be granted, in accordance with the following reasons and considerations, and subject to conditions, as set out below.

9.0 Reasons and Considerations

Having regard to the existing character and the prevailing pattern of development in the surrounding area, the provisions of the Kilkenny County Development Plan 2014-2020, including the relevant standards set out under Section 11.7.9; and the Slieverue Local Area Plan 2006, including the 'Village Centre' zoning that applies to the site; it is considered that, subject to compliance with the conditions set out below, that the retention of the existing car parking spaces would not seriously injure the amenity of the surrounding area by way of noise, nuisance, visual intrusion, or otherwise, and would result in improved road safety. 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 retained in accordance with the plans and particulars lodged with the application on 22 nd March 2021, 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
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	shall be carried out and completed in accordance with the agreed particulars. Reason: In the interest of clarity.
2.	Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works. Reason: To ensure adequate servicing of the development, and to prevent pollution.

Ian Boyle
Planning Inspector

23rd August 2021