



An
Bord
Pleanála

Inspector's Report

ABP-319841-24

Development	Change of use for part of industrial unit to commercial use, new shop front, additional office area and all associated site works.
Location	Unit 6, Zone 5, Clonminam Business Park, Portlaoise, Co. Laois.
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	2460136
Applicant(s)	Dmitrij Zidkov
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First party
Appellant(s)	Dmitrij Zidkov
Observer(s)	None
Date of Site Inspection	4 th December 2024
Inspector	Bébhinn O'Shea

1.0 Site Location and Description

The site is located in Clonminam Business Park, in the southwest of Portlaoise town, and is within a larger industrial area, dominated by warehouse type structures, hard-surfaced curtilage and road network and hard boundary treatments. The premises consists of an end-unit of a long, warehouse-type building, three storey in height, although mostly ground floor with void above, and finished in concrete block and cladding. There is parking and goods storage within the curtilage of the building. The unit is used for the storage of stoves, fires, surrounds and associated goods.

2.0 Proposed Development

Permission is sought for change of part of the unit to commercial use, to allow for sale of heating systems and home decorations i.e. wood pellet stoves, solid fuel stoves, electric fires, mantel beams, stone cladding. The development will involve

- a change of used of 122.2 m² from storage to this retail use at ground floor level,
- a change of use of 112 m² to office at first floor level. (It is noted from site inspection that there is currently no first floor area other than a small office area as shown on first floor plan to be c. 40 sq m. Therefore, this would be new floor area rather than change of use).
- the addition of a second floor office area of 40.1 sq m .

A cover letter submitted with the application sets out that the applicant runs a retail section nearby (Cloud Nine) in Clonminam which has no storage space. Purchasers at that location have to collect products from the storage facility (at the application site) requiring additional traffic movements and placing additional demands on staff. The proposed development would bring the operations together at one location.

3.0 Planning Authority Decision

3.1. Planning Authority Decision

The Planning Authority refused permission for two reasons:

- Comparison retail use on the site would contravene the zoning provisions of the Laois County Development Plan;
- The development would facilitate the re-enforcement and enhancement of retail development at this industrial location, to the detriment of the viability and vitality of Portlaoise town centre and contrary to the policies of the County Development Plan and Local Area Plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Report found that the retail use proposed contravened the zoning objectives of the Laois County Development Plan (LCDP) as retail uses (including comparison retail and retail warehousing) are Not Normally Permitted under the applicable Industrial zoning. Exceptional circumstances, to consider the use more favourably, do not exist. The proposal was also considered to be contrary to the retail policies of the LCDP as it would under the vitality and viability of Portlaoise Town Centre and would set a precedent for other similar developments. There was no objection to the additional storage and office areas, to the design, siting and layout of the development, or on grounds of traffic, parking or drainage.

3.2.2. Other Technical Reports

Portlaoise Municipal District: No objection

3.3. Prescribed Bodies

Uisce Eireann: No objection subject to conditions.

3.4. Third Party Observations

None

4.0 Planning History

- 23/60446 Identical application, refused for the same reasons.
- 07/771 Permission granted to retain elevational changes and position of boundary
- 03/1705 Permission granted for new services road, drainage, and one industrial unit complying with Industrial Class of the Zoning matrix.
- Condition 7: Use of the premises to be confined to use specified in documentation lodged with Planning Authority i.e. as industrial unit. No under to be use fore the sale of convenience goods.
- Reason: In order to safeguard the amenities of the area.

5.0 Policy Context

- 5.1. Laois County Development Plan 2021-2027 (LCDP).

Chapter 6 Economic Development

The site is located within a large area at Togher, identified as a Strategic Employment Opportunity Site. The LCDP acknowledges the zoning and servicing of the lands as a National Enterprise Park for enterprise, employment and industrial uses, and as having a role in establishing a larger, more robust and diverse economic basis for the town, county and region, and supporting the County settlement strategy

Chapter 7 Retail and Town Centre Management and Appendix 4

Outlines the retail hierarchy. sequential approach for retail development the primacy of the retail core/town centre, and Retailing Policy Objectives, including:

RTP 1 *Ensure the orderly development of future retail developments in County Laois, to keep the retail strategy under review, having regard to the*

changes in the retail sector and have regard to any such review in determining applications for retail development

RTP 7 *Ensure that all retail development permitted is in accordance with the Retail Planning: Guidelines for Planning Authorities (DECLG, 2012) and the Laois County Retail Strategy.*

Appendix 4 of the LCDP contains the Retail Strategy for the County. The following policies are noted:

Policy 1: *It will be Council policy to ensure that all retail development permitted accords with the relevant requirements and criteria as established within the Retail Planning Guidelines for Planning Authorities 2012 and the Laois County Retail Strategy 2021-2027.*

Policy 6: *It will be Council policy to discourage new retail development if they would either by themselves or cumulatively in conjunction with other developments seriously damage the vitality and viability of existing retail centres within the County. This policy is aimed at protecting the existing vitality and service provision of the towns, and particularly the town centres, of Laois by preventing the development of retail enterprises in inappropriate locations or at a scale which would have a negative impact on retail competition within the County.*

Chapter 13 General Location and Pattern of Development

Land use zoning for Portlaoise was incorporated into the making of the overall LCDP where the site is zoned Industrial & Warehousing, where the objective is: *‘To provide for and improve industrial and warehousing development.’*

The purpose of the zoning is: *‘To provide for heavy industry associated with environmental emissions, including noise and odour and with intensive or hazardous processing and also provide for warehousing, light industry, technology related office development and general office development that exceed 400 square metres. Other uses, ancillary or similar to industry and warehousing will be considered on the merits of each planning application and*

may be acceptable in this zone. Where employment is a high generator of traffic, the location of new employment at appropriate scale, density, type and location will be encouraged to reduce the demand for travel. The layout of new employment sites shall have regard for alternative sustainable modes of transport.

Proposed site layout should emphasize the necessary connections to the wider local and strategic public transport, walking and cycling networks. Residential or retail uses (including retail warehousing) will not be acceptable in this zone. Where any industrial/warehousing land adjoins other land uses, Laois County Council will require that a buffer zone is provided for and landscaped in accordance with the Development Management Standards of this Plan.'

Retail (Comparison), Retail (Convenience), Retail Warehousing are 'N' under the zoning matrix, i.e. Will Not Normally be Acceptable. This is described in the LCDP as follows:

'Development which is classified as not normally being acceptable in a particular zone is one which will not be entertained by the Local Authority except in exceptional circumstances. This may be due to its perceived effect on existing and permitted uses, its incompatibility with the policies and objectives contained in this Plan or the fact that it may be inconsistent with the proper planning and sustainable development of the area. The expansion of established and approved uses not conforming to land use zoning objectives will be considered on their merits.'

5.2. Local Area Plan

5.2.1. Portlaoise Local Area Plan 2018-2024

- This Plan has now expired.
- The site was zoned Industrial and Warehousing.
- Policy TCR P1 "Encourage retail development within the existing town centre. Proposals which would undermine the vitality and viability of the town centre will not be permitted. The sequential approach to retail development set out in

the “Retail Planning - Guidelines for Planning Authorities, 2012” will be strictly enforced”.

5.2.2. **Draft Portlaoise Local Area Plan 2024-2030**

- The site is within Togher Area Master Plan Area, Area 4, which is identified as ‘Industrial Estate’.

Objective ED05 of the draft LAP refers: *‘Develop Junction 17 National Enterprise Park (Togher) and improve the existing built environment of the Togher/Clonminam Area in line with the masterplan.’*

The Masterplan envisages a National Enterprise Park for enterprise, employment and industrial uses, in the immediate vicinity of national strategic transport infrastructure.

- The draft LAP does not incorporate zoning of land, but relies on the zoning for Portlaoise incorporated into the LCDP, as detailed above.
- Material Alterations to the Portlaoise LAP were advertised with a closing date for public consultation period of 29/10/2024. Other than the re-naming of the area within which the site is located, from Togher Area Master Plan to J17 National Enterprise Park, the proposed Material Alterations do not affect the site or the application/appeal. The LAP is due to be adopted not later than 10 weeks from that date i.e. 07/01/2025.

5.3. **Section 28 Retail Planning Guidelines 2012** These provide guidance to ensure retail development is plan led and respects the primacy of the town centre through application of a sequential approach. Definitions of retail types are provided.

5.4. **Natural Heritage Designations**

pNHA Ridge of Portlaoise, 0.7 km from the site to east.

Sliabh Bloom SPA and SAC 7.5km to the west of site.

5.5. **EIA Screening**

While the proposed construction works constitute a project for the purposes of EIA, the proposed change of use does not. The proposed construction works do not fall

within the scope of a Class of development for the purposes of EIA (See Appendix 1 attached) therefore EIA screening or EIA is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- The appeal states that while both the CDP and LAP state that while retail is not normally permitted in Industrial and Warehousing zoning, it can be in certain exceptional circumstances. This should be considered in this case given the use is ancillary to the established development on site, given the pattern of development in the business park, the precedent for non-industrial/warehousing units, and given the heavy retail use would not be suited to a high street or other commercial retail areas.
- The Planning Authority has failed to consider the overall development and various uses required to consolidate the business. Storage will continue on site, office use is prevalent within the business park. It is not comparison retail floor space. The primary use complies with the zoning objective; the office and retail use are ancillary.
- The development should be viewed as exceptional in nature: The CDP has failed to accommodate this small business if the retail use is not acceptable at the proposed location, and the industrial element of the business is not normally permitted under a Town Centre zoning.
- Vitality and viability of Portlaoise Town Centre: The town centre is not suitable for this type of development. Industrial use is not normally permitted under Town Centre zoning. There is also limited parking.
- The proposed development will not provide an unwanted precedent. The precedent has already been set due to the variances of non-industrial uses within the business park to date. An unwanted precedent would be a heavy goods based business setting up in the town centre requiring heavy vehicles to transport goods.

- There are other primarily retail developments slightly further out from the town centre.

6.2. Planning Authority Response

None

6.3. Observations

None

7.0 Assessment

Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issue in this appeal is the principle of the proposed type of retail use having regard to the policies and objectives of the CDP relating to the site.

7.1. Nature of retail use

- The Retail Planning Guidelines 2012 define types of Retail Goods. Comparison Goods (page 53) include bulky goods. Bulky goods are described as '*Goods generally sold from retail warehouses where DIY goods or goods such as flatpack furniture are of such size that they would normally be taken away by car and not be portable by customers travelling by foot, cycle or bus, or that large floorspace would be required to display them.*' I consider that the retail goods proposed to be sold are consistent with this category, and therefore constitute comparison bulky goods.
- The Retail Planning Guidelines also describe Retail Warehousing as 'A large single-level store specialising in the sale of bulky household goods such as carpets, furniture and electrical goods, and bulky DIY items, catering mainly for car-borne customers.' Based on the nature of the proposed development and

retail use, I consider that the proposed development may also be considered a Retail Warehouse use, albeit over 2 floors.

- The site is zoned Industrial & Warehousing. Comparison Retail and Retail Warehousing are Not Normally Permitted under this zoning.

7.2. Exceptions under zoning

I note the appellant's position in relation to the zoning provisions of the LCDP which state that

i. "Other uses, ancillary or similar to industry and warehousing will be considered on the merits of each planning application and may be acceptable in this zone"

- I do not consider that retail use is similar to industrial/warehouse use and therefore the proposed retail use is not supported by the above excerpt.
- With regard to 'ancillary', the existing use of the unit is clearly a warehouse, which stores items for sale in the retail element of this business, nearby. (It is not operating as an 'Industrial' building, as described by the appellant; there is no industrial process underway within.) Wholesale warehouses are permissible under the Industrial/Warehousing zoning. Wholesale refers to the sale of goods in larger quantities to retailers or other businesses, rather than directly to consumers. (While it is not stated that the existing warehouse also operates as a wholesaler to other retailers, no direct sales to consumers were evident on site.) The current warehousing use is c. 300 sq m at ground floor, with 80.2 sq m in staff welfare and ancillary office use, between ground and first floor.
- The proposed first floor area (which is not existing, but is new floor area) is labelled 'change of use' on floor plan drawings and the application fee refers to a 234.6msq 'change of use' which suggests the first floor use will not be as existing storage/warehousing but as the proposed new retail/display use. (This is relevant in terms of the quantity of retail/display area being proposed and whether such quantity could be considered ancillary to the main warehouse use).

- The proposed development would therefore result in c. 178sq m warehouse/storage, c. 234 sq m commercial/retail and c. 120 ancillary office/staff welfare facilities. The quantity of retail use exceeds the warehouse/storage use, and could not be considered minor or ancillary.

ii. ***‘Development which is classified as not normally being acceptable in a particular zone is one which will not be entertained by the Local Authority except in exceptional circumstances.’***

I do not consider that exceptional circumstances exist:

- The appellant states that the business is not provided for under the LAP/CDP. However, Retail Warehousing is “Y” (Will Normally be Acceptable) under the Town Centre and General Business zonings and “O” (Are Open for Consideration) under the Mixed Use and Enterprise & Employment zonings. Large areas of lands within Portlaoise benefit from these zonings. Therefore, the business is provided for under the CDP/LAP.
- The Retail Planning Guidelines also state, in relation to Retail Warehousing, that ‘Generally speaking, retail warehousing units of less than 700 M2 gross floorspace are more easily capable of being accommodated in urban centres and, in any event, tend to sell a less bulky range of goods.’
- The appellant refers to precedent of other non-conforming uses within this zoned Industrial/Warehousing area to support his case under the Industrial/Warehousing zoning. While each application is considered on its merits, I have considered this matter. While I noted a variety of uses in the area upon site inspection, I have reviewed planning history for the businesses named in the appeal. Some of these date to 2002-2005, and were not assessed under current/recent policy context, and are not therefore comparable. Other current uses are different to those for which permission was granted, and appear unauthorised. I can see no recent applications for the type of uses referred to by the appellant, and no planning reference numbers are provided in the appeal.

Therefore there is no evidence of recent favourable consideration by the Planning Authority of retail uses, or evidence that such uses have been deemed to constitute exceptional circumstances in terms of the zoning provisions of the LCDP.

I therefore concur with the Planning Authority that the proposed retail use would contravene the zoning provisions of the Laois County Development Plan.

7.3. Viability and Vitality of Town Centre

- The Planning Authority also refused permission on the basis that the development would facilitate the re-enforcement and enhancement of retail development at this industrial location, to the detriment of the viability and vitality of Portlaoise town centre and contrary to the policies of the County Development Plan and Local Area Plan.
- The appeal refutes this, on the basis that it would not be possible to operate this business from the town centre given access/parking needs, that the industrial nature of the business is 'not normally permitted' in the town centre and that there are newer retail areas slightly out from the town centre.
- I do not interpret the reason for refusal as the Planning Authority stating that the proposed development must be located within the Town Centre. I consider this reason relates to broader retail planning policy which is set out in Chapter 7 of the LCDP and in the Retail Strategy (which overlap to an extent).
- Policy objective RTP 1 of the LCDP seeks to ensure the orderly development of future retail developments and policy objective RTP 7 is to ensure that all retail development permitted is in accordance with the Retail Planning: Guidelines for Planning Authorities (DECLG, 2012) and the Laois County Retail Strategy
- Policy 1 of the Retail Strategy seeks to ensure that all retail development accords with the Retail Planning Guidelines and Laois County Retail Strategy. This requires a plan led approach to the location of retailing, and the protection of the primacy of retail centres/town centres. Policy 6 relates to prevention of

retail enterprises at inappropriate locations, again to protect retail centres/town centres.

- 7.3.1. The zoning of lands and zoning matrix is part of the implementation of the above policies. As the proposal is for comparison retail on lands zoned Industrial & Warehousing, the proposed development represents retail development at an inappropriate location which undermines the retail strategy for the County and for Portlaoise and would be contrary to the LCDP and (now expired) LAP.

8.0 AA Screening

I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is 7.5 km from the Sliabh Bloom SPA and SAC.

The proposed development comprises the change of use of existing storage to retail, and the construction of additional retail and storage areas in an existing warehouse.

No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The small scale and nature of the development and location within a serviced urban location
- The location and distance from the nearest European site and lack of connections
- Taking into account the screening report/determination by Laois County Council.

I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

I recommend that permission be refused for the reasons and considerations set out below.

10.0 Reasons and Considerations

- 10.1. The Laois County Development Plan 2021- 2027, having regard to the Retail Planning Guidelines 2012, sets out a retail strategy for the county and for Portlaoise, which seeks to ensure retail development is plan led, and to protect the primacy, vitality and viability of town centres. The zoning provisions of the Laois County Development Plan support the Retail Strategy, by guiding the appropriate location of retail (and other) development in Portlaoise.

The proposed development is located on lands zoned 'Industrial and Warehousing' where comparison retail will Not Normally be Acceptable. The proposed development would therefore contravene the zoning provisions relating to the site, would encourage retail enterprise at an inappropriate location, and would undermine the vitality and viability of Portlaoise town centre. The proposed development would thus be contrary to policy objectives RTP1 and RTP6 of the Laois County Development Plan 2021-2027, to the Laois Country Retail Strategy and Retail Planning Guidelines 2012 and to the proper planning and sustainable development of the area.

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.

Bébhinn O'Shea
Senior Planning Inspector

07/01/2025

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	319841-24		
Proposed Development Summary	Change of use of existing storage to retail, additional first floor area and additional 2 nd floor office area in an existing warehouse.		
Development Address	Clonminham Industrial Estate Portlaoise		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	√ Works element comes within definition of project
		No	√ Change of use element does not come within definition of project (No further action required in relation to c.o.u, element)
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	√		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No	√	N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	√	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____