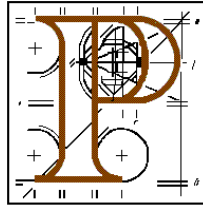


An Bord Pleanála



Inspector's Report

PL15.246060

Proposed Development: Retention permission is sought (for works carried out) and planning permission is sought to complete alterations previously approved to the change the of use of Units 2, 3 and 4 Dundalk Retail Park from retail warehouse to cinema use under ABP Ref. No. PL55.242726 (P.A. Reg. Ref. No. 13520106). The alterations consist of the reduction in the size of the cinema which would not be confined to Units 2 and 3 only and the reversion of Unit 4 to retail warehouse use alongside reconfiguration of the ground floor and project room level including a reduction in seat numbers from 1,693 to 1,095 with these seats contained in 9 cinema screens. In addition, minor alterations to the elevations including relocation of escape doors to suit the reconfigured internal plan at Dundalk Retail Park, Inner Relief Road, Dundalk, Co. Louth.

Planning Application

Planning Authority: Louth County Council
Planning Authority Reg. Ref: 15/726
Applicants: Chandos Investments PLC and Dalkbridge Ltd.
Type of Application: Retention Permission & Planning Permission
Planning Authority Decision: Grant with conditions

Planning Appeal

Appellant: Dundalk Multiplex
Appeal Type: 3rd - V - Grant
Observers: None
Inspector: Patricia M. Young
Date of Inspection: 7th day of April, 2016.

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 Units 2, 3 and 4 'Dundalk Retail Park' which altogether make up the appeal site have a stated 0.2802-hectare site area. They are located in a well maintained and at the time of my site inspection busy multi-unit retail warehousing industrial estate situated circa 2.5-kilometers to the south east of Dundalk's historic town centre. These units like the other units which make up this retail park have a linear format and they are set back with a somewhat staggered building line from the N52 link road by internal access roads, car parking and some small pockets of semi-mature landscaping. The neighbouring units contain a wide range of mainly retail related national and international multiples including Woodies which operate from the adjoining unit to the north and to the south neighbouring units include but are not limited to PC World, Curry's and Harry Corry'. This retail park is accessed from the south via a roundabout on a link road between the N52 and the Blackrock Road. There is also a pedestrian access and secondary vehicle access from the North West corner of the estate near the junction of the Relief road and the residential Log Road.
- 1.2 The surrounding area is mainly characterised by residential development to the west, east and north; however, there are other including large format retail and commercial businesses to the south and south east.

2.0 Proposed Development

- 2.1 Retention permission is sought (for works carried out) and planning permission is sought to complete alterations previously approved to the change the of use of Units 2, 3 and 4 Dundalk Retail Park from retail warehouse to cinema use under ABP Ref. No. PL55.242726 (P.A. Reg. Ref. No. 13520106). The alterations consist of the reduction in the size of the cinema which would not be confined to Units 2 and 3 only and the reversion of Unit 4 to retail warehouse use alongside reconfiguration of the ground floor and project room level including a reduction in seat numbers from 1693 to 1095 with these seats contained in 9 cinema screens and minor alterations to the elevations including relocation of escape doors to suit the reconfigured internal plan

3.0 PLANNING AUTHORITY'S DECISION

3.1 The Planning Authority **granted** planning permission subject to 9 no. mainly standard in nature and scope conditions including:-

Condition No. 2a: Restricts the retail use of Unit 4 to the sale of bulky goods as defined in Annex 1 of the Retail Planning Guidelines, 2012.

Condition No. 2b: Restricts the subdivision or amalgamation of Unit 4.

Condition No. 3a: Relates to previously approved flood measures.

Condition No. 3b: Requires submission and agreement of a site specific warning system and evacuation plan.

Condition No. 9: Requires payment of a Section 48 contribution.

The notification to grant planning permission is accompanied by a number of advisory including but not limited to Irish Water.

3.2.0 Departmental Reports

3.2.1 The **Planning Officer's** report concluded that having had regard to the retail, leisure and recreation land use zoning pertaining to this site, the established nature of the Retail Park in which the units are located, that the development sought would not impact adversely on the vitality and viability of Dundalk's town centre and would not be contrary to the proper planning and sustainable development of the area. The notification of decision to permission issued by the Council reflects this recommendation.

3.2.2 The Planning Officers report makes reference to an infrastructure report which raised no objection to the proposed development. This report is not present on file.

3.3.0 SUBMISSIONS

3.3.1 The Planning Authority received a submission from the appellant objecting to the development sought. The concerns raised in this submission correlate with those set out in their appeal submission to the Board.

3.3.2 Irish Water: No objection subject to standard in nature and scope recommendations.

4.0 RELEVANT PLANNING HISTORY

4.1 Appeal Site:

- **ABP Ref No. PL55.242726:** On appeal to the Board planning permission was **granted** subject to conditions for a development consisting of the change of use of units 2, 3, and 4 from retail warehouse use to a 7 screen cinema and all associated site works.

4.2 In the Vicinity: The Planning Officers report on file sets out the extensive planning history relating to cinema type development in the environs of Dundalk.

5.0 PLANNING CONTEXT

5.1.0 Local Planning Context

5.1.1 At the time this report was being prepared the public consultation phase for the Dundalk & Environs Development Plan, 2015-2021, was still in process. Therefore the appeal site is governed by the policies and provisions contained in the Dundalk & Environs Development Plan, 2009-2015, under which the appeal site and its setting as part of Dundalk Retail Park is zoned: *'Retail, Leisure and Recreation'* where it is an objective: *"to provide for retail warehousing and the sale of bulky goods where not more than 10% of the floor area is allocated to sale of small goods. The provision of strategic large-scale retail development of significant scale and nature to draw from a regional catchment and support the development of Dundalk as a regional shopping destination and the provision of large-scale recreation and leisure facilities"*.

5.1.2 Section 3.3.5 of the said plan sets out policy in relation to retail warehousing and retail parks. In this regard, it deems that the latter do not pose a threat to town centres provided that the goods sold are limited to bulky goods or to goods sold in bulk. In order to protect the town centre, the Environs Plan restricts the sale of ancillary non-bulky goods to 10% of the net sales floor area of any individual retail warehouse unit.

6.0 GROUNDS OF APPEAL

6.1 The 3rd Party appeal submission may be summarised as follows:-

- The applicant is attempting to circumvent the proper planning process as the works are entirely carried out and as such the development as it currently exists is wholly unauthorised.
- The area in the vicinity has been subject to planning applications for cinema uses in the past including a 10 screen cinema which was permitted on lands adjacent to the Soccerdome and Icedome.
- The site forms part of a wider proposal to provide retail and restaurant uses; however, the large scale expansion of the town at this area was refused permission by the Board.
- Not only is the range of retail uses that can be detrimental in terms of impact to a town centre at such a removed location but also the range of leisure facilities.
- While a cinema is permissible in principle at this location and the principle of one at this location has been permitted by the Board, the proposed development must still be examined in the context of its retail warehouse park location.
- The established cinema in the Long Walk area makes a significant contribution to the locality and its viability should be supported in order to promote the regeneration of this key area of the town. The operation of two cinemas in close proximity to one another is not sustainable at this geographical location. The closure of Carroll's Village and Toymaster within the town centre points to an already declining level of activity which will be further exacerbated by the presence of a 9 screen cinema.
- The Board is requested to have regard to the level of cinema provision in other comparable urban centres.
- The Board is requested to refuse permission for the subject proposal as a second cinema in an out of centre location will detract from the vitality and viability of the town centre.
- The applicant has failed to provide adequate information to enable an assessment of this application.
- Unit No. 4's reversion to a retail unit and its impact on car parking is considered a critical issue. Yet the applicant has not demonstrated how the car parking demand is to be accommodated.

- The planning system should ensure that the retail environment is maintained and non-retail uses do not become over dominant within retail parks.
- It is requested that the grant of permission be overturned.

7.0 RESPONSES

7.1 The **Planning Authority's response** may be summarised as follows:-

- The principle of this type of development has been established and a cinema use is not in conflict with the zoning objective for the area as set out in the Development Plan.
- It is accepted that this is a less intensive cinema than that permitted.
- The Council's engineers raised no traffic concerns in relation to this proposal.
- The appellant correctly identifies that there is a live enforcement file open in relation to the development at this subject location.

7.2 The **1st Party's response** may be summarised as follows:-

- The issues raised by the appellant, who is a competing cinema operator, are of a general nature.
- The Board is requested to dismiss this appeal as being frivolous and without substance.
- This application was deemed a valid application by the Council and this proposal primarily seeks retention permission for revisions to the permitted development to accommodate the reduced size of the cinema and permission for alterations including the reversion of Unit 4 back into a retail unit. While the cinema is operational the use of Unit 4 has not reverted back to retail use.
- It is not accepted that the details provided are inadequate based on the appellant's consideration that no assessment of parking provision within the retail park being provided.
- Despite the increased number of screens, i.e. 7 to 9, the cinema is less intensive than that permitted with 33% less floor area and 35% reduction in seats.

- There is sufficient car parking within the retail park to accommodate the cinema and retail warehousing uses on site, including the development sought.
- There is no planning rationale for revisiting the principle of the subject application as both the Council and the Board deemed a cinema at this location acceptable and the site has an established retail planning history.

8.0 ASSESSMENT

- 8.1 *Preliminary Comment:* The applicant in response to the grounds of appeal has argued that this appeal should be dismissed as it is frivolous and without foundation. On this matter I consider it appropriate that the Board in this instance consider this appeal de novo as the appellant has in my view raised a number of valid planning related concerns in relation to the development sought and these in my view are evident in the summary of their appeal submission which is set out in Section 6 above. In relation to the appellants contention that the documentation submitted with this application are insufficient to enable a determination on the development sought and as such the validity of the application is questioned. On this matter I consider that there is sufficient documentation on file and that the absence of an in-depth assessment on whether or not there is sufficient car parking to accommodate the development now sought does not prejudice the Board from making a well informed decision.
- 8.2 *Principle of Development:* Units 2 and 3 which comprise part of the appeal site benefit from a recent grant of planning permission for a change of use from retail to cinema use as part of a larger cinema complex that also incorporated Unit 4 (Note: ABP Ref. No. PL55.242726). In addition, Unit 4 like Units 2 and 3 form part of an established retail warehousing development with these units up until recent years being occupied by Harvey Normans. The site forms part of a larger parcel of lands governed by a 'retail, leisure and recreational' land- use development plan objective. The objective for such zoned lands is to provide for retail, warehousing/parks and large scale recreational uses. Therefore the principle of a cinema and retail use at this location is acceptable.
- 8.3 *Impact on Town Centre and Retail Park:* While there is merit in the appellants arguments that town centres benefit from a range of leisure facilities like cinemas and that such uses add to their viability and

vibrancy I concur with the Council and the applicant in this appeal case that the development sought essentially puts forward a less intensive cinema use in terms of both floor area and overall seating capacity to that previously permitted despite the increase in the number of screens. In terms of impact on the vitality and vibrancy of the town centre which I am cognisant was previously deemed by the Board to not be of sufficient merit to base a refusal of permission on must therefore be arguably less. In terms of retail vitality and retail presence to maintain Unit 4 for retail purposes would add to the existing retail offer within the Dundalk Retail Park. Arguably there is a level of synergy between the retail and the cinema use at this location having regard to the land use zoning of this retail park alongside the fact that the more extended evening and night time hours of operation of the cinema use, even though it is less intensive to that previously permitted and also occupying less frontage, results in a more vibrant streetscape presence for this retail park. I therefore consider that the impact of the development sought on the town centre and retail park vitality and vibrancy in this case not to be a sufficient basis to warrant a refusal of permission.

- 8.4 *Car Parking:* While I am cognisant of the concerns raised by the appellant on this matter the impact of the development sought would not in my view result in any adverse or significant impact on the car parking provision within this retail park. Further, the car parking provision within this retail park is more than ample to accommodate the different nature and operational hours of land uses that it contains.
- 8.5 *Unauthorised Development:* From inspection of the site it would appear that all works relating to the cinema component are now completed. Unit 4 appears to be vacant and does not appear to have been subject to modifications as part of the cinema works. The matter of enforcement is one for the Planning Authority to deal with as they see fit and in this case I consider that the public notices are adequate.
- 8.6 *Condition No.2 of the Planning Authority's notification to grant permission:* Given the applicable zoning of the site; the established nature of the site and its setting; and, the policy provisions set out in the Development Plan for development within a retail park I consider the requirements of this condition are reasonable and should the Board be minded to grant permission for the development sought this condition should be attached.
- 8.7 *Flooding:* Should the Board be minded to grant permission for the development sought based on the precautionary principle and the site's

location that Condition No. 3 of the Planning Authority's grant of permission should be imposed.

- 8.8 *Appropriate Assessment:* Given the modest nature and scope of the development sought, the serviced nature of the site, the lack of any excavations and the absence of any significant pathways between the appeal site and Natura 2000 sites within a 15-kilometer radius and beyond it is considered that the proposed development is not likely to have significant effects on any European site in light of their conservation objectives.

9.0 RECOMMENDATION

- 9.1 Based on the above considerations I recommend that permission be **granted** subject to the conditions set out below.

REASONS & CONSIDERATIONS

Having regard to the zoning of the site within an established retail, leisure and recreational 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 area or of property in the vicinity, would not adversely affect the character of the area, would be acceptable in terms of visual amenity and traffic safety and would not, therefore, be contrary to the proper planning and sustainable development of the area.

CONDITIONS

1. 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 on the 30th day of October, 2015, 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.

In default of agreement, the matters in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of orderly development clarity and in the interest of clarity.

2. (a) The retail use of Unit 4 shall be strictly for use for the sale of bulky goods as defined in Annex 1 of the Retail Planning Guidelines (2012) and not greater than 10% of the net sales area shall be used for the sale of small goods within any one unit. Prior to occupation of the unit an internal layout and fit out plan indicating the approximate areas for sale of small goods shall be submitted for the written agreement of the Planning Authority.

(b) Unit 4 shall not be subdivided or amalgamated without the written approval of the Planning Authority and if deemed necessary a separate grant of permission.

Reason: In order to protect the vitality and viability of the town centre in accordance with the Retail Planning Guidelines, Louth Retail Strategy and the provisions of the Development Plan.

3. (a) The development shall include all proposed flood resilient construction measures detailed in the Flood Risk Assessment received with the parent grant of permission P.A. Reg. Ref. No. 13/520106.

(b) Within 3-months of the grant of this permission the developer shall submit a site specific warning system and evacuation plan for the Planning Authority's written agreement.

Reason: In the interests of orderly development.

4. Full details of all proposed signage for Unit 4 shall be submitted to the Planning Authority for written agreement prior to commencement of development. Furthermore, notwithstanding Part 2 (Exempted Development – Advertisements) of Schedule 2 of the Planning and Development Regulations, 2001, or any re-enactment thereof, no other signs apart from those signs which are agreed in writing with the Planning Authority shall be displayed at the site without a prior grant of planning permission.

Reason: In the interest of visual amenity.

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. Details of the proposed water supply and drainage services, including detailed layouts and specifications, shall be submitted to the Planning Authority for agreement and no development shall commence prior to the confirmation of such agreement in writing by the Planning Authority.

Reason: In the interest of public health and to ensure a proper standard of development.

6. 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, 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.

Patricia M. Young
Planning Inspector
11th day of April, 2016.