

An Bord Pleanála



Inspector's Report

PL 06F.245865

DEVELOPMENT:-

Erection of 2 surface mounted non-illuminated flat panel signs; Retention for change of use from light industrial to motor sales and servicing of vehicles and the erection of 4 no. existing surface mounted non-illuminated flat panel signs to the south and east elevations of an existing building.

Planning Authority:

Fingal County Council

Planning Authority Reg. No:

FW15A/0130

Applicant:

7 Day Auto Ltd.

Application Type:

Permission and Retention
Permission

Planning Authority Decision:

Refusal

Appellant:

7 Day Auto Ltd.

Type of Appeal:

First Party –v- Refusal

Observers:

yes

Date of Site Inspection:

25 February 2016

INSPECTOR:

Patricia Calleary

1.0 INTRODUCTION

PL06F.245865 relates to a first party appeal against the decision of Fingal County Council to issue a notification to refuse **permission** for the erection of 2 surface mounted non-illuminated flat panel signs and to refuse **retention permission** for change of use from light industrial to motor sales and servicing of vehicles, signage and associated works at Unit 8, Block 6, Plato Business Park, Damastown, Dublin 15. The appeal is made on the basis that the development is aligned with the zoning objectives of the Fingal County Development plan and is operating successfully with sufficient car parking. It is also put forward that the proposed and existing signage is appropriate.

2.0 SITE LOCATION AND DESCRIPTION

The appeal site consists of a unit located within Plato Business Park on the northern side of Damastown road in Dublin 15, c.400m north of the N3/Navan road. Plato Business Park and the surrounding lands are characterised by industrial development with multiple light industrial, business and warehouse units. The appeal site is laid out at the south eastern end of lands and it contains a unit within a 6 block unit. The site outlined is that of the perimeter of the unit itself and it is stated to measure 0.1 ha. Lands to the east lie outside of the business park and are characterised as rough grasslands and the Pinkeen River bounds this grassed area further east. Lands occupied by Mullhuddart Motorcross club lie south of the road fronting the unit and business park. Car parking associated with the unit is laid out to the front (south) of the site and there is additional car parking to the rear (northern side). The business park within which the subject unit is located has several other vacant units. The surrounding area is characterised by industrial and business parks and there is also significant residential development located in the wider area.

3.0 PROPOSED DEVELOPMENT

The appeal site is operating as a commercial car sales and servicing unit and the thrust of the application is to seek to regularise the change of use from light industrial to vehicle motor sales and servicing. The drawings presented show the front portion of the building as being used for office and related uses. The rear of the building is shown as an open

plan area and the appeal states that it is being used for servicing and deliveries. There are also 2 offices shown at first floor level on an area marked off over the ground floor space.

- **Retention permission** is sought for the change of use from *'light industrial'* to *'motor sales and servicing of vehicles'*.
- **Retention permission** is also sought for 4 surface mounted non-illuminated flat panel signs on the South and East of the Building.
- **Permission** is also sought for the erection of 2 no. proposed surface mounted non-illuminated flat panel signs, marked 7 and 8 on the application drawings. Based on the drawings, these later 2 signs will replace the 2 no. existing '7 Day Auto' vinyl signs (marked 3 and 6) which are directly attached to the building on the east side of the south elevation and on the south end of the east elevation at a location further away from the corner of the building on both sides.

4.0 PLANNING AUTHORITY'S DECISION

The planning application was lodged with Fingal County Council on 24 September 2015. On 12 November 2015, a decision to **refuse permission** and **refuse retention permission** issued based on 3 reasons summarised below:

1. Development would result in haphazard parking which would injure amenities of the area and result in a traffic hazard.
2. Sufficient legal interest or approval by the person who has such sufficient legal interest to carry out the proposed works was not demonstrated.
3. Erection of proposed signage on southern and eastern facades would result in undesirable visual clutter which would be detrimental to the visual amenity of the area.

4.1 Planning report

- Considers points raised in a third party submission received which refers to lack of parking, traffic safety, use not compatible with the layout and design, excessive signage and weekend operation will have negative impacts on security of business.

- Refers to Transportation report which recommends further information on the issue of parking and Water Services department and Irish Water who consider proposal is satisfactory.
- Refers to site visit by Area Planner which raised concern regarding excessive area to the front and rear taken up by parking related to the subject business. Considers development would injure amenities of the area by virtue of haphazard parking.
- Considered the use is acceptable giving the zoning objective (General Employment – GE).
- Considers letter of permission to make the application is insufficient as it does not include the ‘*change of use*’ element. States Fingal County Council have a legal interest in the subject building and states that legal responsibilities between owner, Management Company and Fingal Co Council is unclear.
- Considers impact of proposed signage would be excessive and lead to visual clutter.

A recommendation to **Refuse Permission** was made.

4.2 Submissions/Observation

A submission was lodged by BMA Planning on behalf of Plato Management Company (Damastown) Ltd and the main concerns are listed under:

- Cars and servicing use not compatible with layout, design and safe operation of the industrial estate.
- Lack of car parking for sales and serving of vehicles.
- Traffic hazard arises because of conflicts between HGV vehicles and other users of the business park.
- Signage is excessive and visually unappealing.
- Negative impacts on security because of weekend operation.

4.3 Interdepartmental reports

Water Services

- No objection (surface water)

Transportation Planning Section

- Proposed change of use from light industry to car sales and servicing would have a maximum parking allowance of 22 spaces based on 1 space per 50m² car show room.
- Recommends request for further information to seek details of required and proposed parking.

4.4 Prescribed Bodies

Irish Water

- No objection (Water and Foul Sewer)

5.0 PLANNING HISTORY

FOOA/110 (parent permission)

Permission was granted to Irish Facility Managers Ltd. for planning permission to construct a business park consisting of 132,000 sq.ft of mixed use facilities comprising of office/warehousing/light industry and enterprise in 6 no. 2 storey blocks.

FW15A/0130 – (permission by same applicant as current application)

An application was made by 7 Day Auto Ltd. for permission for the erection of 4 no. proposed surface-mounted non-illuminated flat panel signs and retention permission for 1 no. sign. [Application was withdrawn].

6.0 GROUNDS OF APPEAL

A first party appeal was lodged by McCutcheon Hally Walsh on behalf of the applicant (7 Day Auto Ltd). The applicant states their disappointment in the way the application was dealt with by the Planning Authority and that the applicant was not afforded an opportunity to address minor items by way of additional information, in accordance with the Development Management Guidelines. It is put forward that the business supports employment for 20 employees. The specific grounds of appeal may be summarised as follows:

- The development is appropriate and is operating successfully without negative impact on the wider business park.
- The development accords with the Development Plan zoning objective '**General Employment/GE**' where vehicle sales outlet and 'vehicle servicing / maintenance garage' is permitted in principle.
- The applicants have **sufficient legal interest** in order to implement the permission and this is evidenced as they are already operating in business under a signed lease agreement and relevant consents. A letter of consent to make the planning application was submitted and that there is no legal requirement to detail each aspect of the development in a consent letter.
- The level of **car parking** at 25 is above the 22 sought by the Transportation department. All parking was permitted under the parent permission and that they have been constructed on site and that it was not necessary to apply for permission for the parking a second time.

- 7 Day Auto operate within the available permitted parking and without any negative impact on circulation of traffic in the business park. They have the agreement of Mulhuddart Motorcross club to use their parking area should a situation arise that additional car parking capacity is required. A letter of permission from Mulhuddart Motorcross is attached.
- The **signage** is appropriate and is typical of other signage in the area and many other similar businesses.

In conclusion, the applicants request An Bord Pleanála to overturn the decision of the Planning Authority and to grant planning permission for the proposed development.

7.0 OBSERVATIONS

One observation was received in respect of the proposed development from BMA Planning on behalf of Plato Management Company (Damestown) Ltd. The observation provides background regarding obligations of purchasers and lessees in the context of management company leases and agreements. Specific grounds of objections are made which include the following:

- The unit was designed to accommodate warehousing, light industrial and enterprise uses and not as a motor sales and servicing premises. The current use is not compatible and is adversely impacting on the safe and efficient operation of the business park.
- There is insufficient car parking and no space on site for display of cars or temporary storage of cars waiting to be serviced or for staff needs.
- HGV vehicle movements will give rise to conflicts with other motorists and pedestrians within the business park and has potential to endanger public safety in the absence of suitable management.
- The proposed signage would be excessive and would give rise to visual clutter.
- Hours of operation outside of normal business hours will have negative impacts on the security of the Business Park and public safety.

8.0 APPEAL RESPONSES

The details of the responses from the Planning Authority on the First Party appeal and the comments received from the first party on the Planning Authority's response are summarised under.

8.1 Planning Authority's comments on the Appeal

Fingal County Council submitted a response to the grounds of appeal which essentially refer to and add further to the 3 reasons for refusal, i.e. parking, legal interest and signage. The following points are set out.

- The applicant has not shown any parking within the site boundary or the site ownership [boundaries] which are designated to the subject development.
- The parking requirements will differ for the change of use from that proposed under the parent application (FOOA/0130) and parking standards for the current use.
- On a site visit by the Area Planner, twice as many places as that submitted as being available (i.e. 25 spaces) were in use by the applicant on the overall site.
- Noting the agreement with Mulhuddart Motorcross Club (MMC) for the use of their parking facility, no such planning permission has been granted to MMC.
- The subject planning application did not clarify the applicant's legal estate or that they have sufficient legal interest to proceed with the development.
- Considers the signage would be excessive and would not meet Fingal County Council design guidance on signage.

8.2 Applicant's comments to the Planning Authority's response

McCutcheon Hally Walsh submitted a response to the appeal response by Fingal County Council dealing with matters of parking, legal estate and signage proposals. They emphasise that the signage is secondary to the main issue at stake and a planning condition or split decision would be preferable than loss of the business. The following specific matters are put forward.

Parking:

- The approach taken was to outline the building which was the subject matter of the change of use in red as no works were proposed to the car parking areas.
- The parking was previously permitted under the parent permission and that permission did not require a specific number of parking spaces to be allocated to each unit. The Planning Authority cannot seek to retrospectively attach specific parking

spaces to particular units post the granting of the parent permission.

- The parking spaces for the overall business park were assessed under the Fingal Development Plan 1999-2004.
- The Transport Planning section consider that 22 spaces are required which is a de-intensification in terms of parking requirements.
- Sufficient parking provided which meet the terms of the lease and that of the Development Plan standards (as interpreted by the Transport Department).

Legal Estate

- A letter of consent to the making of the Planning Application (as updated to include the change of use element) is submitted.
- The lease permits the use of the building to motor repair, servicing and sales. A letter from a solicitors firm is attached which confirms the appropriate legal estate.

Signage

- Signage is required and the signage proposed is simple in design and not duly obtrusive in the context of the clad industrial building.
- The 'Ford' sign is required in order to achieve Ford accreditation.
- The general area is characterised by industrial business parks and warehousing, with monotonous facades and elevations.
- A series of images of similar signage on similar buildings in the area are submitted.

9.0 POLICY CONTEXT

9.1 Local Planning Policy

The site is governed by the policies and provisions contained in the Fingal County Development Plan 2011-2017. The subject site is zoned '**GE – General Employment**' with a stated objective

“to provide opportunities for general enterprise and employment” and a vision to “Facilitate opportunities for compatible industry and general employment uses, logistics and warehousing activity in a good quality physical environment. General Employment areas should be highly accessible, well designed, permeable and legible”.

The uses which are permitted in principle include Vehicle Sales Outlet (Small and Large vehicles) and Vehicle Servicing/Maintenance Garage. Fingal County Council, through their development plan, have strong policy for the promotion and support of economic growth including the promotion of the *'regeneration and reuse of land and buildings in a manner which enhances the local economy'* and to *'promote the availability of a range of business accommodation'* (p.65).

In relation to advertising **signage** proposals, Fingal's development Plan (P.242) states that advertising signs should be *'simple in design, sympathetic to its surroundings, non-illuminated and not unduly obtrusive'*.

Objective UC19 states as follows:

Evaluate signage proposals in relation to the surroundings and features of the buildings and structures on which signs are to be displayed, the number and size of the signs in the area (both existing and proposed) and the potential for creation of undesirable clutter.

Design Guidelines for Business Parks and Industrial areas (Appendix 4 – Signage P.139) include the following:

- All signage should be of an appropriate design so as to be compatible with the character of the area.
- All signage should be constructed with a palate of materials consistent with the predominant material and architectural character of the attendant building.
- The materials, location, size, colour, height, scale lighting and orientation of signage should not detract from the visual amenity of the area.

Car parking standards are set out in Tables TO3a and TO3b. Car showrooms require 1 space per **50 sq.m**. Industry development requires 1 space per **35 sq.m**.

Objective TO58 states as follows:

'Balance the car parking requirements required under Tables TO3a and TO3b against the provision of accessible public transport'.

10.0 ASSESSMENT

I have read and considered the contents of the application, grounds of appeal, planning policy and observations on file. I have also attended the site and environs. The following assessment covers my considerations on the key planning issues and also encapsulates my *de novo* consideration of the application. I consider the key issues in determining the application and appeal before the Board are as follows:

- Principle of development.
- Traffic and Parking arrangements
- Advertising Signage
- Other Issues

10.1 Principle of Development

I note that the subject site is located within a '**GE-General Employment**' zoning objective. The use as a Vehicle Sales Outlet (Small and Large vehicles) and Vehicle Servicing/Maintenance Garage are permitted under this objective. I further note that the wider enterprise and employment policies of the Fingal County Development Plan are highly supportive of a wide range of business accommodation in support of economic growth.

I consider the proposed resultant use as a motor sales and servicing outlet fits directly with the 'GE' objective. I note the Planning Authority agree that the use is permitted in principle. Therefore, there is no doubt in my opinion, that the proposed use is appropriate and acceptable in principle.

10.2 Traffic and Parking arrangements

The applicant states they have 25 car parking spaces on site which were permitted under the parent planning permission (F00A/110) for the business park. They are presented on Drawing no. Z52AP000 submitted with the appeal, showing 12 of those spaces located to the front (south) of the building and the remaining 13 located to the rear.

In considering the change of use, I am of the opinion that the issue of parking should be assessed in the context of the current use because of its potential to have generated additional parking requirement when compared to the permitted use under the parent application. Under Table T03b, 'Commercial car parking standards (maximum)' of the current development plan for Fingal, **car showrooms** require a maximum of 1 space per 50 sq.m of floor space. **Industry** development

requires a maximum of 1 space per 35 sq.m. The current use proposed to be retained is arguably a mix of both use types and would therefore require a maximum of between 22 and 32 spaces. I am also mindful of **Objective T058** which allows a balance of the parking requirements against the provision of public transport. The area is accessible by public transport with frequent buses from the city centre to Damastown. I am also mindful that Table TO3b refers to the standards as **maximum**. In their assessment, the Transportation Planning department considered the proposed change of use would have a maximum requirement of 22 spaces. On the day of my site inspection, I noted the parking was orderly. I also noted significant numbers of vacant units and associated vacant car parking spaces. Having considered all of the above, I am satisfied that 25 car parking spaces are adequate to serve the development. I note that there are no designated spaces for persons with impaired mobility shown within the parking provision for Unit 6. However, I consider that this is a matter which is regulated by separate statute under the provisions of the Building Control Acts.

I do not agree with the Planning Authority that parking would be injurious to the amenities of the area as the evidence does not support their view. I am satisfied, taking into account the provisions of the Fingal Development Plan, the permitted parking and the availability of parking as constructed on site, that there is sufficient parking available to serve the development in its use for motor sales and servicing of vehicles.

In relation to the matter raised by the observer on safety of HGV access, it is crystal clear from my inspection that there is ample room for HGVs to access and move around the site via a 5.5m wide (in each direction) internal road way. There is no evidence on file or on site of any traffic hazard or road safety issues which would result or indeed has resulted from the stated change of use.

In conclusion, I am satisfied that the change of use development proposed to be retained is acceptable from a car parking provision and would not create an unacceptable traffic hazard.

10.3 Advertising Signage

The signage proposed (2 signs) and proposed to retain (4 signs) are flat panel signs which are simple in both design and use of colour and which are unlit. 2 no. existing vinyl signs marked as signs no.s 3 and 6 on the drawings are proposed to be removed to facilitate 2 slightly smaller flat panel signs. The Planning Officer's report states that on the date of his

report (12 November 2015), these signs were already removed. However, they were in place when I inspected the site on 25 February 2016.

Objective UC19 of the Fingal County Development Plan requires that signage proposals are evaluated in relation to the surroundings and the features of buildings and structures on which they are to be displayed as well as the number and size of signs in the area and the potential for creation of undesirable clutter. The size and scale of the signage **proposed and proposed to be retained** is reflective of existing signage of the surrounding industrial area and of signage permitted across the region. The applicant has submitted a series of images of similar signage on other business park units to support this and I also noted similar signs on multiple buildings within the Plato business park and adjoining business parks. There would be a low ratio between the signage proposed and the facades on which the signage would be located and in that context I do not consider the signage would create an undesirable visual clutter.

I am satisfied that the proposal to erect 2 surface mounted non-illuminated flat panel signs at the north eastern corner of the building and retain 4 existing surface mounted non-illuminated flat panel signs (2 at first floor level and 2 at the door) are not obtrusive in their context of an industrial clad building and would not detract from the visual amenities of the area. I am satisfied therefore that the signage proposed and the signage proposed to be retained are in accordance with Objective UC19 and with the Design Guidelines for Business parks and Industrial areas for Fingal. Accordingly I consider that the signage proposed and proposed to be retained should be permitted.

10.4 Other Matters

Legal Interest

One of the reasons for the refusal decision was based on the Planning Authority's consideration that there was a lack of appropriate documentation to demonstrate sufficient legal interest in the land such as to be able to implement the permission. The Planning Authority were also not satisfied with the letter of consent for making the application as it did not refer to the change of use element of the application.

I consider that the adequacy of a consent letter is a matter which is required to be addressed by the Planning Authority at the initial validation stage of the application. It was also open to the Planning

Authority to address this issue by way of a request for further information.

The applicant contended that the consent letter was adequate and submitted an updated letter of consent during the appeal stage to specifically include the 'change of use' aspect of the development.

I also note that the applicant has confirmed, supported by a letter from their solicitors, that they have appropriate legal estate in the land to implement the permission. I am cognisant that Section 34(13) of the Planning and Development Act 2000, as amended, provides that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'. Therefore, I do not intend to consider this matter of legal interest as being further relevant in my assessment of the planning merits of this appeal.

Appropriate Assessment

Having regard to the nature and scale of the proposed development which seeks to retain a change of use of an existing permitted unit together with signage proposals and the nature of the receiving environment and proximity to the nearest European site, namely Rye Water Valley/Cartron SAC (Site Code 001398) which lies c.8km south west of the site and South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) which lies c.13km south West of the site, I consider that no Appropriate Assessment issues arise in this case. It is not considered that the proposed development, either individually or in combination with other plans or projects, would be likely to have a significant effect on a European Site.

11.0 CONCLUSIONS AND RECOMMENDATION

Further to the above assessment of matters pertaining to this appeal, including consideration of the submissions of each party and including my site inspection, I consider that the proposed development, including that proposed to be retained, would not seriously injure the amenities of the area and would be acceptable in terms of car parking demand generated, traffic safety and convenience. I consider that the proposal would be in accordance with the proper planning and sustainable development of the area having regard to the relevant provisions of the 2011 – 2017 Fingal County Development Plan. I am therefore satisfied that the elements of the development proposed and proposed to be retained would be in accordance with the proper planning and sustainable development of the area.

I recommend that **permission** and **retention permission** be granted for the development in accordance with the said plans and particulars based on the Reasons and Considerations hereunder and subject to the Conditions set out below.

REASONS AND CONSIDERATIONS

Having regard to provisions of the Fingal County Development plan 2011-2017, the 'General Employment - GE' zoning objective of the site, the planning history, the pattern of development in the area and the nature and scale of the development proposed and proposed to be retained, it is considered that, subject to compliance with the conditions set out below, the proposed development and the development proposed to be retained would not seriously injure the amenities of the area and would be acceptable in terms of car parking demand generated, traffic safety and convenience. The proposed development and the development proposed to be retained would therefore be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and retained in accordance with the plans and particulars lodged with the application to the Planning Authority on 24th day of September 2015, except as may otherwise be required to comply with the following condition.

Reason: In the interest of clarity.

2. Details of proposed advertising signs No.s. 7 and 8, to include samples of materials and colour scheme, shall be submitted to the Planning Authority for written agreement prior to the commencement of this aspect of the development and this aspect of the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of visual amenities.

Patricia Calleary
Senior Planning Inspector - 05 March 2016

Appendix: Location Maps & photographs