



Comhairle Contae an Chabháin
Cavan County Council

9th April 2019

An Bord Pleanála
64 Marlborough Street
Dublin 1

AN BORD PLEANÁLA	
LDG- <u>01 5103-19</u>	
ABP- _____	
10 APR 2019	
Fee: € <u>110</u>	Type: <u>Change</u>
Time: _____	By: <u>Ray Post</u>

Re: Section V request from Cavan County Council
for Tempside Ltd., T/A Polonez ref. Enf 18-092

Location: Pollamore Near, Dublin Road, Cavan.

Question: To ascertain whether change of use from car dealership to retail sale of convenience goods is or is not exempted development

Dear Sirs,

A question arises as to whether or not this particular change of use is exempt from planning permission, we hereby seek clarification from the board.

A file and payment of €110 is enclosed.

Documents attached are:

1. A site location map.
2. Grant of permission & conditions to 'erect a new serviced dealership unit' - PL ref. 99/1401.
3. Grant of permission & conditions to 'retain change of use of workshop unit' - PL ref. 07/1980.

Part of the unit to rear changed to plant hire PL ref. 07/1980.

Condition no. 7 of PL ref. 07/1980 'Use of the premises to be confined to use specified in documentation lodged with Planning Authority i.e. as machinery and plant hire. No unit to be used for the sale of convenience foods.

Cavan County Council
Courthouse
Farnham Street
Cavan H12 R6V2

T: 049 437 8300

E: info@cavancoco.ie

Comhairle Contae an Chabháin
E: eolas@cavancoco.ie

W: www.cavancoco.ie

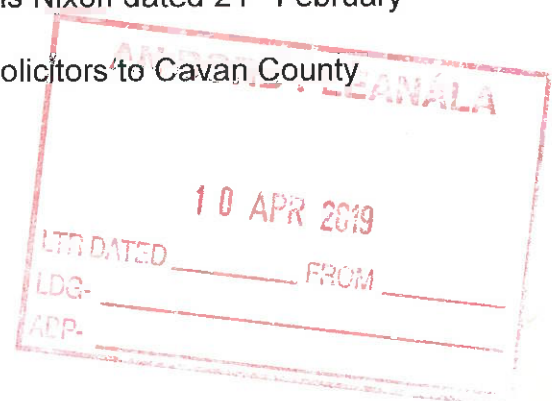


4. Feb 2008 – Oct 2010
Front unit used for carpet & furniture sales – photo attached.

Feb 2011 – Oct 2012
Front unit used for Kitchen / bedroom & fitted furniture sales – no photo available.
5. Jan 14 – Sept 17
Front unit used for 'Performance fuels & feeds & retail pet shop, equestrian & pet supplies' – photo attached.
6. 2014 Ref.-Enf 14-014 but was closed due to exempted development for pet supplies. Complaint received regarding pet shop in 2014. An Enforcement File was opened. Planning Authority satisfied development was exempt due to Class 14.
7. Grant of permission & conditions to 'erect advertisement sign and associated works' - PL ref. 16/30.
8. REFUSE Grant of permission & conditions for the 'change of use for part of previously approved retail unit from retail to retail and off licence sales area' – PL ref. 18/317.
Cavan County Council decision to refuse on 23/10/18
9. Applicant – appealed decision to ABP 21/11/18
10. Warning Letters issued on 21/12/18 to owner (Denis Nixon) & occupier (Tempside Ltd) due to opening of convenience outlet.
11. (a) - Letter & enclosure from Compton Solicitors (on behalf of Tempside Ltd. - occupiers) dated 28th January 2019 in reply to Warning Letter.

(b)-Letter from Denis Nixon (Owner) dated 1st February 2019.
12. Appeal 18/317 withdrawn 08/02/19.
13. Additional correspondence.
(a)- Cavan County Council reply to Compton Solicitor dated 21st February 2019.

(b) - Cavan County Council reply to Denis Nixon dated 21st February 2019.
(c) - Letter & enclosure from Compton Solicitors to Cavan County Council dated 6th March 2019.



If you require any further information, please do not hesitate to contact our office.

Yours sincerely,



Nicholas O'Kane
Senior Planner

②

LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 - 1999

NOTIFICATION OF DECISION TO GRANT A PERMISSION

(SUBJECT TO CONDITIONS) UNDER THE ABOVE ACTS

CAVAN COUNTY COUNCIL

TO: D. Nixon
C/O Crubany Design Services
Rathcorrick,
Cavan

Planning Register Number: 99/1401
Application Receipt Date: 12/11/1999
Valid Application Date: 12/11/1999
Further Information Received Date: 19/01/2000

In pursuance of the powers conferred upon them by the above-mentioned Acts, Cavan County Council has by Order dated 15/02/2000 decided to **GRANT** permission for development of land, namely:- erect new serviced dealership unit with associated site works and signage and connection to public mains at Pullamore Near, Cavan Co. Cavan in accordance with the plans submitted with the application.

Subject to the 39 condition(s) set out in the attached schedule.

Signed on behalf of Cavan County Council

Administrative Officer

Date: 15 February, 2000

Provided there is no appeal against this **DECISION** a grant of planning permission will issue at the end of period within which an appeal may be made.

THIS NOTICE IS NOT A GRANT OF PERMISSION AND WORK SHOULD NOT COMMENCE UNTIL PLANNING PERMISSION IS ISSUED.

NOTE:

An appeal against the decision may be made to An Bord Pleanála **within one month beginning on the date of the decision.** Any appeal must state in full the grounds of appeal and the reasons, considerations and arguments on which they are based.

Appeals (a) against a decision of a Planning Authority on a planning application relating to commercial development, by the person by whom the application was made must be accompanied by a **DEPOSIT OF £300.00** (b) Appeal other than appeal mentioned at (a) must be accompanied by a **DEPOSIT OF £120.00.** Appeals to the Board which are not accompanied by such deposit and grounds of appeal will be **INVALID.**

Appeal should be addressed to An Bord Pleanála, Floor 3, Block 6, Irish Life Centre, Lower Abbey Street, Dublin 1. An appeal by the applicant for permission **should be accompanied by this form.** In the case of an appeal by any other person, the name of the applicant, particulars of the proposed development or of the structure to be retained and the date of the decision should be stated.

10 APR 2000

LTS DATED _____ FROM _____

LOG- _____

REF- _____

LOCAL GOVERNMENT (PLANNING & DEVELOPMENT) ACTS, 1963 - 1999

PLANNING APPLICATION: D. Nixon, C/o Crubany Design Services.
REG NO:- 99/1401.

SCHEDULE : Conditions and Reasons for Conditions

1. Prior to the commencement of any development utilising the existing piped sewerage system as proposed as part of the application, the applicant shall submit to and agree with the Planning Authority further plans that shall:-

- a) Indicate the size and type of watermain to be installed.
- b) Plan and sections of foul sewer (with pipe size, type, levels and point of discharge).

In the interests of public health and amenity.

2. Front fence-line shall be set back a minimum of 3 metres from the existing nearside edge of the tarred carriageway and the area forward of the fence-line shall be treated in the following manner:

The area between the entrance gates and the new boundary and the bituminous/tarred road shall be treated in the following manner:

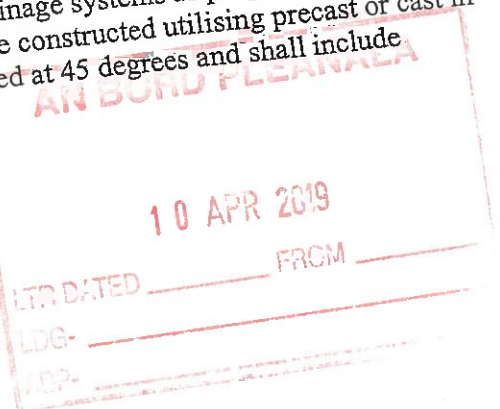
- a) existing roadside drainage shall be piped under the entrance and area forward of new boundary walls shall be drained with concrete pipes, the diameter of which shall be a minimum of 225mm.
- b) the area shall be backfilled and graded downwards from the bituminous/tarred edge of the public road at a gradient of 5%, provided with lockable type gullies and a surface water drainage system ('Acco' channel or similar approved) that ensures no surface water flows from the entrance (or layby area) to the public road but is collected and discharged direct to nearby watercourses.
- c) area forward of new fence line shall be constructed with a minimum depth of 400mm layer of Clause 804 and finished in 100mm layer of bitumen macadam.

To prevent flooding and frost damage to the public road in the interests of traffic safety.

3. The inlets and outlets to piped surface water drainage systems as proposed or as stipulated by the permission or approval shall be constructed utilising precast or cast in situ concrete lead-in walls, training walls splayed at 45 degrees and shall include concrete aprons upstream and downstream.

In the interests of traffic safety.

1



4. The development of the entrance area and associated frontage works as indicated in foregoing condition(s) shall ensure that the existing roadside drainage is neither surcharged, obstructed or impeded as a result of works carried out and that there is no consequential impounding of surface water on the public road.

In the interests of traffic safety and amenity.

5. All works relating to surface water drainage in association with entrance and layby development as indicated in foregoing Condition(s) shall be commenced concurrently with other site preparation works including building construction and completed prior to the pouring of foundations for the proposed building(s).

In the interests of traffic safety and amenity.

6. Any Telecom Eireann/public utility poles which may be exposed by the removal of the front boundary fence shall be resited in a position alongside the new front fence line concurrently with overall site development works.

In the interests of traffic safety.

7. No surface water from roofs or paved areas shall flow from the site (including entrance area) onto the road adjoining the site but shall be collected by a surface water drainage system and discharged direct to nearby watercourses

In the interests of public health, traffic safety and amenity.

8. Foul wastes only shall be discharged to the foul sewer system. Surface waters shall be discharged to the surface water drainage system or direct to nearby watercourses.

In the interests of public health, traffic safety and amenity.

9. The developer shall notify the Area Engineer, prior to backfilling of his intent to connect to the public watermain and allow the Area Engineer to inspect and test the system to ensure the systems are of adequate construction and standard.

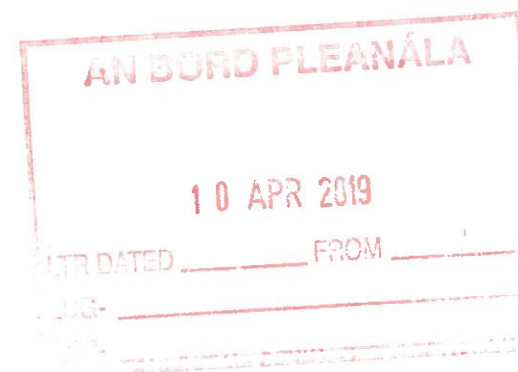
In the interests of public health and amenity.

10. Watermain shall be satisfactorily pressure tested prior to making service connection and these tests are to be approved by the Planning Authority.

In the interests of public health, traffic safety and amenity.

11. The floor level of the proposed dwelling shall be such that the foul drain service pipe may be laid at a minimum gradient of 1\60.

In the interests of public health and amenity.



12. All sewers shall be laid with a minimum cover of 1.2 metres in road and driveways, 0.9 metres in open spaces and footpaths not adjacent to carriageways and 0.6 metres in gardens. Where it is not possible to achieve these minimum covers, pipes shall be bedded and surrounded in concrete 150 millimetres thick.

In the interests of public health and amenity.

13. The water service pipe shall have a minimum cover of 600 millimetres.

In the interests of health and amenity.

14. The mains water supply (minimum diameter of more than 75mm) shall have a minimum cover of 900 millimetres.

In the interests of public health and amenity

15. Manhole covers and frames complying with B.S. 497 Grade A shall be installed in carriageways and Grade B in footpaths, verges and vehicular access.

In the interests of public health and amenity.

16. The premises shall be capable of being isolated from the watermain independently from the County Council's water services control unit.

In the interests of public health and amenity.

17. Each water service connection shall have a stop cock and chamber located in the footpath\road immediately adjoining each property. Each stopcock unit shall be installed to the Council's satisfaction at time of connection.

In the interests of public health and amenity

18. The development shall be carried out complete in one phase

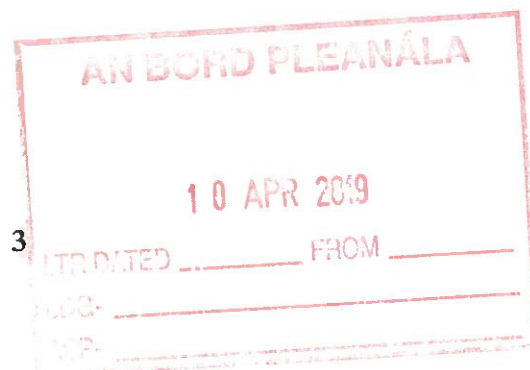
In the interests of public health and amenity.

19. During construction phase the developer shall be responsible for maintaining the public road system nearby in a reasonably clean and soil free condition and any costs incurred by Council cleaning the local road system shall be borne by the developer.

In the interests of traffic safety and amenity

20. During construction phase the developer shall be responsible for ensuring that no pavement or structural damage occurs to the adjoining public road network as a consequence of heavy plant using the local system and any damage shall be repaired by Council at cost to the developer.

In the interests of traffic safety.



21. A refundable deposit of £5,000 shall be lodged with Cavan County Council prior to commencement of any development as a security to ensure compliance with foregoing Conditions relating to the maintenance of the public road system in a safe and integral manner.

In the interests of traffic safety and amenity.

22. All site development works shall be carried out in accordance with the Department of Environment publications "Specification for Road Works" and "Recommendations for Site Development Works for Housing Areas". (Nov. 1998).

In the interests of traffic safety and amenity.

23. All cabling shall be undergrounded (including telecommunications).

In the interests of visual amenity

24. No Materials, goods, machinery or other items including dismantled vehicles, vehicles awaiting repair or servicing or removal to a dumping ground, shall be stored other than within the building or designated storage compounds within the site. No materials or other items shall be stored, deposited or dumped on the adjoining public road system.

In the interests of traffic safety and amenity.

25. All security lighting shall be cowled away from the public road.

In the interests of traffic safety.

26. Petrol interceptors shall be installed and no oil product shall enter the surface water drainage system.

In the interests of public health and amenity.

27. Applicant shall take all measures to ensure that the operation associated with the Workshop do not cause interference with public power supply. Applicant shall liaise with ESB on matters in advance of commencement of development.

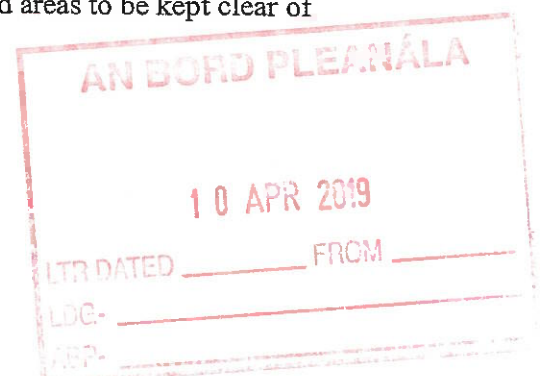
In the interests of residential amenity.

28. Carpark, internal service road and entrance area shall be adequately designed in terms of strength and thickness and shall be surfaced in bituminous macadam with minimum thickness 50 mm.

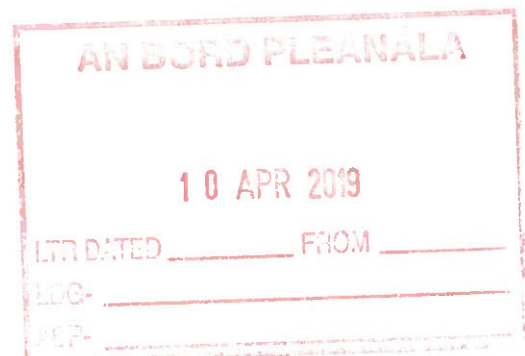
In the interests of traffic safety.

29. Carparking shall be appropriately marked with thermoplastic road marking materials designating parking bays, circulation lanes and areas to be kept clear of parking.

In the interests of traffic safety



30. Roadways and paved areas shall be drained by the provision of an adequate number of gullies so arranged to avoid ponding. The gully grating shall be lockable type to B.S. 497 Part 1.
- In the interests of traffic safety.
31. Non-phosphorus biodegradable detergents only shall be used in the carwash.
- In the interests of public health and amenity.
32. The level of illumination of advertising devices shall be agreed with the Planning Authority prior to erection.
- In the interests of traffic safety.
33. Roof cladding shall be of a dark colour, green or brown or similar agreed with Planning Authority.
- In the interests of visual amenity.
34. The colour and detail of the boundry fence shall be agreed with the Planning Authority.
- In the interests of visual amenity.
35. Proposed evergreen screen (Drg. No. 609/04/00) shall be planted concurrently with building construction and any failures in first 3 years shall be placed. Species to be agreed with Planning Authority.
- In the interests of visual amenity .
36. Suitable and adequate fire fighting equipment shall be installed: Hydraulic hose reels shall comply with B.S. 5274: 1985, shall be capable of a nozzle discharge of 3 litres per minute and shall be sited in a building in accordance with B.S. 5306: Part 1: 1981. Fire extinguishers shall comply with I.S. 290: 1986 and shall be sited in a building in accordance with I.S. 291: 1986. Light duty fire blankets shall comply with B.S. 6575.
- In the interests of fire safety.
37. Vehicular access and turning facilities for Fire Brigade Appliances shall be provided in accordance with Table 5.2 of Technical Guidance Document B of the Building Regulations, 1997.
- In the interests of fire safety.



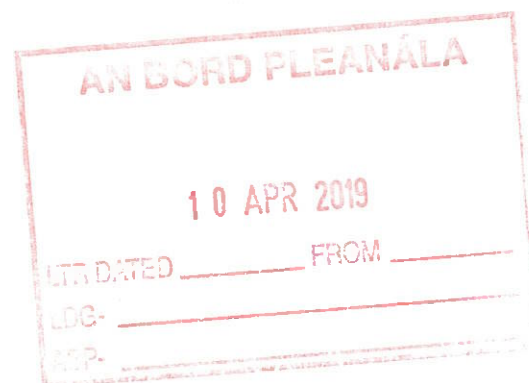
38. Hydrants shall be provided from a watermain capable of discharging a minimum flow of 250 g.p.m. in excess of average demand. Hydrants shall be of the screw down type to B.S. 750 and hydrant indicator marker plates shall be provided to comply with B.S. 3251: 1976. The outlet from a hydrant shall not be greater than 200mm below adjoining ground level.

In the interests of fire safety.

39. A development contribution of £5,000 shall be paid to Cavan County Council in lieu of new improved water/sewerage services facilitating the site.

Contribution pursuant to Sub-section 2 (g) of Section 26 of Local Government (Planning and Development) Act, 1963.

ADMINISTRATIVE OFFICER.



3

PLANNING AND DEVELOPMENT ACT 2000 - 2004

NOTIFICATION OF FINAL GRANT

COUNCIL OF THE COUNTY OF CAVAN

TO: Denis Nixon
C/o Crubany Design Services
Rathcorrick,
Cavan

Planning Register Number: 07/1980
Application Receipt Date: 04/10/2007
Further Information Received Date: 15/05/2008

In pursuance of the powers conferred upon them by the above-mentioned Act, Cavan County Council have by Order dated 06/06/2008 GRANTED RETENTION to the above named, for the development of land, namely:-
retain change of use of workshop unit granted under Pl. Reg. No. 99/1401 to machinery and plant hire (Cavan Hire) Unit and permission to retain entrances as constructed at Cavan Daewoo at Pullamore Near, Dublin Road, Cavan in accordance with the plans submitted with the application.

Subject to the 24 condition(s) set out in the 2nd Schedule and for the reason set out in the 1st Schedule.

Signed on behalf of Cavan County Council.

ADMINISTRATIVE OFFICER

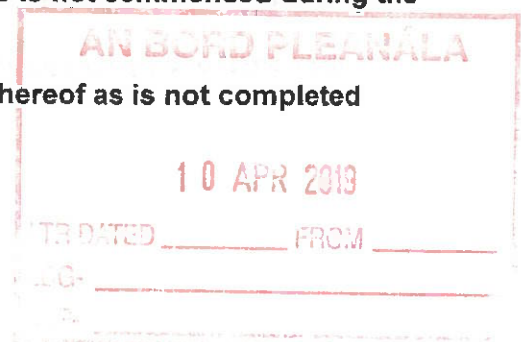
Date: 8 July, 2008

Note:

It should be noted that an Outline Permission is a permission subject to the subsequent permission of the Planning Authority and that until such subsequent permission has been obtained to detailed plans of the development proposed, the development is NOT AUTHORISED. Where Outline Permission has been granted any subsequent application for permission must be made not later than 3 years beginning on the date of the grant of outline permission.

Planning permission granted shall, on the expiration of the period of 5 years beginning on the date of the granting of permission, cease to have effect as regards:-

- (1) In case the development to which the permission relates is not commenced during the period, the entire development and
- (2) In case such development is so commenced, so much thereof as is not completed within that period.



PLANNING & DEVELOPMENT ACTS 2000 – 2004

PLANNING APPLICATION: Denis Nixon REG.NO. 07/1980

SCHEDULE 1

It is considered that, subject to compliance with the conditions set out below, the proposed development would not injure the amenities of the area, give rise to a traffic hazard or be prejudicial to public health and would be in accordance with the proper planning and development of the area.

SCHEDULE 2

1. The development shall be carried out in accordance with plans and particulars submitted to the Planning Authority on 04/10/07, as amended by the details received on 15/05/08, except where conditions hereunder specify otherwise.

In the interests of clarity and the proper planning and sustainable development of the area.

2. The applicant shall submit revised site plans scale 1:500 to Cavan County Council for approval which details access/egress arrangements to the satisfaction of the Planning Authority within 18 months of the date of grant of permission.

In the interests of traffic safety and public amenity.

3. Roof water and clean yard run-off water to be discharged properly into surface water drains. There shall be no discharge to the public roadway.

To prevent flooding of the public road, in the interests of traffic safety and in the interests of public health.

4. During the development works the developer is not to permit any material from the site to be spread or deposited along the public roadway. The developer shall be responsible for maintaining the roadway in a neat, tidy and safe condition.

To prevent any traffic hazard or nuisance arising from such material.

5. a) The developer shall maintain the site in a neat and litter free condition during the and after the construction period. Waste disposal skips shall be maintained on site for this purpose.
b) The applicant is not permitted to store materials outside the boundary of the site on the roadside.

In the interest of maintaining a litter free environment.

6. No additional floorspace shall be formed within the building hereby approved by means of internal horizontal division without the prior grant of planning permission.

In the interest of the proper planning and development of the area.

Use of the premises to be confined to use specified in documentation lodged with Planning Authority i.e. as machinery and plant hire. No unit to be used for the sale of convenience foods.

In order to safeguard the amenities of the area.

8. Full details of all proposed signage and lighting associated with the development shall be submitted to the Planning Authority for written approval prior to its erection

Note: Shop sign advertising shall be of the handwriting type on timber fascia board (or similar) with lighting by external means. Plastic, internally illuminated, box fascia signs or similar shall not be permitted.

In the interests of visual amenity.

9. Any external lighting shall be cowled and directed away from the public roadway.

In the interests of traffic safety.

10. No Materials, goods, machinery or other items including dismantled vehicles, vehicles awaiting repair or servicing or removal to a dumping ground, shall be stored other than within the building or designated storage compounds within the site. No materials or other items shall be stored, loaded, unloaded, deposited or dumped on the adjoining public road system.

In the interests of traffic safety and amenity

11. Carpark, internal service road and entrance area shall be adequately designed in terms of strength and thickness and shall be surfaced in bituminous macadam with minimum thickness 40 mm.

In the interests of traffic safety.

12. Within six weeks of date of final grant the applicant shall submit a site layout plan detailing the existing water layout and connection to the public supply

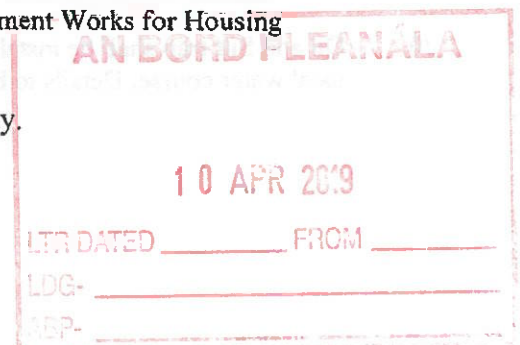
In the interests of public health, traffic safety and amenity.

13. Within six weeks of date of final grant the applicant shall submit on the site layout plan and section, the existing storm sewers including connection to the water course and the foul sewer layout including pumping systems and connection to the public foul manhole.

In the interests of public health, traffic safety and amenity.

14. All works shall be carried out in accordance with the Dept. of Environment and Local Government publication 'Recommendations for Site Development Works for Housing Areas' (November 1998)

In the interests of public health, traffic safety and amenity.



15. Applicant shall be responsible for the maintenance and upkeep of all existing watermains & sewers, to a standard that meets the Water Services Authority's requirements.

In the interests of public health, traffic safety and amenity.

16. Each /unit shall be served by individual service connections if not already installed of appropriate bore which shall be fitted with a "Water Services Control Unit" including meter of a type acceptable to Cavan County Council and located so as to be accessible to County Council Staff. The unit shall be installed to the manufacturer's specification including for frost protection. On the dwelling house side of the "Water Services Control Unit" and within the property a separate facility (stop/shut-off valve) shall be installed such that the premises shall be capable of being isolated from the watermain without recourse to the "Water Services Control Unit".

In the interests of public health, traffic safety and amenity.

17. A bulk meter (Kent or similar approved) shall be installed if not already fitted on the watermain inside the site boundary but before any service connections, in a purpose built meter chamber with a configuration of valves/pipework to enable the meter to be removed for repair purposes. Meter to be sited as advised by water services

In the interests of public health, traffic safety and amenity.

- 18 Any Re-Connection to the public sewer and watermain shall be the subject of a separate application and shall be subject to the fees and charges applicable at that time. However, no connection will be considered until the applicant has made satisfactory arrangements with the local Area Engineer for the inspection of pipelines during laying and before backfilling of trenches and for the pressure testing of pipelines. Written evidence of Area Engineer's approval will be required.

In the interests of public health, traffic safety and amenity.

19. All New pipework laid in roads and road verges shall have their trenches backfilled in accordance with "Guidelines for the Opening, Backfilling and Reinstatement of Trenches in Public Roads" as published by the Department of the Environment and Local Government publication.

In the interests of public health, traffic safety and amenity.

20. Oil and Silt trap shall be installed if not already fitted before the connection points to the local water course. Details to be submitted for approval.

In the interests of public health, traffic safety and amenity.

21. Applicant shall be responsible for the maintenance, upkeep and setting of the 'Oil and Silt Trap' for the servicing cleaning and maintenance. Tanks to be installed to manufacturer's specification & a certificate to this effect to be submitted to Planning Authority.

In the interests of public health, traffic safety and amenity.

22. The outlets to piped surface water drainage systems if not already installed shall be constructed utilising precast or cast in situ concrete lead-in walls, training walls splayed at 45 degrees and shall include concrete aprons.

In the interests of public health, traffic safety and amenity.

23. Each W.C. Suite shall be of multi flush type with a maximum flush of 6 litres.

In the interests of public health, traffic safety and amenity.

24. The developer shall comply with financial conditions as set out in the original grant of planning permission 99/1401.

With reference to Section 48 of the Planning & Development Act 2000.

Administrative Officer

AN BORD PLEANÁIL	
10 APR 2019	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	

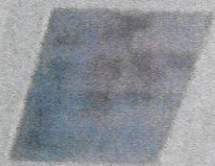


Entrances to Dennis Nixons commercial Unit opposite Meadowview, Dublin Road, Cavan.

10 APR 2019
MTR DATED _____ FROM _____
EUG- _____
MTR- _____

5

Fuels Performance
a Pet Supplies



ALL BOND PREMIUM
10 APR 2019
FROM _____
TO _____


Supper



6

Cavan County Council

Copy of details held on enforcement file:

Enf. 14-014 Dennis Nixon, Pollamore Near, Dublin Road, Cavan.

Declan Crowe
Moyne Hall
Cavan,
Co. Cavan.

30th November 2015

Re: Pet Shops at : Unit 5 Moynehall Cavan and Dublin Road Cavan

Dear Mr. Crowe

I refer to the above Units and to your letter dated 8th April 2014 and to the subsequent investigation by Development Compliance Department Staff.

Please note all planning permissions relating to the above Developments have been checked and both developments are considered to be in full compliance with planning conditions.

Accordingly Cavan County Council now consider the matter closed.

Yours sincerely,

Marice Galligan
Development Compliance Section,
Planning Department,
Cavan County Council

**Enf 14_015 Dublin Road- Former Daewoo garage, now a petshop
Parent Planning permission P 99/140 07/1980**

Written complaint Received from a member of the public complaining about “2 new pet shops in Cavan and also a saddler working from home at Lisdarn”.

Check the planning permission for any exclusive use clauses which would de-exempt any c.o.u. within same class.

Normally, a change of use from a motor retail unit **Class 1** to a grocery retail unit **Class 1** would be exempt under **Article 10, Part 4 of SI600 of the Planning and Development Regulations 2001.**

Check the planning permission for any exclusive use clauses.

Because of well publicised downturn in the car sales industry, it is highly likely the landlord would rent this unit to the on a first come first serve basis in order to ensure continuance of a practical use of this sizable commercial/retail unit.

I have examined the planning issues of this case they are summarised below:

Class 14(a) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 states that development consisting of the change of use ‘from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop’ constitutes exempted development whilst it is also of relevance to note that Column 2 of Part 1 of the Regulations does not impose any limitations or conditions in respect of this exemption.

Although the specific shop / retail use is now a pet shop and was formerly a carpet and flooring shop for the premises in question on the basis of a ‘shop’ use as defined by **Article 4 of the Planning and Development Regulations, 2001, as amended, (S.I. No. 364 of 2005)**, which includes, inter alia, the retail sale of goods, including both comparison and convenience goods (including discount retail/foodstores), and stores for the display of goods for sale and for the hiring out of domestic or personal goods or articles.

Accordingly, on the basis of the foregoing, it is my opinion that the use of the subject car showroom for retail / shop purposes (pet shop) is not development and is therefore exempted development.

Article 5(1) of the Regulations as amended by S.I. No. 364 of 2005 substitutes the following for the definition of ‘shop’ –

‘shop’ means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public-

- (a) for the retail sale of goods,
- (b) as a post office,
- (c) or as a travel agency,
- (d) for the sales of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and “wine” is defined as any intoxicating liquor which may be sold under a wine retailer’s off-licence (within the meaning of the Finance (1909-1910 Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,
- (e) for hairdressing,
- (f) for the display of goods for sale,

- (g) for the hiring out of domestic or personal goods or articles,
- (h) as a launderette or dry cleaners,
- (i) for the reception of goods to be washed, cleaned or repaired, but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which Class 2 or 3 of Part 4 of Schedule 2 applies’.

Article 6 (1) of the Regulations states the following:

‘Subject to article 9, development of a class specified in column 1 of part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’.

Article 9 (1) of the Regulations states as follows:

‘Development to which article 6 relates shall not be exempted development for the purposes of the Act –

- (a) If the carrying out of such development would –
 - (i) Contravene a condition attached to a permission under the Act, or be inconsistent with any use specified in a permission under the Act.
 - (ii) endanger public safety by reason of traffic hazard or obstruction of road users,
 - (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use’.

Part 1 of Schedule 2: Exempted Development – General:

Class 14:

‘Development consisting of a change of use -

- a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop’.

DRAFT Conclusion

In considering this issue, I had regard particularly to:

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000,
- b) Articles 5, 6 and 9 of the Planning and Development Regulations, 2001, and
- c) Classes 14(a) of Part 1 of the Second Schedule to the said Regulations, and the conditions and limitations of this Class:

The said proposed change of use constitutes development which comes within the scope of section 3 (1) of the Planning and Development Act, 2000,

b) the said proposed change of use comes within the scope of the exemption provided at Class 14(a) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and

c) the said proposed change of use to use as a shop is not affected by any of the restrictions on development set out at Article 9 of the Planning and Development Regulations, 2001, as amended,

section 5 (3) (a) of the 2000 Act, hereby decides that the said proposed change of use of an existing car showroom to use for retail / shop purposes at former is development which is exempted development.

Cases for reference RL2020 & RL2959

The case below breached Condition attached to grant. – inspector war overruled and development declared not exempted development

**RL2959: Nyhan Motors, By Pass,
Cloghmacsimon, Bandon, Co. Cork. (D292/11)**

Cork County Council - West Cork Section

Whether the use of car showroom for retail/shop use is development or is not development or is exempted development or is not exempted development.

Case reference: PL88 .RL2959

Case type: Referral

Decision: Is development and is not exempted development

Date Signed: 30/04/2013

Parties

- Con Nyhan (Owner/Occupier)
- Con Nyhan (Referrer) (Active)

7

PLANNING AND DEVELOPMENT ACT 2000 - 2004

NOTIFICATION OF FINAL GRANT

COUNCIL OF THE COUNTY OF CAVAN

TO: Enda Young
DMC Architects Ltd.,
21 Church View
Cavan
Co Cavan

Planning Register Number: 16/30

Application Receipt Date: 25/01/2016

Further Information Received Date.

In pursuance of the powers conferred upon them by the above-mentioned Act, Cavan County Council have by Order dated 07/03/2016 GRANTED PERMISSION to the above named, for the development of land, namely:-
to erect advertisement sign and associated works at Pullamore Near, Cavan, Co. Cavan in accordance with the plans submitted with the application.

Subject to the 1 condition(s) set out in the 2nd Schedule and for the reason set out in the 1st Schedule.

Signed on behalf of Cavan County Council

SENIOR STAFF OFFICER

Date: 14 April, 2016

Note:

It should be noted that an Outline Permission is a permission subject to the subsequent permission of the Planning Authority and that until such subsequent permission has been obtained to detailed plans of the development proposed, the development is NOT AUTHORISED. Where Outline Permission has been granted any subsequent application for permission must be made not later than 3 years beginning on the date of the grant of outline permission.

Planning permission granted shall, on the expiration of the period of 5 years beginning on the date of the granting of permission, cease to have effect as regards:-

- (1) In case the development to which the permission relates is not commenced during the period, the entire development and
- (2) In case such development is so commenced, so much thereof as is not completed within that period.

PLANNING & DEVELOPMENT ACTS 2000 – 2004

PLANNING APPLICATION: Enda Young **REG. NO.** 16/30

SCHEDULE 1

It is considered that, subject to compliance with the conditions set out below, the proposed development would not injure the amenities of the area, give rise to a traffic hazard or be prejudicial to public health and would be in accordance with the proper planning and development of the area.

SCHEDULE 2

1. Development shall be carried out in accordance with plans and particulars submitted to and received by the Planning Authority on 25th January, 2016 subject to the requirements of the following conditions.

In the interest of proper planning and sustainable development.

Senior Staff Officer

8

PLANNING AND DEVELOPMENT ACTS 2000 - 2018

CAVAN COUNTY COUNCIL

NOTIFICATION OF DECISION TO REFUSE

TO: Tempside Ltd
C/o Keenan Lynch Architects
4 Herbert Place
Dublin 2

Planning Register Number: 18/317
Valid Application Received: 01/08/2018
Valid Application Date: 01/08/2018
Further Information Received Date: 27/09/2018

In pursuance of the powers conferred upon them by the above-mentioned Acts, Cavan County Council has by Order dated 23/10/2018 decided to **REFUSE TO GRANT PERMISSION** for development of land, namely:-

the change of use for part of previously approved retail unit from retail to retail and off licence sales area at Pullamore Dublin Road Cavan in accordance with the plans submitted with the application.

For the 3 reason(s) set out in the Schedule hereto.

Signed on behalf of Cavan County Council

Senior Staff Officer

Date: 23 October, 2018

NOTE:

An appeal against the decision may be made to An Bord Pleanála within four weeks beginning on the date of the **DECISION**. Any appeal must state in full the grounds of appeal and the reasons, considerations and arguments on which they are based. Any appeal must be accompanied by a copy of acknowledgement of your submission to the Planning Authority.

Appeal against a decision of a Planning Authority on a planning application must be accompanied by the appropriate fee set out in the 'Guide to fees payable to the Board' which is attached to decision.

Appeal should be addressed to An Bord Pleanála, 64 Marlborough Street, Dublin 1. An appeal by the applicant for permission **should be accompanied by this form**. In the case of an appeal by any other person, the name of the applicant, particulars of the proposed development or of the structure to be retained and the date of the decision should be stated.

AN BORD PLEANALA
10 APR 2019
LTR DATED _____ FROM _____
LDG- _____
ABP- _____

PLANNING & DEVELOPMENT ACTS 2000 – 2018

PLANNING APPLICATION: Tempside Limited. REG. NO. 18/317

1. Having regard to the Land Use Zoning Objectives in the Cavan Town & Environs Development Plan (2014-2020) '*Existing Retail and Retail Warehousing*':- '*This zoning objective seeks to acknowledge existing retail and retail warehousing that has occurred in the plan area outside of the town core area. All of these sites are currently operating as retail and/or retail warehouses. Proposals in this zoning shall be assessed in compliance with Retail Planning Guidelines with regard to type of goods for sale and all proposals shall be assessed by their impacts on the vibrancy and importance of the Town Centre.*' and that Retail Shops are expressly Not Permitted in this Zone, the Planning Authority has considered that the proposed development would materially contravene the Cavan Town & Environs Development Plan (2014 – 2020).
2. On the basis of the information submitted, the Planning Authority is not satisfied that the development would not result the creation of a traffic hazard, by virtue of additional traffic movement onto the public road.
3. Notwithstanding the information submitted by the applicant on the 27/09/2018 in relation to Part 1, Class 14 (a) Planning and Development Regulations (2001 – 2018), in the absence of any determination by the Planning Authority under Section 5 of the Planning and Development Acts of 2000 – 2018 and having regard to Article 9 of the Regulations (2001-2018) "Restrictions on Exemptions", the Planning Authority considers the application is premature and are precluded from determining such an application.

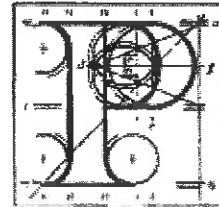
Senior Staff Officer

9

Our Ref: ABP-303029-18

Ref: 18317

Your Ref: Cavan County Council



An
Bord
Pleanála

13 DEC 2018

Cavan County Council
Farnham Street
Cavan
Co. Cavan
Ireland

Date: 12 December 2018

Re:
the change of use for part of previously approved retail unit from retail to retail and off licence sales area
Pullamore, Dublin Road, Cavan

Dear Sir / Madam

An Bord Pleanála has received your submission in relation to the above mentioned appeal and will take it into consideration in its determination of the appeal in accordance with the Planning and Development Acts 2000 to 2018.

Please note that section 129(4) of the 2000 Act provides that a party to an appeal shall not be entitled to elaborate in writing upon submissions or observations made or make any further submissions or observations in writing in relation to the appeal unless requested to do so by An Bord Pleanála.

Yours faithfully,

PP 
Gary Dorgan
Administrative Assistant
Direct Line: 01-8737172

13 Dec 2018

Encls. BP20

Teil
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

Tel
LoCall
Fax
Website
Email

(01) 858 8100
1850 275 175
(01) 872 2684
www.pleanala.ie
bord@pleanala.ie

64 Sráid Macíbhride
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Your Ref: ABP-303029-18

11th December 2018

Our Ref: P.A. Reg. No. 18/317

**An Bord Pleanála,
64 Marlborough Street
Dublin 1
D01 V902**

**Re: Appeal on Application by Tempside Ltd for the change of use for part of
previously approved retail unit from retail to retail and off licence sales area at
Pullamore, Dublin Road, Cavan**

Dear Sir/Madam,

**I refer to the above grant of permission and to the appeal submitted in relation to same
and I attach herewith the Planning Authority's response.**

Should you require any further assistance, please do not hesitate to contact our office.

Yours faithfully,

Senior Staff Officer



Comhairle Contae an Chabháin
Cavan County Council

CAVAN COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS, 2000 to 2017

WARNING LETTER - SECTION 152

To: **Mr. Dennis Nixon**
Poles
Cavan
Co. Cavan

Ref No 18-092

**Ref : Unauthorised development at Dublin Road,
Pollamore Near, Cavan, Co. Cavan.**

Dear Mr. Nixon,

This Warning Letter is issued to you by Cavan County Council as Planning Authority pursuant to Section 152 of The Planning & Development Acts, 2000 to 2017, and refers to land situated at Tirquin and Pollamore Near Cavan, Co. Cavan and more particularly highlighted in red on the attached map 'A' 2018.

It has come to the attention of the authority that the following unauthorised development is being carried out:

**The operation of an unauthorised shop at Dublin Road,
Pollamore Near, Cavan, Co. Cavan.**

You may make submissions or observations in writing to the Planning Authority regarding the purported offence not later than **Four (4) weeks** from the date of the service of this letter on you.

Having examined the unauthorised development and considered any submission or observation received from you within the prescribed period, the Planning Authority may issue an Enforcement Notice pursuant to Section 154 of the Planning and Development Act 2000, as amended.

Officials of the Planning Authority may at all reasonable times enter on the land for the purposes of inspection.

Contd.../

10 APR 2019

LTR DATED _____ FROM _____

LDG- _____

100. _____



Any person who has carried out or is carrying out unauthorised development shall be guilty of an offence (Section 151).

Section 156 provides, inter alia, that a person who is guilty of an offence under Sections 151 or 154 shall be liable:-

- (a) on conviction and indictment to a fine not exceeding €12,697,380.00, or to imprisonment for a term not exceeding 2 years, or to both, or
- (b) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding six months or to both.


Further penalties apply for a continuing offence.

Any costs reasonably incurred by the Planning Authority in relation to Enforcement Proceedings may be recovered from a person on whom an Enforcement Notice is served or where Court Action is taken.

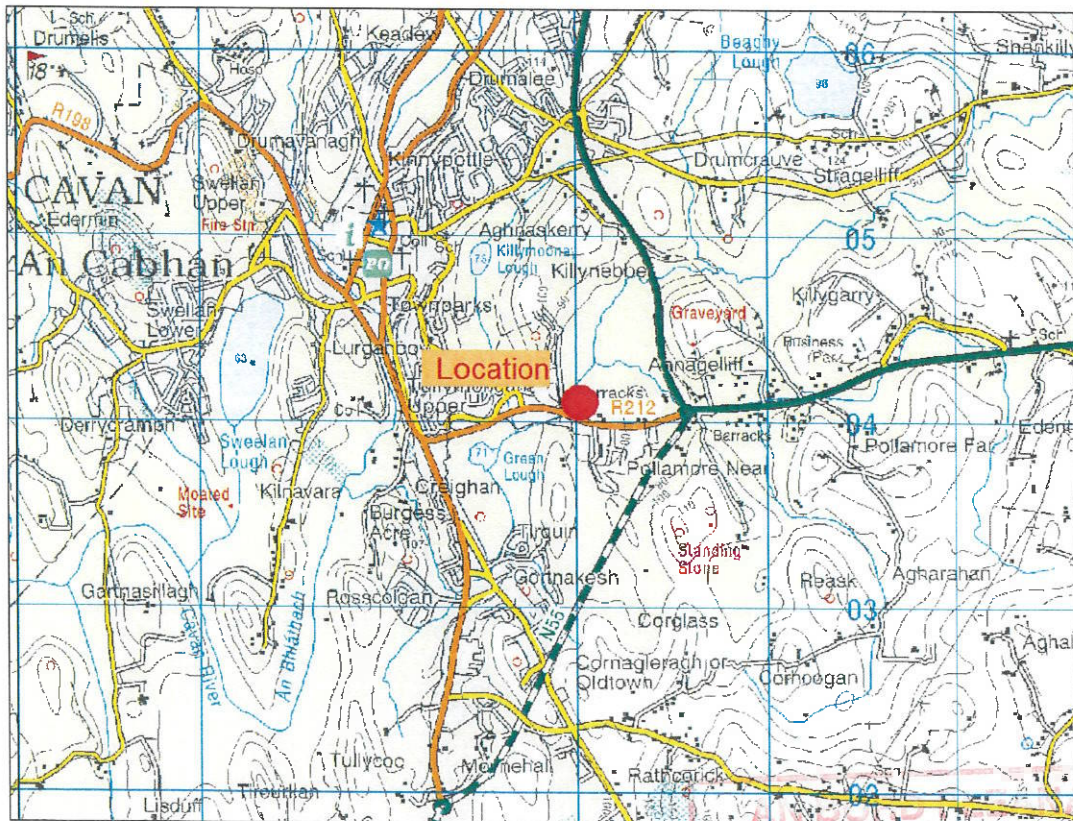
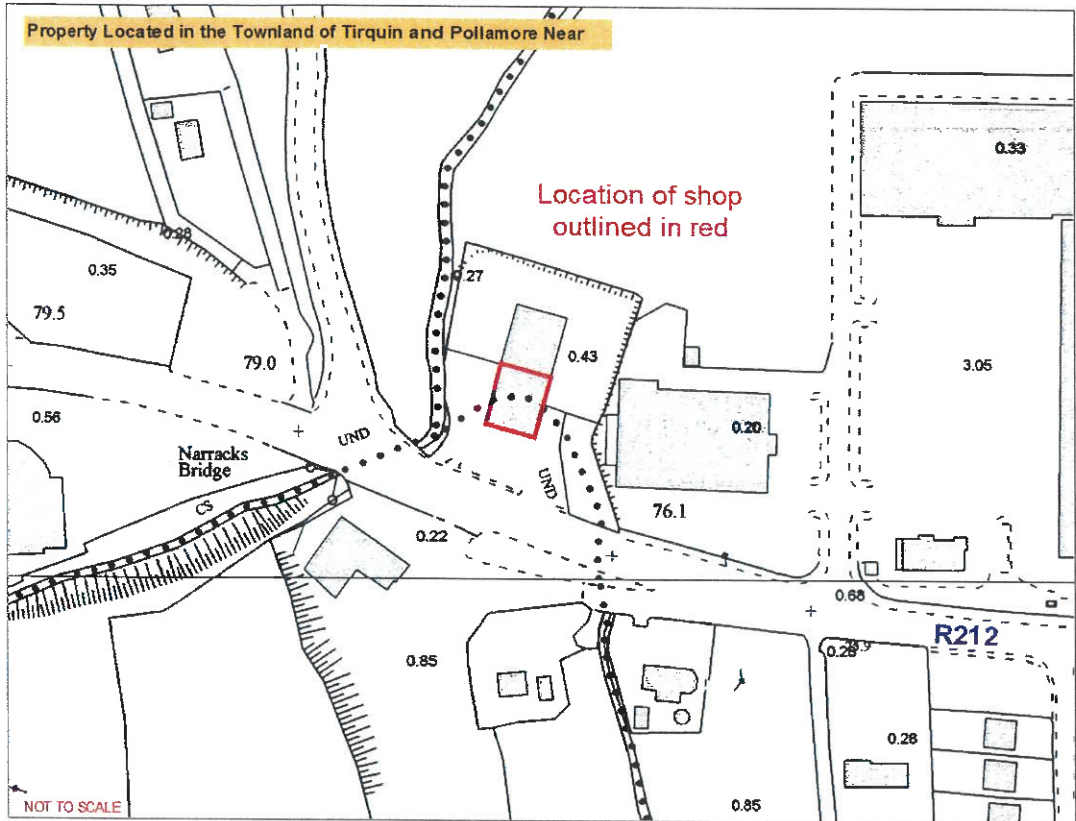
Action Required

A written proposal to rectify or regulate all the above matters must be made within 4 weeks i.e. on or before Friday, 1st February, 2019.

Yours sincerely,


Nicholas O'Kane
Senior Planner
Cavan County Council

Date of service of this letter is **4th January, 2019**



10 APR 2019

LETTER DATED _____ FROM _____

LOG- _____

APP. _____



Comhairle Contae an Chabháin
Cavan County Council

10

CAVAN COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS, 2000 to 2017

WARNING LETTER - SECTION 152

To: **Tempside Ltd**
Unit 1
Cloverhill Industrial Estate
Station Road
Clondalkin
Dublin 22

Ref No 18-092

Cavan County Council
Courthouse
Farnham Street
Cavan H12 R6V2

T: 049 437 8300

E: info@cavancoco.ie

Comhairle Contae an Chabháin
E: eolas@cavancoco.ie

W: www.cavancoco.ie

**Ref : Unauthorised development at Dublin Road,
Pollamore Near, Cavan, Co. Cavan.**

Dear Sirs,

This Warning Letter is issued to you by Cavan County Council as Planning Authority pursuant to Section 152 of The Planning & Development Acts, 2000 to 2017, and refers to land situated at Tirquin and Pollamore Near Cavan, Co. Cavan and more particularly highlighted in red on the attached map 'A' 2018.

It has come to the attention of the authority that the following unauthorised development is being carried out:

**The operation of an unauthorised shop at Dublin Road,
Pollamore Near, Cavan, Co. Cavan.**

You may make submissions or observations in writing to the Planning Authority regarding the purported offence not later than **Four (4) weeks** from the date of the service of this letter on you.

Having examined the unauthorised development and considered any submission or observation received from you within the prescribed period, the Planning Authority may issue an Enforcement Notice pursuant to Section 154 of the Planning and Development Act 2000, as amended.

Officials of the Planning Authority may at all reasonable times enter on the land for the purposes of inspection.

AN BORD PLEANALA

Contd.../

10 APR 2019

LTR DATED _____ FROM _____

LDG- _____

ASP- _____



Any person who has carried out or is carrying out unauthorised development shall be guilty of an offence (Section 151).

Section 156 provides, inter alia, that a person who is guilty of an offence under Sections 151 or 154 shall be liable:-

- (a) on conviction and indictment to a fine not exceeding €12,697,380.00, or to imprisonment for a term not exceeding 2 years, or to both, or
- (b) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding six months or to both.

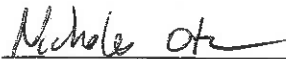
Further penalties apply for a continuing offence.

Any costs reasonably incurred by the Planning Authority in relation to Enforcement Proceedings may be recovered from a person on whom an Enforcement Notice is served or where Court Action is taken.

Action Required

A written proposal to rectify or regulate all the above matters must be made within 4 weeks i.e. on or before Friday, 18th January, 2019.

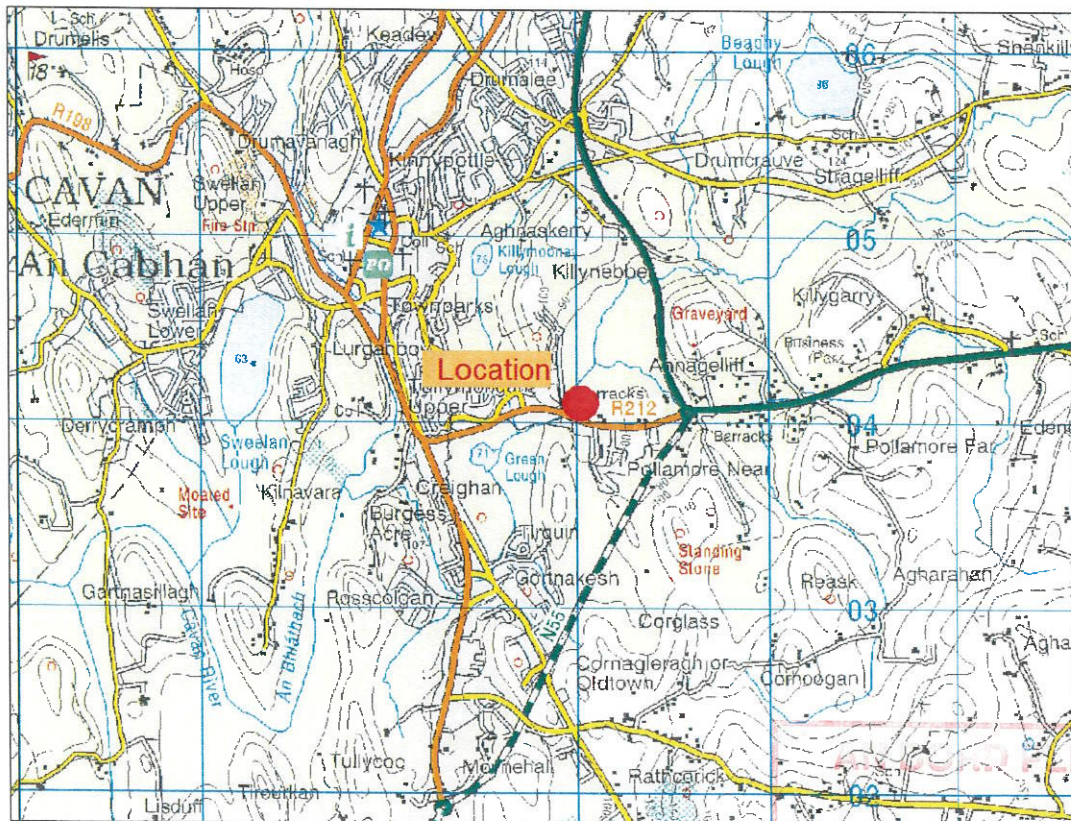
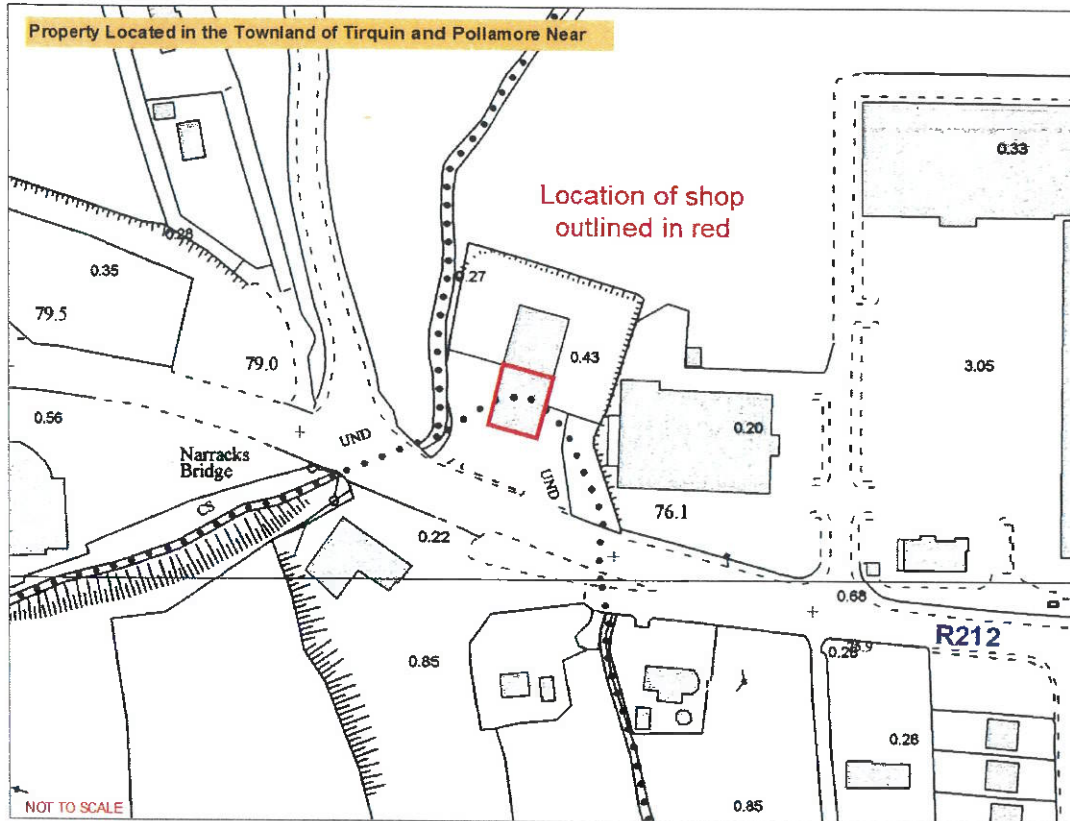
Yours sincerely,



Nicholas O'Kane
Senior Planner
Cavan County Council

Date of service of this letter is **21st December, 2018**





10 APR 2019

UTP DATED _____ FROM _____

LOG- _____

ASP- _____

Deborah Leahy

From: Deborah Leahy
Sent: 07 January 2019 14:37
To: 'admin@clearconsult.ie'
Cc: Nicholas O'Kane; Paul McGovern
Subject: Enf 18-092 Tempside Ltd. - FAO Darren

Importance: High

Good afternoon Darren,

I refer to our telephone conversation regarding the above Enforcement File.

I spoke to Nicholas O'Kane, Senior Planner regarding your call and can confirm that the 9 days for the Christmas period is also applicable for this file.

The revised date for action for 'A written proposal to rectify or regulate matters', as per Warning Letter is **Monday 28th January 2019**.

Should you have any further queries, please do not hesitate to contact me.

Kind regards,

Deborah Leahy

Staff Officer

Building Control & Enforcement Department

Planning Section

Johnston Central Library, Farnham Street, Cavan H12R6V2

Direct Line ☎: +353 49 437 8625 ✉: dleahy@cavancoco.ie www.cavancoco.ie



Ceannairde Contae an Chathair
Cavan County Council

11(a)



By Registered Post
Nicholas O'Kane
Senior Planner
Cavan County Council
Courthouse
Farnham Street
Cavan

Also sent via E-mail:
nokane@cavancoco.ie & dleahy@cavancoco.ie

our ref: LC/SD/RER002096

your ref: 18-092

28 January 2019

Re: Section 152 Warning Letter - Alleged Unauthorised Development
Premises: Polonez, Ground Floor of Unit at Pullamore, Dublin Road, Cavan
Our client: Tempside Limited trading as Polonez

Dear Mr O'Kane,

I refer to the Section 152 Warning letter dated 21 December 2018 which was served upon our client, Tempside Limited trading as Polonez, in respect of the above property.

Please now find enclosed response to this warning letter on behalf of our client which has been prepared by Mr Simon Clear, planning expert.

We await your response in respect of this matter, and should you have any queries, please do not hesitate to contact me on 01 – 234 2678.

Yours sincerely,

A handwritten signature in cursive script that reads "Lorraine Compton".

Lorraine Compton
COMPTON SOLICITORS

Encl.



30 Pembroke Street Upper
Dublin 2, Ireland
DX: 109 047 Fitzwilliam

T: +353 1 234 2678
E: info@comptonsolicitors.ie
W: www.comptonsolicitors.ie

Principal Lorraine Compton
Consultants Nicola Rooney
Joy Compton



**SIMON CLEAR & ASSOCIATES
PLANNING AND DEVELOPMENT
CONSULTANTS**

Nicholas O'Kane,
Senior Planner,
Cavan County Council,
Courthouse,
Farnham Street,
Cavan

28th January 2019

**Re. Warning Letter - Alleged Unauthorised Development at Dublin Road,
Pollamore Near, Cavan, Co. Cavan**

Your Ref. No. 18-092

Response to Warning Letter

Dear Mr O'Kane,

I refer to the Warning Letter dated 21st December 2018 issued by Cavan County Council to Tempside Limited, Unit 1 Cloverhill Industrial Estate, Station Road, Clondalkin, Dublin 22.

I act for Tempside Ltd.

I note that subsequent to issuing the Warning Letter, Cavan County Council (CCC) confirmed by email of 7th January 2019 that the deadline for response is 28th January 2019.

Please now find enclosed the response on behalf of Tempside Limited. This response has been prepared with the approval and support of Senior Counsel.

Simon Clear B.A. Dip. T.P. MIPI
Darran Quaille B.A. MRUP MSc BLUP MIPI

3 TERENCE ROAD WEST,
TERENURE,
DUBLIN 6W
D6W YY79,
IRELAND.

Phone: 00-353-1-492 5934
Fax: 00-353-1-492 7617
E-mail: admin@clearconsult.ie
Web: www.clearconsult.ie
Vat No. 9803199H

Preliminary Issue

Strictly without prejudice to the response herein, section 157(4)(a)(i) of the Planning and Development Act 2000 (as amended) provides that no warning letter or enforcement notice shall issue and no proceedings for an offence under this Part shall commence in respect of a development where no permission has been granted, after seven years from the date of the commencement of the development. Retail use has been legally established since 2008 and accepted as such by the planning authority for a period in excess of 10 years.

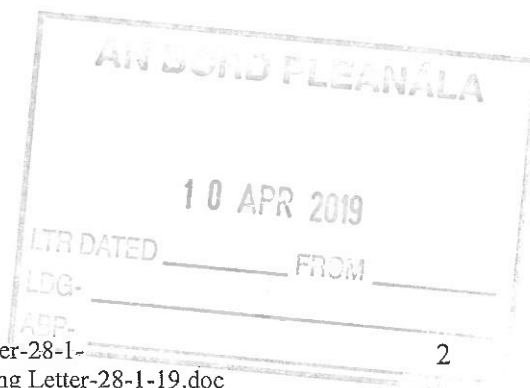
As is set out later, the initial change of use from motor sales to retail was exempted development under Article 6, Class 14 of Part 1 of Schedule 2. The recent occupation of the unit by Polonez represents a continuation of a legally established retail use, in this case, most recently, from pet shop to convenience shop. It is a change of use within a class of use as allowed under Article 10 Class 1 of Part 4 of Schedule 2 being '*use as a shop*'. Article 9 restrictions on exemption cannot be applied to Article 10 development.

Having regard to the aforementioned and to the provisions of section 7(2)(r) of the Planning and Development Act 2000 (as amended) in relation to the Planning Register, we call upon you to immediately withdraw and revoke this warning letter and further to revoke any order of the Chief Executive or any delegated order which may refer to same.

I would ask that you confirm by return that this has been done.

Planning Status

Strictly without prejudice to this preliminary issue **and/or in the alternative** there is no basis in fact or in law for the opinion expressed in the Planning Authority's letter.



Planning History and Occupancy of Unit

The building within which the retail unit in question is located was originally granted under Ref. 99/1401, which provided for *a serviced dealership unit with associated site works and signage*.

The building was occupied by Cavan Daewoo as a main dealership from August 2000 to September 2007.

Under Ref. 07/1980 retention permission was granted for change of use of the rear half of the building to machinery and plant hire (Cavan Hire).

In February 2008, the front part of the building became occupied by a carpet and furniture retailer (Paddy McDonald). This use continued until October 2010.

From February 2011 to December 2012 the front unit was occupied by Damien Walsh, Kitchens and Bedrooms and fitted furniture.

From January 2014 to September 2017 the unit was occupied by Performance Fuels and feeds, retail pet shop, equestrian and pet supplies.

Established Retail Use

Having regard to the occupancy of the unit it is evident that Retail use has been established since February 2008, a period of almost 11 years. Polonez is the fourth retailer to occupy the unit within that period.

The February 2008 change of use from car dealership to retail was exempted development under **Article 6** of the Planning & Development Regulations, 2001 (as amended). Article 6 states:-

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column

10 APR 2019

DATE DATED _____ FROM _____ 3

Class 14 of Part 1 of Schedule 2 of the Exempted Development Regulations provides for the following exemption: *development consisting of a change of use from use for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop.*

Article 9 sets out the restrictions on Article 6 exemptions.

The Planning Authority was entitled to consider the Article 9 restrictions on exemption at the time the change of use from motor sales to shop occurred in 2008. It is evident that none of the restrictions on exemption were considered to apply over the decade of established retail use.

Article 10 Changes of Use

As the retail use was established in 2008, subsequent changes of use must be considered under **Article 10(1)** of the Planning & Development Act, 2001 (as amended) which states:-

Changes of use.	10.	(1)	Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not— (a) involve the carrying out of any works other than works which are exempted development, (b) contravene a condition attached to a permission under the Act, (c) be inconsistent with any use specified or included in such a permission, or (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.
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The recent change of use is a change of use within the Class 1 category of use, which is *'use as a shop'*.

The definition of 'shop' from the Planning & Development Regulations 2001 (as amended) is included in Appendix 1 of this response.

Article 10(2)(b) sets out certain uses that cannot be exempt under Article 10 including:-

(vii) as a retail supermarket, the total net retail sales space of which exceeds 3,500 square metres in the greater Dublin Area and 3,000 square metres in the remainder of the State.

The Polonez convenience store is a shop which has a gross floor area of c.370m².

Article 9

It is our understanding that provisions of Article 9, restrictions in relation to traffic hazard, may have been considered by the Planning Authority in respect of the use of the unit by Polonez. The Planning Authority is reminded that restrictions on exemption under Article 9 apply only to exemptions under Article 6 i.e. exemptions described in Column 1 of Part 1 of Parts 1, 2 and 3 of Schedule 2 of the Planning & Development Regulations, 2001 (as amended). Article 9 refers specifically to and is restricted to Article 6 exemptions.

Article 9 restrictions cannot be applied to Article 10 changes of use, which are separately referenced and dealt with under Article 10 and the sub-articles (1-5 inclusive). The nature and scale of use at Pollamore is not in breach of any of the sub-articles in Article 10.

Summary and Conclusion

Retail use has been legally established since 2008. The initial change of use from motor sales to retail was exempted development under Article 6, Class 14 of Part 1 of Schedule 2. The Planning Authority was entitled to consider Article 9 restrictions on exemption at that time but has found no reason to do so for a period in excess of 10 years.

The recent occupation of the unit by Polonez represents a continuation of a legally established retail use, in this case from pet shop to convenience shop. It is a change of use within a class of use as allowed under Article 10 Class 1 of Part 4 of Schedule 2 being 'use as a shop'. Article 9 restrictions on exemption cannot be applied to Article 10 development.

10 APR 2019

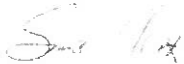
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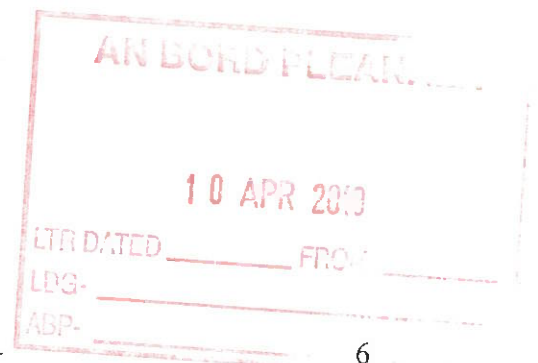
The shop is of a size that falls well below the limit of 3,000m² for a supermarket under Article 10(2)(b)(vii).

The allegation of an unauthorised retail unit cannot be sustained.

Yours sincerely,



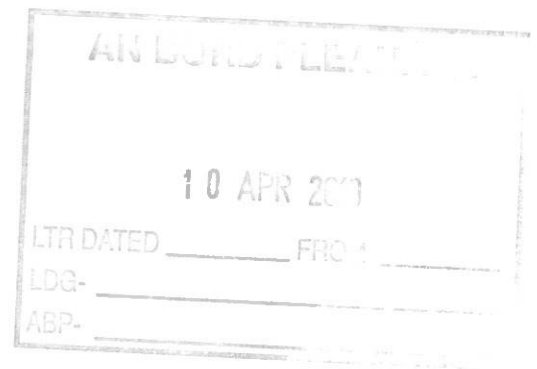
Simon Clear



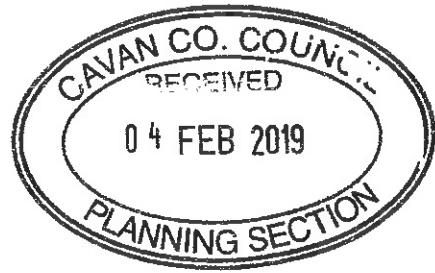
Appendix One – Definition of Shop

'Shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

- (a) for the retail sale of goods,
 - (b) as a post office,
 - (c) for the sale of tickets or as a travel agency,
 - (d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,
 - (e) for hairdressing,
 - (f) for the display of goods for sale,
 - (g) for the hiring out of domestic or personal goods or articles,
 - (h) as a launderette or dry cleaners,
 - (i) for the reception of goods to be washed, cleaned or repaired,
- but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;



11 (b)



Senior Planner
Cavan County Council
Courthouse
Farnham Street
Cavan

1st February 2019

Your Reference No. 18-092


Dear Mr Nicholas O'Kane ,

We wish to acknowledge receipt of your letter dated 4th Jan 2019 , as you are aware Tempside Ltd has made an application in reference to this property and not myself the owner .

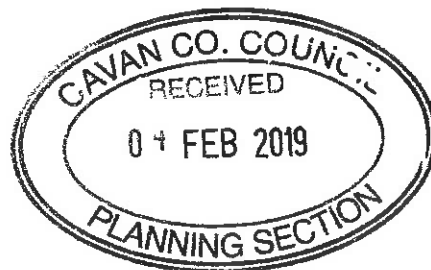
I wish to inform you that the property in question is the subject of a lease , and I have leased the property to Tempside Ltd with the original planning permission that I have already obtained only .

As the property is the subject of a legal lease , what ever additional planning permission, or use they wish to use the property for , Tempside would legally be entitled to do so . As you are now aware my hands are tied in this matter and I can be of no further assistance to you . All future correspondence please to Tempside Ltd .

Yours sincerely ,



Dennis Nixon

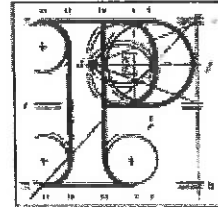


12

Our Ref: ABP-303029-18

PA Ref: 18317

Your Ref: Cavan County Council



An Bord Pleanála

Cavan County Council
Farnham Street
Cavan
Co. Cavan
Ireland

11 FEB 2019

Date: 08 February 2019

Re:
the change of use for part of previously approved retail unit from retail to retail and off licence sales area
Pullamore, Dublin Road, Cavan

Dear Sir / Madam

An Bord Pleanála has received a withdrawal of the application which relates to the above mentioned appeal and hereby notifies you in accordance with section 140(1)(b) of the Planning and Development Act 2000 (as amended) that the said application has been withdrawn.

Please note that in relation to an application which has been withdrawn, section 140(3) of the 2000 Act provides that:

- (a) any appeal in relation to the application shall be regarded as having been withdrawn and accordingly shall not be determined by the Board, and
- (b) notwithstanding any previous decision under section 34 of the Act by a planning authority as regards the application, no permission shall be granted under that section by the authority on foot of the application.

Yours faithfully,

Mark Kieley
Mark Kieley
Executive Officer
Direct Line: 01-8737154



Encls BP51B

Tel	Tel	(01) 858 8100
Glaos Áitiúil	LoCall	1890 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Macbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

13(a)



Comhairle Contae an Chabháin
Cavan County Council

21st February 2019

Ms. Lorraine Compton
Compton Solicitors
30 Pembroke Street Upper
Dublin 2

**Re: Unauthorised development at Dublin Road,
Pollamore Near, Cavan, Co. Cavan.
Polonez - Enf 18-092**

Dear Ms. Compton,

Thank you for your letter of 28th January 2019 regarding the above Enforcement File. The Planning Authority note the contents therein. Notwithstanding, the Planning Authority is of the view that the terms of the Warning Letter still apply.

The document enclosed from Simon Clear & Associates Planning and Development Consultants states in Summary and Conclusion on page 5 the following:

'Retail use has been legally established since 2008. The initial change of use from motor sales to retail was exempted development under Article 6, Class 14 of Part 1 of Schedule 2.'

However, the Planning Authority notes that no Section 5 application was ever granted from Cavan County Council or An Bord Pleanala.

You are further requested to note condition no. 7 of Planning Ref. 07/1980 which relates to the overall site, in particular, the second line of that condition states 'No unit to be used for the sale of convenience foods.'

Please submit your proposals within two weeks of the date of this letter to progress matters further.

Yours sincerely,


Nicholas O'Kane
Senior Planner

Cavan County Council
Courthouse
Farnham Street
Cavan H12 R6V2

T: 049 437 8300

E: info@cavancoco.ie

Comhairle Contae an Chabháin
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Comhairle Contae an Chabháin
Cavan County Council

13 (b)

21st February 2019

Mr. Denis Nixon
Poles
Cavan

**Re: Unauthorised development at Dublin Road,
Pollamore Near, Cavan, Co. Cavan.
Polonez - Enf 18-092**

Dear Mr. Nixon,

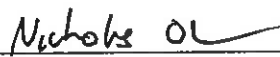
Thank you for your letter of 1st February 2019 regarding the above Enforcement File. The Planning Authority is obliged to write to you as you are the registered owner of this property.

Please see attached letter issued to Compton Solicitors on behalf of your tenants Tempside Limited in response to a submission received.

You are further requested to note condition no. 7 of Planning Ref. 07/1980 which relates to the overall site, in particular, the second line of that condition states 'No unit to be used for the sale of convenience foods.'

Please submit your proposals within two weeks of the date of this letter to progress matters further.

Yours sincerely,



Nicholas O'Kane
Senior Planner

Encl.

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13 (c)

COMPTON
SOLICITORS

By Registered Post
Nicholas O'Kane
Senior Planner
Cavan County Council
Courthouse
Farnham Street
Cavan



Also sent via E-mail:
nokane@cavancoco.ie & dleahy@cavancoco.ie

our ref: LC/SD/RER002096

your ref: 18-092

6 March 2019

Re: Alleged Unauthorised Development
Premises: Polonez, Ground Floor of Unit at Pullamore, Dublin Road, Cavan
Our client: Tempside Limited trading as Polonez

Dear Mr O'Kane,

I refer to your letter dated 21 February 2019 to this office in relation to our client, Tempside Limited trading as Polonez, in respect of the above property.

Please now find enclosed response to this letter on behalf of our client which has been prepared by Mr Simon Clear, planning expert.

We await your response in respect of this matter, and should you have any queries, please do not hesitate to contact me on 01 – 234 2678.

Yours sincerely,

A handwritten signature in black ink that reads "Lorraine Compton".

Lorraine Compton
COMPTON SOLICITORS

Encl.



30 Pembroke Street Upper
Dublin 2, Ireland
DX: 109 047 Fitzwilliam

T: +353 1 234 2678
E: info@comptonsolicitors.ie
W: www.comptonsolicitors.ie

Principal Lorraine Compton
Consultants Nicola Rooney
Joy Compton



**SIMON CLEAR & ASSOCIATES
PLANNING AND DEVELOPMENT
CONSULTANTS**

Nicholas O’Kane
Senior Planner
Cavan County Council
Courthouse
Farnham Street
Cavan

6 March 2019

**Re. Alleged Unauthorised Development at Dublin Road, Pollamore Near, Cavan,
Co. Cavan
Cavan County Council Ref. Enf. 18-092**

Dear Mr O’Kane,

I refer to your letter dated 21st February 2019 addressed to Compton Solicitors, which has been forwarded to me for response.

The letter raises two points. Firstly, in relation to the exemption that was availed of in 2008 under Article 6, Class 14 of Part 1 of Schedule 2, the letter notes that *‘no Section 5 application was ever granted from Cavan County Council or An Bord Pleanala.’*

Section 5 is an optional procedure provided by the Planning & Development Act 2000 (as amended) whereby a Declaration may be sought from a Planning Authority as to whether something is or is not development or is or is not exempted development. The absence of a Section 5 Declaration has no bearing on a person’s right to avail of a legitimate exemption.

Simon Clear B.A. Dip. T.P. MIPI
Darran Quaille B.A. MRUP MSc BLUP MIPI

3 TERENCE ROAD WEST,
TERENURE,
DUBLIN 6W
D6W YY79,
IRELAND.

Phone: 00-353-1-492 5934
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E-mail: admin@clearconsult.ie
Web: www.clearconsult.ie
Vat No. 9803199H

There is no requirement for a person to seek or receive Part 5 clearance from any authority prior to exercising a right to exemption.

Further and in any event, please also note that the Supreme Court decided in its judgment *Fingal CC v. William P. Keeling & Sons Ltd* in 2005 that a developer is not estopped from claiming that a development, which he has carried out without the benefit of planning permission, is in fact and in law exempted development by reason only of having made an application for planning permission for the retention of that development.

Secondly, the letter refers to planning Ref. 07/1980 and quotes part of Condition 7 as follows: "*No unit to be used for the sale of convenience foods*".

The development subject to Ref. 07/1980, as described in the statutory notices, is as follows:-

To retain change of use of workshop unit granted under PL Reg. No. 99/1401 to machinery and plant hire (Cavan Hire) unit, and permission to retain entrances as constructed.

The planning drawings submitted with the application (copy enclosed) clearly identified the extent of the premises for which retention of change of use was sought. The planning fee was calculated and paid based on the floor area of the unit for which retention permission was sought. The Planning Officer's Report was clear in its description of the proposed development.

The full wording of Condition 7 of Ref. 07/1980 states:-

Use of the premises to be confined to use specified in documentation lodged with the planning authority i.e. as machinery and plant hire. No unit to be used for the sale of convenience foods [emphasis added]

Reason: In order to safeguard the amenities of the area

Planning conditions must be interpreted in their complete form and in the context of the development as described in the planning application (*Treacy v An Bord Pleanala* and

also the decision of the Supreme Court in 2016 in Lanigan v Barry and South Tipperary County Council dealing with the proper interpretation of a planning permission).

In this case, the application was for retention of a particular use within part of the building and for retention of entrances. In specifying the particular uses granted, machinery and plant hire, it is clear that the condition relates to the part of the premises for which retention was sought. It is wrong to suggest that Condition 7 *'relates to the overall site'*.

The permitted car sales showroom still existed in the front part of the building at the time of making the planning application and it was not part of or subject to the planning application or the permission for retention.

Summary

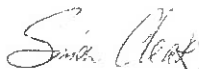
The reference to Section 5 approval is irrelevant. The planning permission for retention did not cover the car sales premises.

The condition 7 did not cover the car sales premises.

The change of use from car sales to retail was properly availed of within the provision of the Planning & Development Act & Regulations.

The allegation of unauthorised development cannot be sustained.

Yours sincerely,



Simon Clear