



An  
Bord  
Pleanála

## Inspector's Report ABP-315357-22

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<b>Development</b>	Single storey front extension to a commercial premises
<b>Location</b>	Main Street, Cappawhite, Tipperary
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	22595
<b>Applicant(s)</b>	Whites Funeral Directors
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	Grant with conditions
<b>Type of Appeal</b>	Third Party v Decision
<b>Appellant(s)</b>	Tony Kennedy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19 <sup>th</sup> April 2023
<b>Inspector</b>	Brendan McGrath

## **1.0 Site Location and Description**

- 1.1. The site is near the edge of the village of Cappawhite. It lies on the main street of the village and comprises a single-storey funeral home. The premises adjoin a house (formerly a credit union building) which is owned by the appellant. There is a two-storey dwelling on the other side.

## **2.0 Proposed Development**

- 2.1. The proposal is to retain a single story extension to the front of a funeral parlour. The extension forms a small open arcade in front of the parlour. The west end of the arcade roof is attached to the adjacent building.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Tipperary County Council granted permission for retention subject to two standard conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planning report is the basis of the planning authority's decision. The report states that a Warning Letter had been issued (enforcement file TUD -22-090). The report refers to a submission by the appellant, the owner of the adjacent property, which is physically attached to the funeral home. The report concludes that the matters raised were civil matters and not matters that concerned the planning authority.

#### **3.2.2. Other Technical Reports**

There are no other reports apart from an engineering report without recommendations.

## **4.0 Planning History**

P310298 Permission granted for funeral parlour in 1986

## **5.0 Policy and Context**

### **5.1. Development Plan**

The site is within Cappawhite village which is a designated Service Centre in the Tipperary County Development Plan 2022

### **5.2. Natural Heritage Designations**

None relevant

### **5.3. EIA Screening**

The development is not a class of development to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, apply and therefore the requirement for EIA screening may be set aside at a preliminary stage.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The appeal is lodged on behalf of the owner of the adjacent building, to which the front extension has been attached at roof level. This was done, according to the appellant, without his consent, and according to the appellant, the resulting development prevents him from carrying out necessary works for the maintenance of his property.

### **6.2. Applicant Response**

A response on behalf of the applicant states that the issues raised are not planning matters.

### 6.3. **Planning Authority Response**

The planning authority has not responded.

### 6.4. **Observations**

There are no observations

## 7.0 **Assessment**

- 7.1. Having examined the application and appeal documentation on file, and having regard to relevant guidance, I consider that the issues raised in the appeal are not planning matters and that no other substantive issues arise. I consider that the funeral parlour as revised and extended is an appropriate and attractive feature on the main street of the village.
- 7.2. Section 34(13) of the Act provides that ‘a person shall not be entitled solely by reason of a permission under this section to carry out any development’. The Development Management Guidelines for Planning Authorities clarify that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. The Guidelines make the point that where doubt arises as to the legal interest of the applicant that additional information may be sought by the planning authority to clarify the matter.
- 7.3. Having regard to Section 34(13) and the submissions on file I conclude that the applicant has sufficient legal interest to make a valid planning application and that the Board should not refuse permission for reasons related to title to land.
- 7.4. **Appropriate Assessment**
- 7.5. Having regard to the small scale of the development under consideration its location within a village and the nature of the receiving environment 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

## 8.0 Recommendation

I recommend that planning permission be granted for the reasons and considerations set out below and subject to the following conditions

## 9.0 Reasons and Considerations

The appeal only raises matters concerning the previously unauthorised nature of the development that has taken place and consequent matters relating to the ongoing maintenance of the appellant's property. The unauthorised issue had been dealt with by the granting of permission for retention by the local authority and the issues relating to maintenance are not planning matters. It is therefore appropriate to confirm the grant of retention permission.

## 10.0 Conditions

1.	<p>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 and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting 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</p>

	<p>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.</p> <p><b>Reason:</b> 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.</p>
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Brendan McGrath  
Planning Inspector

25<sup>th</sup>. April 2023