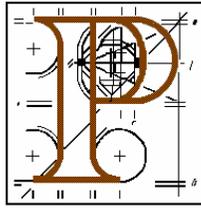

An Bord Pleanála



Ref.: **PL28.240019**

Development: Provision of a new local retail centre to include modifications and change of use of 8 no. business / enterprise / light-industrial units (permitted under ref. 04/28971) to provide 1 no. convenience retail unit (with ancillary alcohol sales) and 4 no. retail service units, and all associated development works, at Block B, Melbourne Business Park, Model Farm Road, Cork.

10

Planning Application:

Planning Authority: Cork City Council

Planning Authority Ref.: 11/34947

20 Applicant: Melbourne Management Company Ltd.

Type of Application: Permission

Planning Authority Decision: Refuse permission (1 no. reason)

Planning Appeal

30 Type of Appeal: First party

Appellants: Melbourne Management Company Ltd.

Inspector: Conor McGrath

Date of Site Inspection: 07/03/2012

1.0 INTRODUCTION

This report relates to a first party appeal against the decision of the planning authority to refuse permission for the proposed development for one stated reason.

2.0 DESCRIPTION OF SITE AND PROPOSED DEVELOPMENT

10 The appeal site is located on the Model Farm Road, close to the western boundary of the City Council administrative area. The site is occupied by a single storey commercial block (Block B), part of the Melbourne Business Park. The business park comprises two similar commercial blocks and a detached office premises to the rear. Land uses in the surrounding area are mixed, comprising residential to the north, south and west, and commercial and retail to the east and northeast. Residential development comprises both established suburban housing and student accommodation. The campus of Cork Institute of Technology lies to the south and there are industrial / business uses in the wider area. The site is located within the consultation zone of an establishment to which the Major Accidents Directive applies.

20 Block B currently comprises 12 no. commercial units (931.2-sq.m.) with frontage to surface car parking to the north, east and south. The units range in size from approx. 45-sq.m. to 90-sq.m. A number of the units are currently vacant, while current occupiers include wholesale suppliers, a picture framing outlet, and offices of the INMO and *Comfort Keepers*. There are approx. 60 no. parking spaces to the front, side and rear of the subject block.

30 The proposed development comprises the change of use of eight of the existing units in Block B (no.'s 7-13 and no. 18) from enterprise / light industrial use to use as a local / neighbourhood centre. The development will provide 1 no. convenience retail outlet by amalgamating units no. 10-13, with ancillary off-sales (372.5-sq.m.), and 4 no. retail services units (272-sq.m.). The total floor area affected is 644.5-sq.m. and no extension of the existing development is proposed.

3.0 RELEVANT PLANNING HISTORY

40 **PA ref. 87/137482:** Permission granted on the site for a builders yard and 2 no. light industrial buildings of 6 and 8 no. units respectively. Condition no. 2 restricted use to light industrial.

PA ref. 88/14538: Permission granted for a change of plans of one light industrial building, with increased floorarea and reduction from 8 no. units to four. Condition no. 1 restricted the development to light industrial use.

PA ref. 93/18530: Permission granted for 14 no. light industrial units. Condition no. 3 prohibited any retail activity and required that office use be ancillary to permitted light industrial uses.

10 **PA ref. 03/26870 ABP ref. PL28.202800:** Permission sought for change from light industry to light industry, business, enterprise and retail services use. A split decision issued on appeal, granting permission for changes to Block A and refusing permission for changes to Block B. Condition no. 1 relating to Block A excluded retail uses from the grant of permission. The refusal for Block B related to the incremental loss of light industrial uses, restricted site and additional car parking demands and the policy of containment of office and public service functions in this area.

PA ref. 04/28423 ABP ref. PL28.209050: Permission refused for a change of use of existing units in Block B from light industry as permitted under 13742/87, as amended by 14538/55 & 18530/93, to light industry and related uses, including warehousing and distribution, wholesaling, trade showrooms, retail showrooms and incubator units. An appeal against the decision was withdrawn.

20 **PA ref. 04/28971:** Permission sought for the change of use of Block B from light industrial to light industry and related uses including warehousing and distribution, wholesaling, trade showrooms, retail showrooms and incubator units. Condition no. 2 of the grant of permission excluded retail and retail service uses and independent office use.

PA ref. 10/34608: Permission granted for change of use of unit 6, Block A from enterprise/business/light industry use permitted under 03/26870 (PL28.202800) to fitness/health related use and all associated ancillary development works

30 **PA ref. 12/35157:** Concurrent planning application for a change of use of Unit 6, in Block A from business/enterprise/light-industry use permitted under 03/26870 / PL28.202800 to use as a veterinary clinic.

4.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

4.1 Decision

In considering the application, the planning authority sought further information in relation to the following matters:

- 40
- Details of delivery movements.
 - Details regarding mechanical plant.
 - Hours of operation.
 - Boundary treatment.
 - Cycle parking provision.

Following receipt of further information, the planning authority published notice of its intention to consider a grant of permission for the proposed development which would materially contravene the zoning objectives of the 2009 City Development Plan. At a

meeting of the City Council in November 2011, the motion to materially contravene the development plan was rejected. Permission for the proposed development was subsequently refused for the following reason:

10 *The proposed development site is located in an area zoned Business and Technology in the Cork City Development Plan 2009, with an objective to provide for high technology related office based industry and general offices over 400-sq.m. Having regard to the policies and objectives of the Cork City Development Plan 2009, including zoning objective ZO8 Business and Technology and paragraph 15.11, it is considered that the proposed change of use of the proposed development site to convenience retail and retail service uses would contravene these zoning provisions and would therefore be contrary to the proper planning and sustainable development of the area.*

4.2 Technical Reports

20 **Planning:** The development plan establishes an indicative need for a local centre in this area. The development is keeping with the provisions of the development plan. No lands in light industrial use would be lost as a result of the development. There are no specific policies regarding the preservation of Business and Technology zoned lands and the loss of such lands is not material in nature. The zoning does not allow for local centre / retail uses and this must be viewed as a material contravention. The development is in keeping with Policy 4.14 of the development plan. The proposal provides a mix of uses and as it entails retrofitting an existing structure, there is no potential for vertical integration. Relationship to Model Farm Road is sufficient and there is potential for enhancements to the existing building. Pedestrian facilities can be addressed by condition. Conditions can address delivery movements, mechanical plant, planting along the western boundary. The fencing off of the western landscaped strip could reduce surveillance thereof and may be more detrimental than beneficial. The proposed development can be supported in principle, notwithstanding the zoning objective.

30

Following the resolution of the Council to reject the material contravention of the development plan, the report of the Senior Executive Planner recommended that permission be refused.

40 **Planning Policy Section:** The development plan provides for a new local centre on the Model Farm Road. The need for this was first established in the Bishopstown and Wilton Area Action Plan 2007. An indicative location for the local centre is identified, denoting the general location subject to deliverability. The proposed location is acceptable in that it conforms with the intention set out in the development plan. A material contravention of the development plan is required.

Roads: Car parking appears adequate to serve the development. No objection subject to conditions. Development contributions of €14,101.35 (704.71-sq.m. x €80.0406).

Environmental Waste Management and Control: No objection subject to conditions.

Water Services: Conditions recommended.

Drainage Division: Survey drawings indicate that the foul sewer is full of sludge. Insufficient details of drainage proposals have been provided. Conditions recommended.

Transportation Division: Condition recommended regarding provision of a pedestrian crossing facility on the Model Farm Road.

10 **HSA:** The authority does not advise against the granting of permission.

4.3 Third Party Submissions:

The planning authority received a large number of third party submissions in relation to the application and the proposed material contravention. The issues raised therein were largely similar and include the following:

- Contribution to traffic problems in the area.
- The retail needs of the area are already well catered and there is no need for the development.
- 20 • Anti-social behaviour arising from the proliferation of off-licence uses.
- Previous planning decisions have consistently prohibited retail use on the site.
- Material contravention of the zoning objectives for the site.
- Material contravention of conditions relating to previous permissions on the site.
- Poor accessibility and peripheral location.
- Poor standard of design contrary to the requirements of the development plan.
- Disturbance of adjoining residential properties.
- Erosion of industrial uses in the city, contrary to development plan policy.
- The most suitable location for a local centre is on residentially zoned lands, where no material contravention would be required.
- 30 • Adjoining development at Eden Hall fulfils a local centre function.
- Bishopstown shopping centre should be enhanced.
- Failure to comply with development plan requirements for a local centre.
- The RPG's specifically exclude the sale of food in industrial parks.
- Loss of lands for potential business and technology development.

5.0 FIRST PARTY GROUNDS OF APPEAL

40 Melbourne Management Company Ltd. make the following points in their appeal against the decision to refuse permission for the proposed development:

- The decision to refuse permission was made against the professional advice and no reason or justification is provided as to why the motion was rejected.
- The courts have previously found that elected representatives must provide reasons and justifications for disregarding the advice of the officials.
- They are not entitled to take into account local opposition to a scheme.

-
- 10
- It has previously been held that regard must be had to all relevant objectives of the plan and not only consider certain objectives in a selective or isolated manner.
 - It has also been held that the Board can have regard to internal technical reports.
 - A material contravention requires a departure from a fundamental provision of the plan or that a development would seriously prejudice an objective of the plan.
 - The proposal is not a material contravention of the plan and is consistent with the objective to provide a local centre on the Model Farm Road and objective 4.14.
 - The Council failed to have regard to the zoning map and the objectives of section 4.52 which states that indicative locations for new Local Centres are shown, thus allowing for flexibility in the final location.
 - The objective to provide a Local Centre would have to take place on some other land use zoning in this area.
 - This is the most appropriate location and zoning in this area to accommodate the centre, as established by the sequential test.
 - Regard should be had to the surrounding mixed pattern of development.
 - While the plan indicates that the main purpose of the zoning is to promote high-tech and office based industry, other uses are not precluded.
 - The planning authority did not have regard to the flexibility inherent in the zoning and failed to consider the local centre objective.

20

 - The plan contains no statement that retail / local centre uses cannot be provided on Business and Technology lands or that such lands must be preserved.
 - In *Duffy v. Waterford Corporation*, it was held that where there was compliance with other development plan objectives, non-compliance with the zoning objective alone did not constitute a material contravention of the plan.
 - The decision conflicts with other decisions of the council which were not considered to be material contraventions (references provided).
 - Similar considerations to this case were raised under appeal ref. PL28.224758 and PL28.224758, where development was granted on appeal for a school following a rejection of a material contravention of the plan.

30

 - Permission should be granted under S.37(2)(b):
 - The development is of strategic importance as it will deliver local services to a large community, consistent with the development plan and retail strategy.
 - The zoning and local centre objectives are conflicting and contradictory.
 - Provision of a local centre is a statutory objective of the development plan.
 - The local centre objective followed a review of the Retail Strategy carried out in accordance with the Retail Planning Guidelines and is consistent therewith.

6.0 OBSERVATIONS

40

A total of 17 no. observations on this appeal were received from the following parties:

1. Mary O’Sullivan
2. Paudie Burke
3. Con A. O’Flynn
4. Eileen Spillane and others
5. Aidan O’Sullivan

-
6. RGDATA
 7. Sheila Rochford
 8. Clr. John Buttimer
 9. Eimer and Edward Fitzgerald
 10. Finbar and Patricia Murphy
 11. Thomas J. Carroll
 12. Anna Herrick
 13. Raymond Dennehy
 14. Pat Hurley
 - 10 15. Peter Fitzgerald
 16. Pat Golden
 17. Liam and Regina Dunne

Having regard to the extent of overlap in the content of the submissions, the issues raised are summarised together below for convenience:

- Contribution to existing traffic problems in the area.
- Inadequate pedestrian access.
- There is no need for further retail development in the area and the impacts on existing retail outlets in the area will have employment consequences.
- 20 • There are sufficient bars and off-licences in the area and further off-licence use would contribute to anti-social behaviour arising from the large student population.
- Impact on adjacent residential amenities due to noise, light and disturbance.
- Loss of potential business and technology space, adjacent to CIT.
- The development materially contravenes the zoning objective for the site and development plan policies.
- The Material Contravention motion was subject to lengthy debate and rejected unanimously for planning reasons.
- Previous planning decisions have consistently prohibited retail use on the site.
- Contravention of previous planning conditions.
- 30 • Local centre use is not identified as permissible / open for consideration on B&T lands.
- A refusal will not frustrate the local centre objective as there are other suitable, available lands in the area with zoning to accommodate same.
- The professional advice of the planning authority was that the development constitutes a material contravention of the development plan.
- The plan provides for a local centre in the Model Farm Road / Rossa Avenue area with a commercial (retail and non-retail) and non-commercial offering.
- A 10% reduction in Business and Technology zoned lands is material, particularly given the growth status of this sector.
- 40 • There is demand for such accommodation in the city.
- Failure to meet the development plan requirements regarding the design and mix of uses in the local centre.
- The local centre objective does not over-ride the zoning objective for the site.
- The CASP Economic Strategy encourages high tech business on B&T lands.

-
- This is a peripheral location relative to the catchment population. Rossa Avenue would be a more appropriate and central location and would not require a material contravention.
 - The criteria under S.37(2)(b) are not met and no exceptional circumstances exist to warrant a material contravention of the plan.
 - Eden Hall or Rossa Avenue would most obviously meet the map based local centre objective of the development plan.
 - Internal reports identified deficiencies with regard to foul drainage arrangements, which should be resolved prior to any decision to grant permission.
 - 10 • The existing Bishopstown retail centre has a number of vacant units.
 - The development will create a precedent for convenience retailing in industrial parks.
 - There is a need to restrict opening hours.

7.0 PLANNING CONTEXT

7.1 Cork City Development Plan 2009

The appeal site is zoned ZO 8 Business and Technology: To provide for high technology related office based industry and general offices over 400 sqm.

20

15.11 The main purpose of this zoning objective is to promote and encourage the provision of high technology industry and office based industry. These industries include software development, information technology, telemarketing commercial research and development, data processing, publishing and media recording and media associated activities. General Offices where each office unit is in excess of 400-sq.m. will also be acceptable in principle on sites zoned for Business and Technology. Light industrial uses will also be permitted in this zone. In exceptional circumstances primary healthcare centres and hospitals will be open for consideration under this zoning in suitable Business and Technology zones close to District Centres, namely Mahon and Blackpool, where
30 suitable space is unavailable in District, Neighbourhood and Local Centres and where access and amenity considerations are acceptable.

30

Surrounding lands, with the exception of other Business and Technology lands to the north east, are generally zoned ZO 5 Residential, Local Services and Institutional Uses. Within this zone uses, including small scale local services, institutional uses and civic uses and provision of public infrastructure and utilities are permitted, while small scale 'corner shops' and other local services such as local medical services, will be open for consideration. New local and neighbourhood centres are open for consideration in this zone provided they meet the criteria for such centres set out in Chapter 4.

40

Policy 4.8: Strategic Role of Local Retail Centres

- To acknowledge the importance of local centres in suburban and rural locations in meeting local shopping needs.
- To encourage the improvement to the designs of local retail centres in suburban areas and rural villages, including the provision of facilities in the public realm

4.50 The purpose of local/ neighbourhood centres is to ensure that all residential areas are within easy access of and are adequately serviced by local/neighbourhood facilities and services. Neighbourhood Centres serve a pedestrian catchment of approximately 600-800m while Local Centres have a smaller pedestrian catchment of approximately 200-500m.

10 4.51 New centres will generally be anchored by a small/medium sized convenience store and should also include a number of smaller associated local service units to enhance the overall appeal of the centre in terms of service provision and design. Anchor supermarkets should be medium sized and not exceed 1,500net sq.m. in the case of Neighbourhood Centres and not exceed 400 net sq.m. in the case of Local Centres. The centres should contain a comparable amount of local services floorspace to anchor floorspace with the former constructed at the same time as the main anchor.

4.52 Possible new Local Centres in the suburbs where gaps in provision exist at present are shown indicatively in Zoning and Objectives Maps in Volume 2. These centres will provide the location for convenience shopping and local/neighbourhood services to facilitate existing and emerging populations.

20 4.53 In all cases developments for new Neighbourhood/Local Centres should be conceived as mixed-use schemes, incorporating a range of local services, a vertical mix of uses where possible, and a high quality of urban design appropriate to their scale and character. The range of uses permitted should conform to specific zoning policies in the plan but where suitable uses could include residential and complementary local services, such as childcare, retail offices, pharmacies, medical consultancies, public houses, small shops, etc.

Policy 4.14: New Neighbourhood and Local Centres

To encourage the provision of new Neighbourhood and Local Centres provided they:

- Demonstrate the need for the centre;
- Demonstrate the retail impact;
- Demonstrate the appropriateness of the site by means of a Sequential Test Statement;
- 30 - Provide a mix of uses and services suited to the scale of the centre;
- Ensure a high standard of urban design, and particularly ensure that developments address the street appropriately, avoid the development of extensive blank frontages, and incorporate a mixture of uses vertically and horizontally;
- Are adequately served by public transport.

40 7.16 A survey of distribution of local and neighbourhood centres has been carried out to show which residential areas show a deficiency in terms of service provision. Where gaps in provision have been identified potential new local centres have been identified with indicative locations highlighted on the Zoning and Objectives Maps in Volume 2

7.2 Wilton and Bishopstown Action Area Plan 2007

2.6 Local Services

Aim: To promote the development of local services to meet the needs of the community in accessible locations

Local Shopping and Commercial Services

2.6.2 The (plan) area has a reasonable distribution of existing and proposed district, neighbourhood and local centres serving the needs of the residents and employees within the area. The City Plan, 2004 retail / urban design strategy envisages a network of centres within 5-to-10 minutes (or 400-800 metres) walk of all parts of the city. Figure 2.9 clearly illustrates that the area is generally well served by the existing network of District, Neighbourhood and Local Centres.

10 2.6.3 It also illustrates however, that there is a need for an additional local centre in the Model Farm Road / Rossa Avenue location to serve the needs of the local residents and the considerable number of employees and students nearby (for example at FAS, CIT and the Cork Business and Technology Park). This should offer an appropriate quantum of convenience retail floorspace in an anchor store (200-500-sq.m.) and a mix of appropriate commercial / non-commercial uses.

7.3 Retail Planning Guidelines for Planning Authorities

20 95. Local shops located in local centres or neighbourhood centres perform an important function in urban areas. They can provide a valued service, catering particularly for the daily or casual needs of nearby residents or of those passing by. Local shops encompassing both foodstores and important non-food outlets such as pharmacies have significant social and economic functions; they offer a particularly important service for those who are less mobile, especially elderly and disabled people, families with small children, and those without access to a car.

The Guidelines define a local centre or neighbourhood centre as a small group of shops, typically comprising a newsagent, small supermarket/general grocery store, sub-post office and other small shops of a local nature serving a small, localised catchment population.

30

8.0 PLANNING AUTHORITY RESPONSE TO GROUNDS OF APPEAL

The planning authority have made no further comment on the appeal.

9.0 ASSESSMENT

It is proposed to consider the appeal under the following broad headings:

- 40
- Land use and development principle.
 - Location of development.
 - Design and layout.
 - Residential amenity.
 - Roads and traffic.
 - Material contravention (S.37(2))
 - Other matters arising.

9.1 Land use and development principle

The appeal site is zoned ZO8 Business and Technology, for high tech related office based industry and general offices uses. The existing units in Block B were originally permitted and constructed for light industrial use. Permission was granted under ref. 04/28971 for a change to light industry and related uses including warehousing and distribution, wholesaling, trade showrooms and incubator units, however retail and retail service uses were excluded by condition. At time of inspection, I was unable to identify any Business and Technology uses in the block.

10

The planning history relating to this block up to 2004 was consistent in restricting retail use on the site. The provisions introduced in the 2009 Development Plan regarding local centres are regarded as a material change in circumstances in this area, however. In this regard, it is considered that the development may be considered on its own merits in the light of the relevant development plan policies, notwithstanding the planning history on the site.

20

Internal planning reports recommended a grant of permission on the basis of the development plan objective to provide a local centre in this area. While not expressly stated in the plan, I conclude that retail use is not a permissible use on Business and Technology zoned lands. It was on this basis that the planning authority determined that a material contravention would be required in order for the development to proceed. S.37(2) of the Act is considered in more detail in section 9.6 below.

9.2 Location of development

30

The 2007 Bishopstown and Wilton AAP identified the need for an additional local centre in the Model Farm Road / Rossa Avenue area to serve residents, employees and students in the surrounding area. The provisions of the AAP are incorporated into the 2009 City Development Plan. The City Plan indicates that Local Centres have a pedestrian catchment of approximately 200-500m and should comprise a small convenience store and a mix of local services / uses. Gaps in local centre provision are established and indicative locations for new centres are identified on the zoning maps. The Local Centre objective identified on the development plan zoning map is located approx. 220m east of the appeal site, however, such locations are indicative only.

40

The appeal site is somewhat peripheral to the catchment identified in the Area Action Plan. Since the adoption of the development plan, however, the local centre objective has not been fulfilled. While third parties refer to alternative sites for the local centre, it does not appear that any proposals for local centre development on such lands have been put forward. I note also that a number of the issues raised in observations are not specific to this location and would be likely to arise in relation to any site in this immediate area. Existing development in Eden Hall also is referenced in submissions as an alternative location for the local centre, however, having regard to its location and access arrangements, I do not consider that it would constitute a more favourable location than the subject site.

10 The Local Centre development objective is acknowledged to be indicative in terms of location. The subject site offers an existing commercial building and associated parking within the general area identified in the plan. Adjoining private residential estates include Rossbrook to the south and west, The Manor to the north and Melbourne Court to the northeast. There is a concentration of student accommodation in the immediate surrounds of the site, including Eden Hall to the northwest, Parchment Square to the east and Abbeyville to the northeast. There are also office and other employment centres in the area. There are a number of retail outlets in the surrounding area, including a small convenience store in Eden Hall and the Texaco forecourt shop to the east. These stores are small in scale, however, and would not fulfil the local centre role envisaged in the development plan.

In the context of the extent of lands zoned for Business and Technology uses in the surrounding area, it is not considered that the development would result in a significant loss of available floorspace. I would not raise a fundamental objection to the development at this location.

20 **9.3 Design and Layout**

The development comprises the change of use of eight of the twelve units in an existing commercial block to retail / retail services use. The portal frame industrial building, with parapet cladding concealing the pitched roof behind, is not of a high design standard. The block is set back approx. 20m from the Model Farm Road, behind a grass verge and approx. 23 no. surface parking spaces. The block is not a highly prominent feature in the area.

30 The proposed development will provide five retail / retail service units. The convenience store (261.5-sq.m. net) would meet the guideline floorareas identified in the development plan for a local centre. The remaining five units are considered to provide adequate scope to accommodate a range of local services, without providing an excessive scale of development on the site. Minimal modifications are proposed as part of the development, to include new shopfront and fenestration to the convenience store, and infilling of two shopfronts on the rear elevation.

In the event of a decision to grant permission and establish a local centre development on the site, it is considered that revisions to the elevational treatment could be conditioned. In particular existing cladding at parapet level should be removed and replaced and a consistent elevational treatment should be provided to all units in the block and not only the convenience store.

40

9.4 Residential Amenity

The site is bounded by residential properties, which would not be uncommon for local centre developments. The closest houses are located 10-12m from the site boundary. The site is already in commercial use and in this regard it is not considered that

significant additional amenity impacts would be likely to arise from the proposed change of use. Submissions on the file raise a number of specific issues, however.

10 It is proposed to extend an existing bin store, located on the western side of the block, to accommodate additional bin storage and plant. Having regard to the nature of the proposed use, there may be additional impacts on residential amenities, due to smells and additional noise from plant. No details of the plant to be installed are provided, however, having regard to its location 14m from the rear of the adjoining dwelling, there is potential for additional noise impacts, particularly at night. The relocation of the enclosure to the rear of the block, at greater remove from dwellings, and the provision of appropriate acoustic treatment would address concerns in this regard. It is likely that deliveries to the convenience unit would take place at the rear of the block, and appropriate conditions on the timing of such activities would be considered appropriate.

20 The proposed off-licence element is subsidiary to the proposed convenience foodstore. Third party submissions raise the issue of impacts on residential amenity, arising from increased alcohol consumption and associated anti-social behaviour in the surrounding area. This is associated with the concentration of student residences in this area. The Intoxicating Liquor Act 2008 (Section 7) provides that the District Court may refuse to issue a certificate in respect of a new off-licence on grounds of

- (a) the character, misconduct or unfitness of the applicant.
- (b) the unfitness or inconvenience of the premises.
- (c) the unsuitability of the premises for the needs of persons residing in the neighbourhood, or
- (d) the adequacy of the existing number of licensed premises of the same character in the neighbourhood

30 Reference has been made to the number of outlets selling alcohol in wider area. Having regard to the above, I consider that the issue of over-supply can be adequately addressed through the licensing system and that the duplication of functions in this regard would be undesirable. I understand the concerns of the local residents; however, the controls which are sought would be more properly applied through the licensing regime

This appeal is concerned with the land use planning implications of the proposed retail development. Having regard to the location of the site within an existing commercial centre, and subject to appropriate conditions on the operation of the development, it is not considered that its operation would give rise to significant negative impact on adjoining residential amenities.

40

9.5 Roads and Traffic

Model Farm Road is a busy arterial route linking Ballincollig with the city and a 50kph limit applies in this area. The entrance to the site, shared with the adjoining Block A, is sited on a low crest, however, sightlines in both directions are adequate. The planning authority raised no objection to the development on traffic safety grounds. I acknowledge that the adjoining roads are busy, particularly during peak hours, however,

the nature of the proposed use is such that it would serve local / passing trade and I do not consider that it would generate significant additional movements on the road network.

Based on the development plan parking requirement, there is adequate parking provision on the site. The bulk of retail parking requirement can be accommodated to the front of the block. Internal planning reports on the file recommend the provision of a pedestrian crossing on the Model Farm Road to improve access to the site. I do not regard this as an unreasonable requirement and consider that in the event of a decision to grant permission in this case, a condition in this regard should be attached.

10

9.6 Material Contravention

S.37(2)(a) of the Act states that the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

S.37(2)(b) states that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that—

20

- (i) The proposed development is of strategic or national importance,
- (ii) There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under [section 28](#) , policy directives under [section 29](#) , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

30

The planning authority decision to refuse permission in this case states that

*..... the proposed change of use of the proposed development site to convenience retail and retail service uses **would contravene these** zoning provisions and would therefore be contrary to the proper planning and sustainable development of the area.*

40

The decision does not state that the development would **materially** contravene the plan. In this regard, it can be argued that the provisions of S37(2)(b) do not apply. The decision to refuse permission arose from the rejection of a motion to materially contravene the development plan, however, and having regard to submissions on the file, I have addressed the criteria identified in S.37(2)(b) below.

- (i) The proposed development is not of strategic or national importance,

-
- (ii) It is clearly an objective of the development plan to provide a local centre for the area, in a location identified indicatively on development plan maps. While local centre use is open for consideration on “*residential, local services and institution*” zoned lands in the area, the objective is not restricted to such lands. While the achievement of the objective would not comply with the Z08 Business and Technology zoning, the achievement of the local centre objective would be in accordance with the overall strategy of the development plan.
- (iii) There are no specific guidelines, policy directives or other matters which would dictate that permission for the proposed development should be granted.
- 10 (iv) While I note the pattern of development in the area, there is no precedent which would indicate that permission for the proposed development should be granted.

Having regard to item (ii) above, I consider that it would be open to the Board to grant permission in this instance, notwithstanding the conflict with the zoning objective for these lands.

9.7 Other matters Arising

20 I note the reports of the drainage division regarding sludge build-up in foul drains. The division was satisfied that the matters arising could be resolved by condition, including the upgrading of existing drains or provision of new connections to the public sewer where necessary. I do not regard such recommendation as unreasonable or inappropriate.

No appropriate assessment issues arise.

The site is located within the consultation zone of Gouldings / Grasslands fertiliser facility, a COMAH site. The HSA do not advise against the proposed development.

30

10.0 RECOMMENDATION

Having regard to the foregoing I recommend that the decision of the Planning Authority be overturned in this instance and that permission be granted for the proposed development for the reasons and considerations set out below:

Reasons and Considerations:

40 Having regard to the nature of the development proposed, the pattern and form of existing development on the site and in the surrounding area, the provisions of the Cork City Development Plan 2009 and in particular the objective to provide a new Local Centre in this area, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the surrounding area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would

therefore be in accordance with the proper planning and sustainable development of the area.

While retail and associated uses are not provided for under the ZO8 Business and Technology land use zoning objective, having regard to the provisions of S.37(2)(b)(ii) of the Planning and Development Act 2000 – 2010, and the objective of the development plan to provide a local centre in the Model Farm Road / Rossa Avenue area, it is considered that the proposed development would be acceptable and would be in accordance with the proper planning and sustainable development of the area.

10

Conditions:

1. PARTIC

The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted the 22 day of September 2011, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

20

In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. AMEND

The proposed development shall be amended as follows:

30

- (a) The treatment of all elevations, including fenestration, shall be revised to ensure a consistent finish for all units in this Block. External roller shutters shall not be provided.
- (b) Existing cladding at parapet level shall be removed and replaced with materials of a form and colour to be agreed with the planning authority.
- (c) The proposed extended bin store and plant enclosure, located on the western elevation, shall be relocated to the rear / southern elevation of the convenience retail unit.

40

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

3. COMMFINISHES

Details including samples of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

- 10 4. (a) The hours of operation shall be between 0700 hours and 2200 hours only.
 (b) No deliveries shall be taken at or dispatched from the premises outside the hours
 of 0800 and 2000hrs, unless otherwise agreed with the planning authority. .

Reason: In the interest of the residential amenities of property in the vicinity.

5. No amalgamation of units or subdivision of any unit shall take place without a
 prior grant of planning permission.

Reason: To control the layout and scale of the development.

20

6. RETAILAD 2

No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected (on the building/within the curtilage of the site) unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

30

7. CYCLESPPACES

5 no. bicycle parking spaces shall be provided within the site. The design, layout and demarcation of these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interests of sustainable transportation.

40

8. URBANWASTE 1

A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the on-going operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste

shall be managed in accordance with the agreed plan. Such plan shall also provide for the provision of litter bins to the front of proposed retail units.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

9. URBANWATERDRAIN

10 Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

10. INDSOUNDPROOF

All plant and machinery shall be enclosed and soundproofed in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

20 **Reason:** To safeguard the amenities of adjoining property.

11. NOISE A

(a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling shall not exceed:-

(i) An L_{AeqT} value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive. [The T value shall be one hour.]

(ii) An L_{AeqT} value of 45 dB(A) at any other time. [The T value shall be 15 minutes].
The noise at such time shall not contain a tonal component.

30

(b) All sound measurement shall be carried out in accordance with ISO Recommendation R 1996 “Assessment of Noise with respect of Community Response” as amended by ISO Recommendations R 1996 1, 2 or 3 “Description and Measurement of Environmental Noise” as applicable.

Reason: To protect the residential amenities of property in the vicinity of the site.

12. LANSCREENURBAN

40 (a) A scheme indicating boundary treatments shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This boundary treatment scheme shall provide a screen along the western site boundary, consisting predominantly of trees, shrubs and hedging of indigenous species ~~capable of growing to the height of [X] metres~~. The planting shall be carried out in accordance with the agreed scheme and shall be completed within the first planting season following the commencement of construction works.

(b) Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development, in the interest of visual amenity.

10 **13.** The developer shall, at his own expense, provide a pedestrian crossing facility on the Model Farm Road adjacent to the permitted development. The location, design, construction and specifications of such pedestrian crossing shall be submitted to and agreed in writing with the planning authority prior to the commencement of development on the site. Such pedestrian crossing shall be operational prior to commencement of retail operations on the site.

Reason: In the interests of pedestrian safety.

20 **14. S.48 UNSPECIFIED**

The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement,
30 the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

40 Conor McGrath
Inspectorate