



An
Bord
Pleanála

Inspector's Report ABP-312507-22.

Development

Permission for (A) Retention
permission to retain retail use and (b)
planning permission for change of use
to retail of bulky goods.

Location

Unit 4 mile height, Manor East, Tralee,
Co. Kerry.

Planning Authority

Kerry County Council.

Planning Authority Reg. Ref.

21/234.

Applicant(s)

Paul Kiernan.

Type of Application

Permission.

Planning Authority Decision

Split Decision.

Type of Appeal

First Party v Condition

Appellant(s)

Paul Kiernan

Observer(s)

None

Date of Site Inspection

24/06/2022.

Inspector

A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located within the settlement boundary of the Tralee and within the Manor East retail park which lies to the southeast of the town. The retail park comprises a mix of retail and commercial units and an extensive area of surface car parking. The site has a stated area of 1.872ha.
- 1.2. The subject unit, no. 4, lies to the rear of the retail park and is currently occupied by 'Homesavers', which is a retail unit. The unit has a stated floor area of 929m².

2.0 Proposed Development

- 2.1. The initial application sought permission for change of use from light industrial / warehouse to the retail of bulky goods. The application included a number of supporting documents including as follows:
 - Plans, particulars and completed planning application form.
 - Letter of consent from registered owners.
- 2.2. Following a site inspection by Kerry County Council, it was noted that the unit was being used as a retail unit, and therefore, the description of the development was not accurate.
- 2.3. Permission is sought, as per the revised public notices, for (A) Retention permission to retain retail use and (b) planning permission for change of use to retail of bulky goods, all at Unit 4 mile height, Manor East, Tralee, Co. Kerry.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority, following the submission of the response to the FI request, decided to issue a split decision to refuse to retention of the retail use and to grant permission for the sale of bulky goods, subject to 3 conditions.

3.1.1. **Planning Reports**

The initial Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, planning history, and the local policies and objectives. The report also includes a section on EIA and AA.

The Planning Report considered that as the unit had already changed use, the description of the development was inaccurate. This matter was raised by way of further information.

Following the submission of the response to the FI request, the planning officers report noted that Objective TR-M-01 of the Tralee Municipal District Plan limits retail development at this location to retail warehousing only as defined in the Guidelines for Planning Authorities, Retail Guidelines DoECLG 2012. The report concludes therefore, that the proposed retention of retail use would not be in compliance with this objective and refusal of retention permission is recommended.

The report also notes that an enforcement notice, served in December 2020 to cease the retail use of the building by March 2021 was not complied with and that the retail use continued to operate when inspected in December 2021. The report also concludes that the proposed change of use from permitted light industrial / warehouse use to the sale of bulky goods is acceptable.

The report therefore recommends a split decision to refuse to retention of the retail use and to grant permission for the sale of bulky goods, subject to 3 conditions. This Planning Report formed the basis of the Planning Authority's decision to issue a split decision.

3.1.2. **Other Technical Reports**

Kerry NRO: The report notes no observations and advises that the application should be referred to the MD Roads Engineer for comment.

County Archaeologist: Notes that the monument on site was excavated as part of the development of the site following testing etc. No mitigation is required.

Building Control Officer: The report notes no objection to the planning application but recommends that the applicant be advised of their requirements in terms of a Fire Safety Certificate and a Disability Access Certificate.

3.1.3. **Prescribed Bodies**

TII: No observations to make.

Following receipt of the response to FI, a further report noted that the Authority's position remained as set out in the initial letter.

3.1.4. **Third Party Submissions**

None.

4.0 **Planning History**

The following is the relevant planning history pertaining to the retail park site:

PA ref 04/192: Permission granted for the construction of a retail / warehouse/commercial development comprising of four detached units with associated car parking and ancillary site services including access roads, common effluent treatment plant and connection to public utility services.

5.0 **Policy and Context**

5.1. **Tralee Municipal District Local Area Plan 2018-2024**

- 5.1.1. The Tralee MD LAP sets out the local planning framework for the area with the exception of Tralee town. The Tralee Town Development Plan 2009-2015 (as extended) will continue to apply to the area formerly administered by the Tralee Town Council. It is indicated that this Town Development Plan will remain in force until after the adoption of the new County Development Plan. The Board will note that the Kerry County Development Plan 2015 is currently under review and the preparation of the new Kerry County Development Plan 2022-2028 is currently underway.

5.1.2. Tralee is identified, with Ardfert, as the leading settlements within the MD and the strategy for the MD is dependent on the growth of these settlements through creating employment opportunities and attracting people to live in the settlements, thereby strengthening their urban structure and creating a demand to support local services.

5.2. Tralee Town Development Plan 2015 as varied and extended

5.2.1. The subject site is zoned M4 Built Up Area in addition to being identified as an Opportunity Site. Chapter 11 of the Tralee TDP deals with zoning policy and objectives and I note that the subject site is located within an area zoned Mixed Use (Town Centres / Core Retail Area)(M1 – M5). Section 11.4 of the Plan deals with Existing Residential / Town Centre Area / Built Up Areas (R2/M2/M4) and the following is relevant:

It is the policy of the Local Authority to facilitate development that supports in general the primary land use of the surrounding existing built up area. Development that does not support or threatens the vitality or integrity of the primary use of these existing built up areas shall not be permitted.

Within the development boundary of the town, in areas that are not subject to specific zoning objectives, proposals for development will be considered in relation to the following:

- The objectives of this and any other statutory plan;
- The character of the surrounding area; and
- Other planning and sustainable development considerations considered relevant to the proposal or its surroundings.

5.3. Kerry County Council Development Contribution Scheme 2017

5.3.1. The Development Contribution Scheme 2017 remains the relevant scheme relating to the proposed development. The proposed development comprises an application for the change of use of unit 4 Mile Height to retail of bulky goods and to retain retail unit. Permission was granted for the overall development in 2005 under PA Planning

Reference 04/192. This permission included a condition restricting the use of the subject unit to:

- (a) Light industry
- (b) Manufacturing
- (c) Storage and Distribution
- (d) Wholesale

It is noted that the Development Contribution Scheme applicable in 2005 related only to water services, including sewerage.

- 5.3.2. The Development Contribution Scheme, Part 6 deals with Change of Use and Intensification of Use. The current scheme includes the provision to reduce development contribution charges by 50%. The Scheme also indicates that:

Permission for a change of use in town centres where the change of use does not lead to the need for new or upgraded infrastructure/services or where there is no additional demand placed on existing infrastructure (i.e. additional car parking), they shall be exempt from Development Contributions.

All other change of use applications (including those where there is an increased demand for infrastructure/services) shall be subject to development contributions at the standard rate subject to a reduction of 50%.

The subject site does not lie within the town centre.

- 5.3.3. The Development Contribution Scheme, Part 9 indicates that there is no reduction / exemption applicable in the case of applications for retention permission and that contributions shall be charged a rate of 150% of the standard Roads and Transport Contribution and Community & Amenity Contribution.
- 5.3.4. The Scheme also includes provisions for the application of a levy relating to developments in Tralee in addition to the standard development contributions. For commercial developments, the rate is indicated at €32/m².

5.4. Natural Heritage Designations

- 5.4.1. The site is not located within any designated site. The closest Natura 2000 site is the Ballyseedy Wood SAC (Site Code: 002112) lies approximately 0.5km to the south of the site. The Slieve Mish Mountains SAC (Site Code: 002185) lies approximately 2.3km to the south.

5.5. EIA Screening

- 5.5.1. The application was submitted to the Board after the 1st September 2018 and therefore after the commencement of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018.
- 5.5.2. Item (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units
 - Urban development which would involve an area greater than 2ha in the case of a business district, 10ha in the case of other parts of a built-up area and 20ha elsewhere.
- (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)
- 5.5.3. The proposed development comprises an application for the change of use of unit 4 Mile Height to retail of bulky goods and to retain retail unit, within an existing and established development. The area is therefore described as ‘other parts of a built-up area’ rather than a ‘business district’ and as such, I am satisfied that the site area is substantially below the 10ha threshold for ‘other parts of a built-up area’. It is therefore considered that the development does not fall within the above classes of development and does not require mandatory EIA.
- 5.5.4. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold

where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.5.5. Having regard to:

- (a) the nature and scale of the development,
- (b) the location of the site within the development boundaries of Tralee,
- (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that 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

This is a first-party appeal against the decision of the Planning Authority to include Condition 2 in the decision grant planning permission for the change of use to retail of bulky goods. The refusal of permission for the retention of the retail use has not been appealed and the appeal relates solely to the development contribution attributed in condition 2.

6.1.1. The grounds of appeal are summarised as follows:

- Since the change of use granted under the previous application is pretty similar and almost identical to the present grant, it is believed that the imposition of the levy is excessive, overbearing and unnecessary.

- No further works are required to be undertaken by Kerry County Council to facilitate the development.
- All previous levies attaching to the original development have been paid in full.

6.2. Planning Authority Response

Submission advises as follows:

- The permitted development restricted the use of the unit to the following:
 - (a) Light industry
 - (b) Manufacturing
 - (c) Storage and Distribution
 - (d) Wholesale

Under the development contribution scheme in operation at the time, development levies were only payable for water and sewerage services and the uses permitted were considered low intensity.

- The decision to issue a grant of permission to change the use to retail of bulky goods is subject to the 2017 Development Contribution Scheme and requires contributions to be levied under the following headings:
 - (a) Roads and Transport
 - (b) Community and Amenity
 - (c) Tralee Levy

The 2017 Scheme provides for a 50% reduction in contributions for change of use applications.

- On the basis of the above, the charging of development contributions at 50% of the standard rates is the correct implementation of the Kerry County Council Development Contribution Scheme 2017.

6.3. First Party Response to Planning Authority's Response

- 6.3.1. The first party submitted a response to the Planning Authority's response to the first party appeal. The response restates that the change of use is pretty much almost identical to the previous grant, being made only to fulfil the changed matrix of developments allowed in the area by Kerry County Council. The submission restates that the imposition of the levy is excessive, overbearing and unnecessary.

6.4. Observations

None.

7.0 Planning Assessment

- 7.1. This assessment relates to a first party appeal under S48(10) of the Planning & Development Act, 2000 as amended. The first party has appealed condition no. 2 of the decision of Kerry County Council to issue a split decision and grant permission only for the change of use to retail of bulky goods. S.48(10)(b) of the Act provides that an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority.
- 7.2. Section 48(10)(c) states that where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of the planning authority is brought under Section 37, the planning authority shall make the grant of permission as soon as may be after expiration of the appeal period, provided the appellant furnishes adequate security for the payment of the full amount of the contribution as specified in the condition.
- 7.3. In considering the appeal, I note that the Board is bound by the terms of the adopted Development Contribution Scheme and cannot deviate from same. The merits or appropriateness of any adopted Development Contribution Scheme is not open for interpretation by the Board as referenced in Cork City Council –v- An Bord Pleanala

(2006). Rather, the Board is required to assess whether the terms of the scheme, as written, have been correctly applied.

7.4. In terms of the current proposal, I consider it appropriate to address the planning history of the overall site. Under the parent permission, PA ref. 04/192, permission was granted for the construction of a retail / warehouse/commercial development comprising of four detached units with associated car parking and ancillary site services including access roads, common effluent treatment plant and connection to public utility services. This permission included a condition restricting the use of the subject unit to:

- (a) Light industry
- (b) Manufacturing
- (c) Storage and Distribution
- (d) Wholesale

7.5. Under this decision to grant permission, the Development Contribution Scheme applicable at the time related only to water services and the uses of the site, as detailed above, were considered to be low intensity. The total development contributions sought under PA ref. 04/192 was €3,800.00.

7.6. In relation to the development contribution under appeal, being €23,225.00, I would advise the Board that Condition 2 of the PAs grant of planning permission presents the following breakdown:

Roads & Transport	-	€4,319.85
Community & Amenity	-	€4,041.15
Tralee Levy	-	€14,861.00

The Kerry County Council Development Contribution Scheme 2017 provides that the applicable rate per m² is as follows:

Roads & Transport	-	€9.30
Community & Amenity	-	€8.70

- 7.6.1. The First Party appeal considers that as levies have previously been imposed and that the change of use is similar and identical to that granted, the levy is excessive, overbearing and unnecessary. It is further submitted that no further works have or will be undertaken by Kerry County Council to facilitate the development in terms of roads and transport, community and amenity and the Tralee levy. All levies attached to the original development have been paid in full.
- 7.6.2. In response, the Planning Authority considers that the nature of the previously permitted uses was of a lower intensity to the hereby permitted use for the retail of bulky goods. It is considered that the Development Contribution Scheme has been correctly implemented.
- 7.6.3. Section 6 of the Scheme deals with Change of Use and Intensification of Use. The current scheme includes the provision to reduce development contribution charges by 50%. The Scheme also indicates that:

Permission for a change of use in town centres where the change of use does not lead to the need for new or upgraded infrastructure/services or where there is no additional demand placed on existing infrastructure (i.e. additional car parking), they shall be exempt from Development Contributions.

All other change of use applications (including those where there is an increased demand for infrastructure/services) shall be subject to development contributions at the standard rate subject to a reduction of 50%.

The subject site does not lie within the town centre, and therefore the exemption in this regard is not applicable.

- 7.6.4. In terms of the second part of Section 6 of the Scheme, it is clearly stated that all other change of use applications, shall be subject to development contributions at the standard rate subject to a reduction of 50%. The issue of the need for new or upgraded infrastructure / services does not arise. The development the subject of this appeal represents a change of use from that originally permitted. As such, I am satisfied that the inclusion of Condition 2 as calculated is appropriate and that the

Kerry County Council Development Contribution Scheme 2017 has been correctly applied.

7.6.5. The Development Contribution Scheme, Part 9 indicates that there is no reduction / exemption applicable in the case of applications for retention permission and that contributions shall be charged a rate of 150% of the standard Roads and Transport Contribution and Community & Amenity Contribution. The Board will note that the decision issued by Kerry County Council explicitly refuses the retention of the retail use at the site and therefore, Part 9 of the Scheme is not applicable in this instance.

7.7. I am satisfied that the Development Contribution Scheme has been correctly applied.

Appropriate Assessment

7.8. There are no issues of AA arising in this instance.

8.0 Recommendation

8.1. It is recommended that Condition 2 of the grant of permission be RETAINED, on the basis that the terms of the Kerry County Council Development Contribution Scheme, 2017 have been properly applied.

9.0 Decision

The Board, in accordance with Section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had been properly applied in respect of condition number 2 and directs that the said Council RETAIN condition number 2 and the reasons therefor.

10.0 Reasons and Considerations

Having regard to

- (a) the provisions of the Kerry County Development Contribution Scheme 2017,
and
- (b) the information submitted in support of this appeal,

the Board considered based on the evidence submitted, that the proposed development constitutes a change of use to retail of bulky goods only, and that the terms of the Development Contribution Scheme have been properly applied.

A. Considine
Planning Inspector
27th June 2022