



An
Bord
Pleanála

Inspector's Report

ABP 318657-23

Development	Replacement of fascia & signage and provision of off-licence with associated site works
Location	Unit 36, High Street, Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	23218
Applicant	LMM Properties Holding Limited
Type of Application	Permission
Planning Authority Decision	To grant permission with conditions
Type of Appeal	Third Party
Appellant	Keith Kinchella
Observers	None
Date of Site Inspection	1 st May 2024
Inspector	Trevor Rue

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	4
3.4. Third Party Submission	5
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Development Plan.....	5
5.2. National Guidelines	7
5.3. Natural Heritage Designations.....	7
5.4. EIA Screening	8
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Applicant Response	9
6.3. Planning Authority Response.....	11
7.0 Assessment.....	11
8.0 Recommendation.....	14
9.0 Reasons and Considerations.....	14
10.0 Conditions	14

1.0 Site Location and Description

- 1.1. The application site, with a stated area of 0.093 hectares, comprises a vacant retail unit on the western side of High Street, a commercial thoroughfare in Kilkenny City Centre. The two-storey building is of modern construction, containing stone panels and a glass façade.
- 1.2. High Street is a one-way street with loading bays on both sides fronting commercial premises. A narrow alley known as Red Lane runs along the northern side of the application site; its access to High Street is closed off by a wooden gate.
- 1.3. Ground floor land uses in the area are primarily retail and hospitality. There are residential uses on upper floors. An archway entrance to the Market Cross Shopping Centre (MCSC) is located roughly 20 metres to the south of the site.

2.0 Proposed Development

- 2.1. It is stated on the application form that the proposed development would consist of:
 - (i) replacement of fascia and projection signage (totalling about 3 square metres);
 - (ii) provision of an ancillary off-licence sales area of about 48.8 square metres in the ground floor retail unit;
 - (iii) provision of associated plant area at first floor level;
 - (iv) minor works including new automatic sliding entrance doors, replacement shop-front glazing and internal fit-out works; and
 - (v) all ancillary site services and site development works.

3.0 Planning Authority Decision

3.1. Decision

- 3.3.1 On 13th November 2023, Kilkenny County Council decided to grant permission subject to two conditions. Condition 2 required the submission for approval of revised, more detailed proposals for signage, including a reduction in the size of the lettering and the omission of the proposed projecting sign.

3.2. Planning Authority Reports

Planning Report

- 3.2.1. The planning report of 13th November 2023 provided the reasoning for the authority's decision. It noted that the retail outlet, formerly occupied by Argos, was in the city centre, which is identified as the city's primary retail area where limited intervention is required in terms of products and services traded. It expressed the opinion that the proposed change of use of part of the premises for the sale of liquor is acceptable in principle and stated that the applicant would also require a liquor licence.

Other Technical Reports

- 3.2.2. The Council's Planning Department, Conservation Section noted that the property is within the historic city of Kilkenny and the City Centre Architectural Conservation Area (ACA). The proposed fascia signage would consist of illuminated individual letters 1083 millimetres high. The projecting sign would extend by 800 millimetres from the front façade and be 650 millimetres high. Colours for the letter and the name of the premises should be forwarded for assessment. Where corporate branding is proposed, the proposal should reflect Council policy. As the shop is centrally located on High Street, the projecting sign would increase clutter; it is deemed unnecessary and should be omitted.

3.3. Prescribed Bodies

- 3.3.1. The Board, being of the opinion that the proposed development might have significant effects in relation to Kilkenny City Centre ACA, requested the following bodies mentioned in Article 28(1)(c) of the Planning and Development Regulations 2001 to make any submissions or observations to it by 6th February 2024:

- the Department for Housing, Local Government and Heritage;
- the Heritage Council;
- An Taisce;
- An Chomhairle Ealaíon; and

- Fáilte Ireland.

3.3.2. None of these bodies responded to the invitation within the time specified.

3.4. **Third Party Submission**

3.4.1. The present appellant made a submission to the planning authority, the contents of which were repeated in his appeal to the Board.

4.0 **Planning History**

4.1. **92/990101:** In October 1992, planning permission was granted to Town & Country Investments plc for an amended service access. (A right of way connecting the present application site to Chapel Lane is shown on the site location map.)

4.2. **03/90092:** In October 2003, planning permission was granted to Argos Distribution Limited for one fascia and one projecting sign, both externally illuminated, at the application site.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. Figure CS 4 of the Kilkenny City and County Development Plan 2021-2027 indicates that the application site is within an area zoned for general business. The permitted uses set out in Volume 2, Section 2.9.5 of the Plan include among other things retailing, retail warehousing, wholesale outlets, hotels, restaurants and public houses.

5.1.2. The retail objectives in Volume 2, Section 3.4.4 of the Plan include the following:

- ii. To enhance and promote the vitality and viability of Kilkenny City Centre, and to support the centre's role as the dominant retail destination within the County;
- iii. Promote Kilkenny City Centre as a shopping destination that is competitive with other comparable shopping destinations in the South East and further afield;
- vii. To encourage the reduction in vacant floor space, taking into account suitability, obsolescence, and the identification of alternative uses that may be appropriate where possible, facilitate the regeneration and reuse of derelict buildings in

appropriate locations for town centre uses and support the retention and maintenance of heritage premises and shop fronts; and

xi. Ensure all new development respects and enhances the historic environment.

5.1.3. Figure ERS1 shows the site within the core retail area of Kilkenny City. Policy 6 states that retail development and other main town centre uses should be prioritised to be located within Kilkenny's core retail area to ensure the vitality and viability of the historic core is protected and promoted. Similarly, it is of great importance to ensure that the historic character of the core retail area is protected. An important balance must be struck between creating a dynamic and commercially successful retailing environment and an attractive historic setting.

5.1.4. Figures HS5 and HS6 of the Plan show the site within the City Centre ACA, which encompasses the medieval core of Kilkenny. Among the ACA development management requirements in Volume 2, Section 4.5.1 of the Plan are the following:

- CCACA 1: Assessment of proposals for the presentation of commercial premises will require retention of genuine early/original shopfronts/pubfronts, and the provision of high-quality contemporary design when new shopfronts/commercial fronts are proposed.
- CCACA 2: To maintain high standard of presentation of ground and upper floors by controlling the size, number and composition of advertisements on buildings to prevent and reduce visual clutter in the ACA. Plastic or neon signage will not be considered in the ACA.

5.1.5. Volume 1, Section 13.24 of the Development Plan deals with shop fronts. It encourages the use of high-quality natural materials in shop-front design and goes on to say that modern "multiple" formats which have adopted a corporate image will not necessarily be allowed to use their standardised shopfront design, corporate colours and materials. Such companies should be encouraged to ensure that their particular fascia takes account of the character of the street and local area.

5.1.6. Section 13.24.1 states that as a general principle, fascia signs should be simple in design and not excessive in illumination or size. Section 13.24.4 says that internally illuminated fascia or projecting box signs will not be permitted. Concealed strip or flood lighting and spotlights may be an acceptable alternative.

- 5.1.7. Section 13.24.5 states that the over-riding principle is the avoidance of visual clutter and an improvement in the quality of the commercial character of the towns and villages throughout the county. The planning authority will strictly control all advertising signs in relation to their location, design, materials and function and will restrict non-essential advertising structures or any advertising structure which would impact injuriously on amenity, the built environment or road safety. Signs shall be sympathetic in design and colour both to the building and its surroundings. Projecting signs will be restricted in size and number to prevent clutter.

5.2. National Guidelines

- 5.2.1. Guidelines on Retail Planning were published by the former Department of the Environment, Community and Local Government in 2012. A key message set out at the start of Section 4 of the Guidelines is that the development management process must support applications for retail development which are in line with the role and function of the city or town in the settlement hierarchy of the relevant development plan and accord with the scale and type of retailing identified for that location in the development plan and relevant retail strategy.
- 5.2.2. It is stated in Section 2.5.3 of the Guidelines that it is a national policy objective to ensure that the planning system continues to play its part in ensuring an effective range of choice for the consumer, thereby promoting a competitive market place. The planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation. In interpreting and implementing these Guidelines, planning authorities and An Bord Pleanála should avoid taking actions which would adversely affect competition in the retail market.

5.3. Natural Heritage Designations

- 5.3.1. The application site is within 200 metres of the River Nore Special Protection Area for birds, which traverses Kilkenny City. The application site is not close to any other Natura 2000 site designated for its European nature conservation importance.

5.4. EIA Screening

- 5.4.1. By virtue of Class 10(b)(iv) in Part 2 of Schedule 5 to the Planning and Development Regulations 2001, urban development involving an area greater than 2 hectares in a business district requires environmental impact assessment (EIA). The proposed development affecting an area of 0.093 hectares is sub-threshold development.
- 5.4.2. The proposal consists of relatively minor external and internal works to a single property, new signs and the creation of a subsidiary off-licence within a shop. I am satisfied that there is no real likelihood of significant effects on the environment arising from the development. I therefore conclude, following preliminary examination, that EIA is not required and there is no requirement for a screening determination.

6.0 The Appeal

6.1. Grounds of Appeal

- The city is currently well catered for by off-licences and is saturated with similar businesses in the vicinity of the application site. Since the covid pandemic, a notable increase of anti-social behaviour is occurring directly outside some off-licences and in the streets leading to these premises.
- No opening hours are given in the application form. Potentially off-licence sales would occur in this sensitive tourist area of the city on Mondays to Saturdays from 10.30am to 10.00pm and on Sundays and St. Patrick's Day from 12.30pm to 10.00pm. The Sale of Alcohol Bill currently being considered by the Oireachtas could result in the extension of off-licence hours, leading to a detrimental influence from the proposed development on the High Street area.
- The application site is in an ACA and the sale of liquor in such areas would not adhere to the aims and objectives of the Development Plan. Any future development should improve the public realm.
- By the nature of off-licence sales experienced in similar premises in Kilkenny City, the number of vehicles pulling up will likely grow, resulting in illegal parking and traffic disruption in High Street as the application does not provide for short-stay parking.

- From recent media reports, it is understood that the tenant is likely to be a large overseas grocery chain. While this would be generally positive for Kilkenny City, the location of the proposed unit within such an outlet is concerning.
- The Council's decision took no account of the effect on the existing business community of Kilkenny's main historic commercial area. The Council should have protected the viability and long-term functionality of the area by assessing the overall fit of the proposal with the neighbouring commercial premises.
- Previously located to the rear of the application site, SuperValu has vacated MCSC in which it was the anchor tenant. The proposed development would inhibit MCSC from attracting a new grocery store, resulting in less footfall in a centre with over 30 units. The vacant unit in MCSC would be an ideal location for the development, which could reinvigorate falling footfall and sales in the High Street area.

6.2. Applicant Response

- The Board is requested to consider the validity of the appeal. The intended operator of the unit, Tesco, made contact with the appellant (Mr Kinchella) to discuss the concerns raised. In an e-mail response, he referred to reviewing the file with "the appellants", which implies that he is working on behalf of an unidentified third party. An Bord Pleanála's April 2019 guide "Making a Planning Appeal" states that to make a complete and valid appeal:

"You must clearly state your own name and address. If a planning agent is acting for you, the agent must clearly state their own name and address as well as your name and address."

- The Board is requested to dismiss the appeal at the earliest opportunity under Section 138(1)(a)(ii) of the Planning and Development Act 2000 as amended. Section 138(1)(a) empowers the Board to dismiss an appeal where it is of the opinion that (i) it is vexatious, frivolous or without substance or foundation, or (ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person.

- The grounds of appeal have been overstated and/or are not relevant. The foundation of the appeal is vexatious. The matters raised are not planning issues.
- In a recent third-party appeal relating to a proposed primary retail unit adjacent to Tyrrelstown Local Centre, Hollywoodrath, Dublin 15 (317539-23), the appellant argued that a proposed off-licence element would not bring positive change and had potential to increase anti-social behaviour. The Board, noting that no substantive planning issues had been raised, dismissed the appeal under Section 138(1)(b)(i) of the 2000 Act.
- The application site is located on land zoned for general business uses on a main pedestrian route within the core retail area of Kilkenny City. The proposal complies with the relevant controls and standards contained in the Development Plan. It provides for a more efficient use of what is currently a vacant unit. It would create sustainable local jobs and contribute to the vitality and vibrancy of the city centre.
- It appears that the appellant would support the proposed use and welcome the intended user to the city centre if the use were located in a different commercial premises. The appeal is commercially motivated and anti-competitive.
- There is not a saturation of similar businesses in the vicinity of the application site. An alcohol sales study was produced which states that there are six premises within 500 metres of the site (2 minutes' walk) and two within 250 metres (up to 7 minutes' walk). Only one premises within the 2-minute catchment is directly comparable in product range and opening hours to the proposed convenience retail outlet. It is concluded that given the quality and location of off-licences currently in the study area, the sizeable resident population in the area and the ancillary nature of the alcohol area proposed, the off-licence would not lead to an over-concentration of off-licences in the area.
- Whereas the purchase of alcohol is the main reason for visiting a specialist operator or full off-licence, in this case customers would have the option to buy alcohol as part of a general shopping trip. The smaller sales area, occupying less than 10% of the net floor area of the store, would draw customers from a more local catchment than that of a destination alcohol retailer.

- Part off-licences and convenience stores are not the sole cause of anti-social behaviour in the city. The intended operator has a proven record of being a responsible retailer. The proposed alcohol sales area would be located away from the store's doors and windows in a secure and monitored area with the benefit of natural surveillance by staff during opening hours. Security staff would be employed in the store to deter and intervene in any anti-social behaviour associated with the retail unit should it arise. The intended operator follows a "Think 25" policy; if a person purchasing alcohol looks to be under 25, proof of age would be requested before the transaction is completed.
- The previous occupier of the recently vacated premises did not provide any customer parking. The appellant does not give any evidence for the claim that the proposed development would result in more vehicles pulling up outside the premises or that instances of illegal parking would increase. The experience of the intended tenant is that its customers are primarily top-up basket shoppers who arrive on foot. Public car parks are located close by. Control of illegal car parking is the responsibility of the local authority and the Gardaí.
- The argument that the proposed development would inhibit MCSC from attracting a new grocery store is unfounded. The occupation of the application site would add vitality to the street and spur investment in the area by providing a much needed local convenience offer to the residential and working population and would promote the "10-minute settlement" concept.

6.3. Planning Authority Response

6.3.1. None

7.0 Assessment

7.1. Issues

7.1.1. Having inspected the site and considered in detail the documentation on file for this third-party appeal, it seems to me that the main planning issues are:

- whether the proposed development is acceptable in principle at this location;
- whether it would respect and enhance the historic environment;

- whether it would be likely to lead to anti-social behaviour;
- whether it would adversely affect MCSC; and
- whether it would be likely to lead to illegal parking.

7.1.2 I must also consider whether an appropriate assessment (AA) is required pursuant to the European Union Habitats Directive (92/43/EEC).

7.2. Acceptability in Principle

7.2.1. The definition of “shop” in Article 5 of the Planning and Development Regulations 2001 was amended in 2005 to exclude use for the sale of intoxicating liquor for consumption off the premises (other than wine sold under a wine retailer's off-licence). The effect of this amendment is that the creation of a subsidiary off-licence within a shop is not exempted development. It is not disputed that the current proposal involves a material change of use and requires planning permission.

7.2.2. Off-licences are not named explicitly in the Development Plan in the list of uses that are acceptable in the area where the application site is located. However, the area is zoned for general business and the sale of alcohol is a form of retailing. The list of acceptable uses includes venues where alcohol is dispensed – public houses, hotels and restaurants. The proposal accords in principle with the relevant retail objectives of the Plan and hence with the national Guidelines on Retail Planning.

7.2.3. Whether there is already an adequate number of licensed premises in the neighbourhood will be a matter for consideration by the District Court if an objection is made to a future application for an off-licence. There is no need test in the retail chapter of the Development Plan or in the national Guidelines. I am satisfied that in planning terms the proposed use is acceptable in principle at the location proposed.

7.3. Impact on the Historic Environment

7.3.1. The existing shop front is not the most attractive in the ACA but, so far as one can tell from the submitted elevation, significant alterations to the door and window openings are not proposed and the dimensions of the fascia would not be affected.

7.3.2. High Street is mostly free of upper-level signs of the type proposed. The proposed projecting sign above fascia level would add to clutter and detract from the visual quality of the ACA. I agree with the planning authority that it should be omitted.

7.3.3. Fascia signage on adjacent buildings is fairly subdued. The proposed fascia sign is insufficiently illustrated and the planning authority is right to insist on full details being presented for its approval. The acceptability of letter heights can be properly assessed when proposals for materials, colours and illumination are submitted. I am satisfied that if permission is granted, conditions could be attached that would protect the historic character of the core retail area in accordance with the Development Plan.

7.4. Anti-Social Behaviour

7.4.1. The appellant has provided no substantive evidence to support his suggestion that the proposed off-licence would potentially lead to an increase in anti-social behaviour. I have no good reason to doubt the applicant's evidence that the proposed convenience outlet and off-licence unit would be operated in a responsible manner. Anti-social behaviour is ultimately a matter for An Garda Síochána.

7.5. Illegal Parking

7.5.1. The appellant has provided no persuasive evidence to support his assertion that the proposed off-licence would result in illegal parking and traffic disruption in High Street. I accept that most customers are likely to use a nearby car park and/or arrive on foot. Control of illegal on-street parking is the responsibility of the Council and the Garda.

7.6. Impact on Market Cross Shopping Centre

7.6.1. The appellant argues that the introduction of a Tesco store at the application site would have an adverse effect on the trading position of the nearby MCSC. It appears that he would welcome the proposed development, presumably including the proposed off-licence, if it were located in the MCSC. Those submissions run directly counter to the Guidelines on Retail Planning which lay down that the planning system should not be used to inhibit competition or preserve existing commercial interests. They are also hard to reconcile with the appellant's arguments about anti-social behaviour.

7.6.2. Mr Kinchella's e-mail to Tesco's Head of Property Acquisition and Property Management makes reference to the appellants in the third person. This suggests that he may be fronting the appeal on behalf of other people. It seems to me that the stated grounds of appeal are devoid of merit or substance and may be motivated by commercial rather than planning considerations. I consider that the Board would be entitled to dismiss the appeal summarily under Section 138(1)(b)(i) of the 2000 Act.

However, it may be equally apt at this stage to grant permission subject to conditions similar to those formulated by the Council.

7.7. Appropriate Assessment Screening

- 7.7.1. Having regard to the nature and scale of the proposed development and the absence of emissions therefrom, it is possible to screen out the requirement for the submission of a Natura impact statement and the carrying out of an AA at an initial stage.

8.0 Recommendation

- 8.1. I recommend the Board either to dismiss the appeal under Section 138(1)(b)(i), or else to grant planning permission subject to the conditions set out below.

9.0 Reasons and Considerations

- 9.1. The Board considers that the matters raised in the appeal, namely the potential for increased anti-social behaviour, for illegal parking and for negative impact on the Market Cross Shopping Centre, are not substantive planning issues. The Board is therefore satisfied, having regard to the nature of the appeal, that it is appropriate to dismiss the appeal under Section 138(1)(b)(i) of the Planning and Development Act 2000 as amended.

OR

- 9.2. Having regard to the Kilkenny City and County Development Plan 2021-2027 and the Guidelines on Retail Planning published in 2012, it is considered that the development, if carried out in accordance with the attached conditions, would not injure the amenities of the area and would accord with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed strictly in accordance with the plans and particulars lodged with the application on 20th September 2023, except in so far as they relate to signage.</p> <p>Reason: To ensure that the development accords with the permission.</p>
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2.	<p>The proposed projecting sign shall not be erected or displayed.</p> <p>Reason: To avoid clutter and maintain the visual amenity of the City Centre Architectural Conservation Area.</p>
3.	<p>Prior to commencement of development the applicant shall submit, for the written agreement of the planning authority, revised proposals for the fascia sign, including a drawing specifying the wording, colours and materials to be used and detailing the means of illumination and the brightness thereof. The sign shall be installed strictly in accordance with the agreed particulars.</p> <p>Reason: To maintain the visual amenity of the City Centre Architectural Conservation Area.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.



TREVOR A RUE

Planning Inspector

3rd May 2024