



An
Bord
Pleanála

Inspector's Report

ABP-305493-19

Development	Cafe, signage, associated external seating, and associated site and development works.
Location	The Retail Park, Liffey Valley, Coldcut Road, Dublin 22
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD19A/0212
Applicant	Intrust Properties Company Limited by Guarantee
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party v Grant
Appellant	Liffey Valley Management Ltd.
Date of Site Inspection	20.11.2019
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site subject of the application is within the existing car park of Liffey Valley Retail Park. The Retail Park is located approx. 200 metres of south of Liffey Valley Shopping Centre.
- 1.2. Liffey Valley Retail Park is accessed from Fonthill Road to the east (which is also referred to in the application and appeal documentation as Bóthar an Life). There are commercial retail units e.g. Curry's PC World, Halford's, Hanley's Furniture, Argos and Carpet Right in an 'L' shape along the west and south of the site with the remainder of the Retail Park mainly comprising car parking and vehicular circulation. There is also a detached McDonald's drive-thru restaurant in the north western corner of the Retail Park. There is a brick paved walkway running through the car parking area in a north east to south west direction linking the existing units to the public road. There is some soft landscaping and lighting columns throughout the car parking area.
- 1.3. The subject site has a stated area of 0.182 hectares.

2.0 Proposed Development

- 2.1. The proposed development is for the construction of a single-storey coffee shop for use as a café, external bin store and signage with associated external seating, landscaping, connection to services and associated works.
- 2.2. The proposed café structure has a stated floor area of 245sqm with an indicated maximum height of 4.65 metres. External finishes are primarily grey and red architectural panelling with substantial glazing. External signage is proposed to all four elevations. The external bin storage space has an area of 22sqm.
- 2.3. In addition to standard planning application plans and particulars the planning application was accompanied by a 'Planning Report' and a 'Drainage Design Report'.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 11 no. conditions of a standard nature, including; environmental and public health issues, surface water drainage, signage, hours of operation, noise and construction practices and financial contributions.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's report was the basis for the decision. The Planning Officer concluded that the proposed development would not result in a material and unacceptable adverse impact on the vitality and viability of Liffey Valley Shopping Centre, would not seriously injure the amenities of the area, would be acceptable in terms of traffic safety and would not conflict with the South Dublin County Council Development Plan 2016-2022.

3.2.2. Other Technical Reports

Roads Department – No objection.

Environmental Health Officer – No objection subject to conditions.

Water Services – Further information recommended.

Public Realm Section – No comment.

3.3. Prescribed Bodies

Irish Water – No objection subject to conditions.

3.4. Third Party Submission

A third-party submission was received from Liffey Valley Management Ltd. The main issues raised can be summarised as follows:

- Liffey Valley Retail Park units are subject to a condition which restricts their use to retail warehousing and ancillary car parking is considered part of a retail use. A

grant of permission could be deemed a contravention of a condition of a previous permission.

- The proliferation of town centre type uses, outside the designated retail opportunity site, in a retail park should not be supported. If granted it could set a precedent for town-centre type uses in this bulky goods retail park.
- Condition No. 3 of P.A. Reg. Ref. S99A/0463 restricts the use of the majority of units in the Retail Park to retail warehousing. It is submitted that this extends to the use of the car park. The Board Inspector in PL06D.RL3616 stated that spaces ancillary to a shopping centre are also subject to the use of the shopping centre.
- The café building at this location is not appropriate and particularly not until the opportunity site within the retail core is delivered.
- The continued proliferation of town-centre type uses at Liffey Valley Retail Park and other locations peripheral to the designated opportunity site is not in the best interests of the proper planning and sustainable development of the area. Activity should first be consolidated at the opportunity site.
- The Retail Planning Guidelines states that it is important that the range of goods sold in both existing and any future retail parks is tightly controlled and limited to truly bulky household goods. McDonald's already operates in the Retail Park and permission for an additional food and beverage outlet would be contrary to the guidelines, set an unacceptable precedent and detract from the identified opportunity site.
- In ABP Reg. Ref. PL06S.239004 the Board Inspector noted Liffey Valley was unusual in that both the town centre and retail park are zoned 'town centre' but considered that the Retail Park was still a retail park as defined in the guidelines and therefore any such use should align with the guidelines. A similar approach is requested to be taken.
- Liffey Valley Retail Park operates separately to the Shopping Centre and a proliferation of town-centre type uses at this peripheral location should not be supported.

4.0 Planning History

- 4.1.1. There are a number of planning applications and referrals referenced in the planning authority report and the appeal documentation. These can be synthesised as follows:
- 4.1.2. P.A. Reg. Ref. S99A/0463 – Permission granted on 04.02.2000 for retention of amendments to previously approved permission P.A. Reg. Ref. S98A/0060 on the site subject of the current planning application to include alterations to internal subdivision from 12 no. to 14 no. units, elevational amendments etc. Condition No. 3 stated that the use of each unit shall be restricted to retail warehousing which may include building materials, electrical goods, garden equipment, floor coverings, leisure/sports and DIY products but shall exclude the sale of food and clothing items.
- 4.1.3. P.A. Reg. Ref. SD10A/0368, ABP Reg. Ref. PL06S.239004 – Permission refused on 22.09.2011 for the change of use from a retail warehouse to a discount grocery store or supermarket at Unit 9B, Liffey Valley Retail Park for two reasons. Firstly, the change of use within the Retail Park would be contrary to the Retail Planning Guidelines, 2005, would be detrimental to the vitality and viability of the Shopping Centre and designated Retail Core and, secondly, it would materially contravene Condition 3 of S01A/0033 (alterations and additions to Unit 9 to include subdivision of the existing unit to provide 2 no. units of 910sqm and 930sqm) whereby the use of the unit is restricted to retail warehousing.
- 4.1.4. P.A. Reg. Ref. 15/853, ABP Reg. Ref. PL09.245905 – Permission granted on 11.05.2016 for a standalone café/restaurant unit at Globe Retail Park, Naas.
- 4.1.5. ABP Reg. Ref. PL06D.RL3616 – The Board decided on 06.07.2018 that, where a question had arisen as to whether or not the use of the Parcel Motel Facility as a placement for deposit/temporary storage unit adjacent to Tesco in Ballybrack Shopping Centre, Co. Dublin was or was not development and was or was not exempted development, it was development and it was not exempted development.

5.0 Policy Context

5.1. South Dublin County Council Development Plan 2016-2022

- 5.1.1. The site is in an area zoned 'Objective MRC; To protect, improve and provide for the future development of a Major Retail Centre'. Schedule 5 (Definition of Use Classes & Zoning Matrix Table) of the Plan states that a 'restaurant/café' is permitted in principle in an area zoned 'Objective MRC'.
- 5.1.2. Retail (R) Policy 1 Objective 3 – To support new retail provision in the County to meet the needs of the County's population and to direct new retail floor space into designated retail centres in accordance with the Council Retail Hierarchy, so that centres can maintain and expand their retail offer.
- 5.1.3. R4 Objective 1 – To support Liffey Valley as a Major Retail Centre and allow for the growth of the existing shopping centre and complementary leisure, retail warehouse and commercial land uses.
- 5.1.4. R4 Objective 2 – To support and facilitate consolidation of the quantum and quality of the retail offering at the Liffey Valley Major Retail Centre.

5.2. Retail Planning Guidelines for Planning Authorities, 2012

- 5.2.1. Section 4.11.2 (Retail Parks and Retail Warehouses) of the guidelines is relevant to the current application.

5.3. Natural Heritage Designations

- 5.3.1. The closest area of natural heritage designation is the Liffey Valley pNHA approx. 1.1km to the north.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, which is a fully serviced suburban location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be

excluded at preliminary examination stage, and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

1 no. third-party appeal was received from Liffey Valley Management Ltd. The main issues raised can be summarised as follows:

- The planning authority appears to only have had regard to the existing development rather than also the planned expansion of the Shopping Centre. Expansion lands within the designated retail core need to be protected against the continuation of locating town-centre type uses in Retail Parks and commercial areas in the vicinity.
- In order to ensure the vitality and viability of future development proposals on the designated retail opportunity site this type of use must be directed to the core area.
- The Retail Park is already served by a McDonald's outlet. Permission for an additional food and beverage outlet in the Retail Park would be contrary to the Retail Planning Guidelines, set an unacceptable precedent and detract from the identified opportunity site.
- The Retail Park and ancillary car park are subject to restrictions which limits the use to Bulky Goods Retail Warehousing as per Condition No. 3 of P.A. Reg. Ref. S99A/0463 (and S97A/0523 and S98A/0060). The Board Inspector in PL06D.RL3616 concluded that spaces ancillary to a shopping centre are also subject to the use of the shopping centre and this was accepted in the planning authority Planner's Report.
- The proposed use would contradict the Retail Planning Guidelines. Both the guidelines at the time of the original grant of permission, and current guidelines, clearly restrict the goods sold from retail parks to being entirely bulky goods only.

- The planning authority assessment appears largely based on a similar development proposal in Co. Kildare, ABP Reg. Ref. PL09.245905. However, the Board has previously been very clear in a previous determination in the Retail Park, ABP Reg. Ref. PL06S.239004, and concluded the restrictions of Condition 3 should be upheld.
- Under PL06S.239004, notwithstanding the then ‘town centre’ zoning, the Retail Planning Guidelines clearly state the type of goods to be sold in a retail park and the Inspector stated that to grant the development would create an unfocused and incoherent town centre area, result in confusion in terms of convenience shopping and under the policies of the LAP and County Plan.
- The Retail Planning Guidelines state that it is important that the range of goods sold in both existing and any future retail parks is tightly controlled and limited to truly bulky household goods.
- If permitted the development would negatively impact on the established retail centre in the vicinity.
- It is essential that development management is utilised to ensure that opportunities for new retail facilities at the adjacent opportunity site are not undermined by a dilution of the retail offer available from the Retail Park.

6.2. **Applicant Response**

None received.

6.3. **Planning Authority Response**

The planning authority confirms its decision and issues raised were covered in the Planner’s Report.

7.0 Assessment

The main issues are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Expansion Lands/Opportunity Site
- Retail Planning Guidelines 2012
- Relevant Planning History/Precedent
- Appropriate Assessment

7.1. Expansion Lands/Opportunity Site

- 7.1.1. The appeal states that the proposed development would have an adverse impact on the viability of future development proposals on the designated retail opportunity site and this site needs to be protected against the continuing location of town-centre type uses in the Retail Park and general vicinity.
- 7.1.2. It appears that the appeal documentation is referencing Section 5.5.0 (Core Retail Areas) of the South Dublin County Council Development Plan 2016-2022. Figure 5.6 sets out the boundary of the 'Liffey Valley Core Retail Area' and it includes a 'Retail Opportunity Site'. This general site designation applies to the undeveloped area on the opposite side of Fonthill Road, north east of Liffey Valley Retail Park, between the existing Tesco Extra Store, the staff car park and the public road. Policy R2 Objective 2 of the Plan states that it is policy to direct major new retail floorspace in the County to designated centres of the appropriate level and the identified Retail Opportunity Sites and to further direct retail development in designated centres into the Core Retail Areas and restrict retail development outside of the Core Retail Area to an appropriate level and form of retail development.
- 7.1.3. The appeal documentation states that town centre type uses must be directed to the core area. However, Figure 5.6 shows that the identified core area of Liffey Valley includes Liffey Valley Retail Park. It is also noted that the proposed land use is permitted in principle on this 'Objective MRC' zoned land. While it may be a Retail Park this is the zoning applied by the Council despite there being specific retail

warehousing zoning elsewhere e.g. Fonthill Business/Retail Park, approx. 900 metres to the west.

- 7.1.4. I do not consider it likely that the provision of a café as proposed would have any significant adverse impact on the viability of proposals for the identified retail opportunity site. Policy R2 Objective 2 refers to ‘new major retail floorspace’ and the proposed development does not meet this threshold. I do not consider that the proposed development, in itself or combined with the existing ‘town centre type uses’ identified in the appeal documentation elsewhere in the vicinity, would adversely affect the development potential of the opportunity site.
- 7.1.5. Therefore, I do not consider that the proposed development would have an adverse impact on the viability of future development proposals on the designated retail opportunity site.

7.2. Retail Planning Guidelines 2012

- 7.2.1. The appeal documentation states that an additional food and beverage outlet would be contrary to the guidelines as the guidelines clearly restrict the goods sold from retail parks to being entirely bulky goods only and the range of goods sold should be tightly controlled.
- 7.2.2. Retail Parks are referenced in Section 4.11.2 (Retail Parks and Retail Warehouses) of the guidelines. A retail park is defined as an agglomeration of retail warehouses grouped around a common car park selling mainly bulky household goods. The guidelines note that the definition of goods permitted to be sold in retail parks has been blurred and it is stated that it is important that the range of goods sold in existing parks is tightly controlled and limited to truly bulky goods.
- 7.2.3. The guidelines, therefore, are quite clear on the type of goods to be sold from retail parks. However, development of the type proposed is not explicitly prohibited; rather it should be ‘tightly controlled’. Notwithstanding, as set out in Section 7.1.3, the retail park is in an area zoned ‘Objective MRC’ where development of the type proposed is permitted in principle. There is therefore a conflict between the guidelines and the County Development Plan 2016-2022 in terms of the uses permissible at this location and it is noted that a McDonald’s restaurant already exists within the Retail Park.

7.2.4. I consider that, given the 'MRC' zoning objective for the Retail Park, in a county development plan that was adopted following the introduction of the Retail Planning Guidelines, 2012 and the fact that a 'restaurant/café' is acceptable in principle, the proposed development would not materially contravene the provisions of the guidelines.

7.3. Relevant Planning History/Precedent

7.3.1. The appeal documentation notes that the retail park is subject of a restriction which limits the range of goods that can be sold, and that this restriction also applies to the ancillary car parking area.

7.3.2. The restriction on the sale of non-bulky goods from the units is noted and this is consistent with the general provisions of the Retail Planning Guidelines, 2012. However, a planning application can be made for a development which overturns a condition on a previous permission as happened with P.A. Reg. Ref. SD10A/0368 which was for the change of use from a retail warehouse to a discount grocery store or supermarket at Unit 9B of the Retail Park. The decision by the planning authority to grant permission was overturned by the Board on appeal, ABP Reg. Ref. PL06S.239004. Notwithstanding, that application and the current application are substantially different. The refused application was for the change of use of a specific unit within the Retail Park to the sale of non-bulky goods. If permitted, the Retail Park would have suffered a reduction in the quantum of retail warehouse floorspace which would have undermined the retail park role. The current application, however, is for floor space entirely separate to the existing units. If this application is permitted, the quantum of existing retail warehousing would not be reduced or otherwise diluted. Therefore, I do not consider the decision made under ABP Reg. Ref. PL06S.239004 is automatically applicable to the current application.

7.3.3. Development of the type proposed is relatively common e.g. Globe Retail Park in Naas (as referenced in the planning authority Planner's Report) and The Park in Carrickmines, Co. Dublin. The proposed development could be considered ancillary to the Retail Park and will likely be used primarily by customers and employees of the park and would only have a local impact. I do not consider that the provision of

this unit would have any notable impact on the operation of the Liffey Valley Shopping Centre or the viability of any development on the retail opportunity site.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and fully serviced location remote from any European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the South Dublin County Council Development Plan 2016-2022 and the Retail Planning Guidelines for Planning Authorities, 2012, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of the land use zoning objective of the area and the existing nature of Liffey Valley Retail Park and would not have any material effect on the viability of the existing Shopping Centre or proposals for the 'Retail Opportunity Site'. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

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

Reason: In the interest of visual amenity.

3. Details of proposed external signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. Hours of operation shall be restricted to between the hours of 07.00 and 23.00 hours.

Reason: To protect the amenities of the adjoining properties.

5. 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.

6. The developer shall enter into a water and/or waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

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

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

Anthony Kelly
Planning Inspector

23.12.2019