



An
Bord
Pleanála

Inspector's Report

ABP-311227-21

Development	Change of use from retail to dental surgery, signage and associated site works.
Location	Unit 18B, Monread Shopping Centre, Monread Road, Naas, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	21829
Applicant(s)	Tesco Ireland Ltd
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Tesco Ireland Ltd
Date of Site Inspection	15 th January 2022
Inspector	Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area 0.0113 hectares, is located within the curtilage of the Monread Shopping Centre, which is on the northern side of Naas and just south of the M7 motorway. The site is occupied by unit 18B, which is a unit with a floor area of 113sqm and it accessed externally from its own door.

2.0 Proposed Development

- 2.1. Permission is sought for the change of use of an existing retail premises to accommodate a dental surgery at ground floor level (113sqm). The unit is part of the Monread Shopping Centre.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on one reason...

1. The proposed development is located on lands zoned R-Retail/Commercial under the Naas Town Development Plan 2011-2017. A dental surgery is neither permissible nor open for consideration on R-zoned lands, and the development would, if permitted, materially contravene the Naas Town Development Plan 2011-2017 and would therefore be contrary to the proper planning and sustainable.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (28/07/21): The proposed use is not permitted or open for consideration in the zoning and would materially contravene land use policy of the Naas Town Development Plan.

3.2.2. Other Technical Reports

EHO (08/07/21): No objection subject to conditions.

Environment Section (12/07/21): No objection subject to conditions.

Water Services (09/07/21) No objection.

3.3. **Prescribed Bodies**

Irish Water (13/07/21): No objection.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

PL09.240437 (12/11): Permission granted for change of use of unit F from class 1 retail to class 2 financial services with a 5 sq. m signage zone on front elevation of the unit.

5.0 **Policy Context**

5.1. **Development Plan**

The relevant Development Plan is the Kildare County Development Plan 2017-2023.

Naas Town Development Plan 2011-2017:

The appeal site is zoned R-Retail/Commercial with a stated objective 'to provide for and improve retailing and commercial activities'. There is specific objective for a district centre with the purpose of this zoning is to provide for improved retailing and commercial activities including the District Centre on the Monread Road.

Under Table 14.5 Land Use Zoning Matrix

Medical and related consultancy is indicated as being 'not permitted' with this zoning.

Draft Naas Local Area Plan 2021-2027.

The appeal site is still zoned R-Retail/Commercial.

Under Table 11.3 Land Use Zoning Matrix

Medical Consultant/Health Care is indicated as being 'open for consideration.

5.2. **Natural Heritage Designations**

5.2.1 None within the zone of influence of the project.

5.3. **EIA Screening**

The proposed development is of a class but substantially under the threshold of 2 hectares site size in a business district to trigger the requirement for submission of an EIAR and carrying out of EIA. Having regard to the nature of the development, which is a change of use of a retail unit to a dental surgery, the absence of features of ecological importance within the site, I conclude that the necessity for submission of an EIAR and carrying out of EIA can be set aside at a preliminary stage.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1 A first party appeal has been lodged by Avison Young on behalf of Tesco Ireland Limited. The grounds of appeal are as follows...

- The proposal seeks to use a unit has been vacant for a significant period of time. The proposal would not detract from the existing primary retail/commercial use of the shopping centre.
- The appellant questions the validity of the Town Development Plan used to assess the application on the basis that administrative functions transferred from Naas Town Council (now abolished) to Kildare County Council and the Council did not give notice under Section 11 of the Planning Act to prepare a new Development Plan or extend the existing Town Development Plan as per Section 11A of the Planning Act. The appellant also refers to Section 11C in that a plan of a dissolved town Council is to have effect to the extent of that

plan. It is contended that the Town Development Plan ceases to have effect upon its expiry, which was 2017.

- The appellant notes that the Council are in the process of adopting a new Local Area Plan for Naas. It is considered that the enforceability of the Naas Town Development Plan can be questioned and that the reason for refusal is not enforceable. The appellant requests that the application is assessed de novo and such is in compliance with the proper planning and sustainable development of the area.
- The change of use of a retail unit to dental surgery would not impact on the vitality or viability of the town centre or the amenities of property in the vicinity and is an appropriate use within a mixed use development.
- The appellant states that there are a number of national, regional and local policies supporting enhancement of mixed use centres including the National Planning Framework, the Regional Spatial and Economic Strategy, the Retail Planning Guidelines and the Kildare County Development Plan.
- The proposal is consistent with the pattern of development and that such uses would not be expected within centres such as this. The applicant refers to ABP-240437 as relevant decision regarding relating to change of use of a unit within the existing centre.
- It is requested that permission can be granted in accordance with Section 37(2)(b) of Planning Act due to conflicting objectives in the context of the County Development Plan, having regard to Section 28 guidelines and having regard to the pattern of development.
- The appellant notes that the option exists for the Board to wait until the new Local Area Plan for the town is adopted before making a decision.

6.2. Planning Authority Response

6.2.1 Response by Kildare County Council.

- The Council have no further comment to make.

7.0 Assessment

7.1. Having regard inspected the site and associated documents, the main issues can be assessed under the following headings.

Development Plan policy

Physical impact/pattern of development

Section 37(2)(b)

7.2. Development Plan policy

7.2.1 The appeal site is located in Naas, which was formerly administered by Naas Town Council and is now within the administrative area of Kildare County Council. The decision to refuse and assessment of land use zoning was made on the basis of the Naas Town Development Plan 2011-2017. Under this plan the site is zoned R-Retail/Commercial with a stated objective “to provide for and improve retailing and commercial activities’. Under Table 14.5 Land Use Zoning Matrix, Medical and related consultancy is indicated as being ‘not permitted’ with this zoning. On this basis permission was refused with the proposal determined to be a material contravention of the land use zoning objective.

7.2.2 The appellants argument is that the Town Development Plan is no longer valid or enforceable (reference to Section 11 of the Planning Act). It is also argued that the development can be permitted on the basis of Section 37(2)(b) of the Planning Act. I will assess the proposal on the basis of Section 37(2)(b) in a later Section of this report.

7.2.3 I acknowledge the appellants arguments regarding the status of the Naas Town Development Plan and would acknowledge that such has yet to be superseded by a new plan. There is a Draft Local Area Plan and under such the use would be open for consideration. As this has yet to be adopted this is not a material consideration. The County Development Plan does not determine the zoning of the site and it is reasonable to assess the proposal based on the zoning set out under the Town

Development Plan until such is superseded. Such is being used to assess development on other sites within the boundary defined by the Naas Town Development Plan 2011-2017. As it stands the proposed development is not a permitted use within the zoning objective based on the Naas Town Development Plan, which is the last operative plan for the area outlining zoning policy and land use for the site in question.

7.3 Physical Impact/pattern of development:

7.3.1 The proposal is for a change of use of a vacant retail unit to a dental surgery. The unit is part of a large shopping centre on the outskirts of the town. The unit is well serviced in terms existing road and parking infrastructure and is located in close proximity to a significant level of residential development. I would consider that the proposed use is compatible with the existing retail use on site and would have no significant or adverse impact in terms of adjoining amenities. I would consider that the unit in question is an appropriate location for such a use and would be consistent with the pattern of development and in accordance with the proper planning and sustainable development of the area. The appeal site is subject to an objective identifying it as a district centre under the Naas Town Development Plan 2011-2017 with the purpose of this zoning to provide for improved retailing and commercial activities including the District Centre on the Monread Road. The Kildare County Development Plan under Section 9.5.4, New District and Neighbourhood Centres states that “New District and Neighbourhood Centres should complement rather than compete with town centres. In accordance with the Retail Planning Guidelines definition, their predominant retail role should be main food shopping supported by a mix of local, civic, community and non-retail services and a limited quantum of comparison shopping, which should be lower order in nature. What is appropriate will be determined by the application of the tests of the assessment criteria for retail developments as outlined in Section 17.13 of Chapter 17, Development Management Standards”.

7.3.2 The Retail Planning Guidelines (April 2012) define District Centres as providing “a range of retail and non-retail service functions (e.g. banks, post office, local offices,

restaurants, public houses, community and cultural facilities) for the community at a level consistent with the function of that centre in the core strategy. They can be purpose built as in new or expanding suburbs or traditional district centres in large cities or town". I would consider that the proposed use is an appropriate use in district centre and is consistent with both the definition of such under the Retail Planning Guidelines and the specific objective identifying the area as a district centre under the Naas Town Development Plan 2011-2017.

7.4 Section 37(2):

7.4.1 The proposal was refused on the basis that such constitutes a material contravention of the land use zoning objective. Section 37(2) of the Planning Act is relevant in terms of the Board assessing a case refused on the basis of material contravention.

Under Section 37(2)...

(2) (a) Subject to *paragraph (b)*, the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that—

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under *section 28*, policy directives under *section 29*, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

(c) Where the Board grants a permission in accordance with *paragraph (b)*, the Board shall, in addition to the requirements of *section 34 (10)*, indicate in its decision the main reasons and considerations for contravening materially the development plan.

7.4.2 In this case I would consider that some of the criteria under Section 37(2)(b) apply and that the Board can grant permission for the proposed development despite it being refused on the basis of material contravention. Firstly in relation to Section 37(2)(b)(ii) there are conflicting objectives in relation to the Naas Town Development Plan with the zoning matrix indicating that the medical use is not permitted while at the same time the site is defined as a district centre in which such services would be compatible with such a designation. In relation to Section 37(2)(b)(iii) the proposal would be consistent with national guidelines and policy in particular such is compatible with the definition of District Centre under the Retail Planning Guidelines (April 2012). I would also consider that the development should be granted in the context of Section 37(2)(b)(iv) having regard to the pattern of development, and permissions granted, in the area since the making of the development plan. The proposal is compatible with the existing pattern of development and permission ref no. PL09.240437 granted permission for a change of use of unit within the centre to financial services (with Naas Environs Plan Area), on the same type of zoning despite being a use determined as not being permitted.

8.0 **Appropriate Assessment**

8.1 Having regard to the nature and scale of the proposed development and its proximity 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 a European site.

9.0 Recommendation

9.1. I recommend a grant of permission subject to the following conditions.

10.0 Reasons and Considerations

Having regard to the nature, form, scale and design 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 pattern of development in the area and compatible with the existing shopping centre use, satisfactory in the context of the visual amenities of the area, the amenities of adjoining properties, and traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In granting permission it is acknowledged that the proposed use is a material contravention of the zoning of the site as R-Retail/Commercial under the Naas Town Development Plan 2011-2017 with medical and related consultancy being indicated as being 'not permitted' within said zoning.

The proposed development meets the criteria of Section 37(2)(b) of the Planning and Development Act, 2000 (as amended) in particular

Section 37(2)(b)

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes/signage to the proposed building shall be agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. Drainage arrangements shall comply with the detailed requirements of the planning authority for such works and services.

Reason: In the interest of public health and surface water management

4. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and

Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery, and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

Colin McBride
Senior Planning Inspector

17/01/22