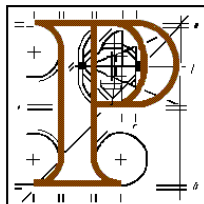


An Bord Pleanála



Inspector's Report

Development: Permission for development that will consist of a change of use of 9 sq.m. of floor area from retail ancillary use to retail use and a change of use of 4.8sq.m. of floor area from retail use to retail use with ancillary off-licence use.

Site Address: Texaco Service Station, Rathfarnham Road, Dublin 14

Planning Application

Planning Authority: South Dublin County Council
Planning Authority Reg. Ref.: SD16A/0042
Applicant: Foxrock Motor Company Limited
Type of Application: Permission
Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant: Foxrock Motor Company Limited
Type of Appeal: First Party v Refusal
Observers: Declan O'Neill on behalf of Rathfarnham Village Green Residents' Association

Date of Site Inspection: 26th July 2016

Inspector: **Joanna Kelly**

Appendices:

Appendix 1 Site Location Map
Appendix 2 Photographs and Site key Plan

1.0 INTRODUCTION

This report pertains to an appeal by the first party against the decision of South Dublin County Council to refuse permission for change of use.

2.0 SITE DESCRIPTION

2.1 The appeal site, with a stated site area of 0.13ha, is located along the Rathfarnham Road, approx. 600m north of the Main Street. The site is an irregular rectangular shape located between residential dwellings. The site is flanked by residential use to the north, south and west.

2.2 There is an existing retail 'SPAR' shop on the site which supports the petrol filling station. A car wash is located along the southern boundary of the site. A 'parcel motel' facility is also located along the western boundary. A fuel storage area is located to the front of the retail store. At time of inspection, the forecourt use was notably busy with motorists queuing to get into the forecourt. A delivery to the shop was also observed during the time of my inspection.

2.3 Within the retail unit, there is an existing 'wine display area' where the new extension would be located. The existing ATM would be relocated. It was noted that the 'deli area' is located along the northern wall of the unit. There is currently no seating associated with this deli and in light of the current layout it is difficult to envisage how seating could be accommodated. The shop offers a range of goods for sale and the circulation area with the unit is notably constrained.

2.4 There are approx. 4 no. customer parking spaces to the front of the unit which are only accessible if no vehicles are impeding their access on the forecourt. From my site inspection it was noted that there was a steady flow of customers with motorists queuing to get access onto the forecourt in some instances. There are two parking spaces located to east of the shop however these are in an area where 'air and vacuuming services' are located. Egress movements from these spaces are challenging due to location of shop and constant pedestrian movements from the shop to the forecourt.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The applicant is seeking to incorporate an existing storage area of approx. 9sq.m. into the main retail floor area of the existing shop unit. This proposal will result in the re-configuration of internal storage areas but does not involve any additional floor area being constructed.

It is also proposed to use approx. 5sq.m. of existing retail floor area as retail with ancillary off-licence use.

4.0 TECHNICAL REPORTS

4.1 Planning report

The report notes planning history on the appeal site. One objection was also noted which raised concerns about principle of development, intensification of use, undermining of consolidation of retail in village, traffic hazard and anti-social behaviour.

The planner recommended refusal of permission for one reason pertaining to size of the retail unit which the applicant has failed to demonstrate would not negatively impact on the adjoining district centre.

Roads Department

Concerns regarding the intensification of the retail use as there is little space for additional parking however given the small area no objection on this occasion.

Environmental Health Officer

Proposal is acceptable subject to conditions

5.0 PLANNING AUTHORITYS DECISION

The Planning Authority refused permission for the following reason:

The proposed development would provide for increased retail floorspace in a location previously assessed under SD10A/0353 and the County Development Plan 2010-2016 as being unsuitable for an expanded retail area as it would not comply with Policies TDL2 regarding viability of District Centres and S32 regarding retail use ancillary to a petrol station. **The same County Development Plan remains in operation.** The increased net retail area as a result of the proposal would be approximately 129sq.m. Policy S32 requires that **a sequential approach** to such development shall apply.

Having regard to the above, the applicant has **failed to adequately demonstrate** that the proposed development **would not negatively impact on the adjoining District Centre.** The proposed development would therefore **materially contravene** the policy of the South Dublin County Development Plan 2010-2016 and as such would be contrary to the proper planning and sustainable development of the area.

6.0 APPEAL GROUNDS

The grounds of appeal are summarised as follows:

- The Planning Authority considers the net retail floor area to exceed the 100sq.m. cap on the basis of the deli/sandwich bar (27sq.m.) which when added to the proposed retail area of 91sq.m. amounts to 127sq.m.
- The food offering within service station buildings are separate to the retail floorspace in planning terms, and this has been accepted on numerous occasions.
- The applicant sets out details such as definition of a 'shop' in Planning and Development Regulations and the definition in the Retail Planning Guidelines.
- The appeal submission refers to planning precedent notably PL.242051 and PL.238034. Reference is also made to other Local Authority decisions.
- The appellant concludes that there can be no doubt, that food offerings such as a deli should not form part of the net retail floorspace calculation. Therefore the proposed net retail floor area is 100sq.m.
- An alternative internal layout (seating) is enclosed should the Board be of the view that in order to qualify as a restaurant or café the deli must have an associated seating area the applicant is willing to provide same. Drawing P2516_A002 shows a small seating area associated with the deli. This would result in a net retail floor area of 93sq.m., including the new extension.
- It is submitted that the minor amendment to the internal layout would not have any material impact from a planning perspective and could have easily been imposed by means of a condition of planning.
- With regard to ancillary off-licence in filling stations, the appellant is of the opinion that policies S17, S18 and S19 quoted in the planner's report are not relevant as they relate to standalone off-licences. The proposed development fully complies with other policies.
- In relation to section 3.4.12 which seeks to avoid the over concentration of off-licences or part off-licences it is set out that there is only one off licence in Rathfarnham Village. There are other retail units with a wine licence but this is clearly different to an off-licence which sells beers and spirits. There is no over-concentration of off-licences.
- It is set out that the proposal is not a material contravention of the development plan. The reason for refusal is based on the false premise that the net retail floor area is 129sq.m. if the correct net retail floor-space of 100sq.m. is applied then there is no material contravention of the development plan.
- The Board is requested to overturn the decision and grant permission for the proposal.

7.0 RESPONSES

7.1 Planning Authority

The Planning Authority confirms its decision and the issues raised in the appeal have been covered in the planner's report.

8.0 OBSERVERS

Declan O'Neill on behalf of Rathfarnham Village Green Residents' Association

The main points in this submission are summarised as follows:

- There is nothing resembling a café in the shop at present. It is a very crowded shop with minimal circulation space, and a very small fresh food counter with absolutely no seating.
- It is difficult to see how seating could be integrated into the shop as it is currently configured, without a substantial loss of the already overcrowded sales area.
- The submission highlights the objection grounds set out in the letter dated 13th March 2016 still stand.
- Additional photographs of recent deliveries to the site are enclosed which demonstrate the dangerous situations being created to traffic and pedestrians alike because the trucks cannot get into the site due to the constant congestion.

9.0 PLANNING HISTORY

Appeal site

File ref. No. 06A/0350 Permission granted for demolition of existing service station, forecourt canopy and decommissioning of underground fuel tanks and construction of a new petrol station (single storey building 278sq.m. with a net retail floor area of 118sq.m.).

Of note, Condition 3 set out that the net sales area shall be a maximum of 100sq.m.

File Ref. No. SD10A/0353 Permission refused for construction of a pitched roof over existing mono pitch service station building to accommodate staff accommodation, administrative office and storeroom, construction of off licence within existing ground floor area, construction of pharmacy within existing ground floor area, construction of glazed forecourt canopy extension and associated site works.

File ref. No. SD11A/0141 Permission granted for retention of existing manual lance car wash to include manual lance attached to automatic car wash structure, wash pad and drainage sump.

10.0 LOCAL PLANNING POLICY

10.1 South Dublin County Council Development Plan 2016-2022

This development plan was made on 16th May 2016 and took effect from 12th June 2016 and hence it is the policies and objectives contained in this plan that apply to the proposed development and not that of the 2010-2016 plan.

The settlement hierarchy seeks the continued consolidation of the established urban and suburban built form as a priority. I note that the lands along the Main Street of Rathfarnham are designated 'village centre' in the development plan.

The retail planning policies are out below:

RETAIL (R) Policy 1 Overarching

It is the policy of the Council to seek to ensure adequate retail provision at suitable locations in the County and to protect the vitality and viability of existing centres in accordance with the retail framework provided by the Retail Planning Guidelines for Planning Authorities (2012) and the Retail Strategy for the Greater Dublin Area 2008-2016. Given the changing economic circumstances since the adoption of the Retail Strategy for the Greater Dublin Area a cautionary approach will be adopted in relation to future quantitative retail floor space requirements.

R1 Objective 1:

To have regard to the Retail Planning Guidelines for Planning Authorities, DOECLG (2012), the Retail Strategy for the Greater Dublin Area 2008-2016, Regional Planning Guidelines Office (2008) and the Regional Planning Guidelines for the Greater Dublin Area 2010-2022 (2010) in defining the role of retail centres and in determining planning applications for retail development.

R1 Objective 2:

To update the Retail Strategy for South Dublin County within the lifetime of this Plan following the completion of the reviews of the Regional Planning Guidelines for the Greater Dublin Area 2010 - 2022 and the Retail Strategy for the Greater Dublin Area 2008 – 2016 and include for analysis of footfall, vacancy and expenditure.

R1 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 County Retail Hierarchy, so that centres can maintain and expand their retail offer.

R1 Objective 4:

To support the viability and vitality of the existing retail centres in the County, in particular town, village and district centres and to facilitate a competitive and healthy environment for the retail industry, while reinforcing sustainable development.

R1 Objective 5:

To assess and monitor the vitality and viability of town, major retail, district and village centres.

R1 Objective 6:

To facilitate and provide for, the refurbishment and replacement of obsolete floorspace and promote the use of vacant floorspace.

R1 Objective 7:

To support, subject to identified need, the development of smaller and medium sized supermarkets in preference to superstore and hypermarket outlets, development of which should be generally limited.

R1 Objective 8:

To review and monitor retail trends that influence the performance of the sector within South Dublin and to encourage and facilitate innovation in the County's retail offer and attraction.

R1 Objective 9:

To encourage and facilitate the provision of local convenience shops (Shop – Local) in existing residential areas where there is a deficiency of retail provision in the catchment, subject to protecting residential amenity.

11.0 ASSESSMENT

Having examined the file, relevant history files, considered local and national policies, inspected the site and immediate environs, assessed the proposal and all of the submissions on file, I consider the key issues to be:

- Compliance with retail planning policy
- Planning precedent
- Appropriate Assessment

11.1.0 Compliance with retail planning policy

11.1.1 As the Board will be aware there is a cap on the net retail floor space of petrol filling stations of 100sq.m. as provided for under paragraph 4.11.9 of

the Retail Planning Guidelines for Planning Authorities, 2012. However the Guidelines also provide that "...where permission is sought for a floorspace in excess of 100sq.m., the sequential approach to retail development shall apply, i.e. the retail element of the proposal shall be assessed by the Planning Authority in the same way as would an application for retail development (without petrol/diesel filling facilities) in the same location.

11.1.2 The central issue upon which the appeal centres is whether the existing deli area should be included in the calculation of retail floor area or not. Annex 1 of the Retail Planning Guidelines for Planning Authorities, 2012 provides a definition of net retail floor space as follows:

*"the area within the shop or store which is visible to the public and to which the public has access including fitting rooms, check-outs, the area in front of check-outs, serving counters and the area behind used by serving staff, areas occupied by retail concessionaires, customer service areas, and internal lobbies in which goods are displayed, **but excluding storage areas, circulation space to which the public does not have access to, cafes, and customer toilets**".*

11.1.3 The appeal focuses on whether the existing 'deli' floor area should be included in the calculation of the net retail floor space. In this regard, I do consider it worth reflecting upon the definition of a "shop". I refer to the Planning and Development Regulations 2001 as amended, which provides the definition as follows:

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

(a) For the retail sale of goods,

(b) As a post office

(c) For the sale of tickets or as a travel agency

(d) For the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence

(e) For hairdressing,

(f) For the display of goods for sale,

(g) For the hiring out of domestic or personal goods or articles

(h) As a laundrette or dry cleaners

(i) For the reception of goods to be washed, cleaned or repaired

But does not include any use associated with the provision of funeral services or as a funeral home, or as a hostel, **a restaurant** or

*a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises **except under paragraph (d)** or any use to which class 2 or 3 of Part 4 of Schedule 2 applies.*

11.1.4 There is no dispute that the existing use on the site, including the sale of current goods i.e. wine and hot food for consumption off the premises falls within the definition of a 'shop'. The appellant has set out that *"it is logical to assume that if a café is excluded from the definition of retail then a food offering such as a deli is also excluded"*. I do not consider this logical in the context of the definition for a 'shop' as there is no 'café' element currently associated with the existing retail floor area. The current offering from this area in question, as confirmed by my site inspection, are sandwiches or hot food for consumption off the premises. The deli area is an integral part of the retail floor space and in my opinion would be considered a serving counter as provided for under the 'net retail floorspace' definition. There is no seating provided for customers and given the configuration of the shop it would not be possible to provide such without removing existing retail good counters/display areas. I would also draw the Board's attention to the definition of "net retail sales area" contained in the Retail Planning Guidelines 2005 which referred to *"the area of a shop or store which is devoted to the sales of retail goods (including the area devoted to checkouts"*. The 2012 definition clearly and expressly now includes *"serving counters and the area behind used by staff"*. I therefore, conclude and agree with the Planning Authority's assessment that the deli area should be included in the calculation of net retail floor space.

11.1.5 The Board should note that the parent permission File ref. No. SD06A/0350, under condition 3 required that the *"net sales area shall be a maximum of 100sq.m. metres"*. I note that the floor plans submitted by the applicant indicated a net sales area of 118sq.m. similar to the existing floor plan. It is unclear how the applicant complied condition 3 to limit the net floor space to 100sq.m. In any event, this is not a matter for the Board.

11.2.0 Planning Precedent

11.2.1 With regard to the planning precedent cited by the appellant, each application and appeal should be assessed on its own merits as each present a differing set of circumstances. With regard to the application in Mountgorry, Swords, PL.242051 the appellant advances an argument that the café/deli element was not included in the net retail area. Whilst this was the case, I would point out that the Inspector set out *"this part of the (petrol filling) station is distinguished from the adjoining convenience shop and so I consider that it is reasonable to regard it as a café and so not a "shop"...."* I do not see how the same analogy could be construed in this particular case.

The deli area is such that clearly falls within sub-section (d) of the definition of a shop and is an integral component of the retail floor space.

11.2.2 With regard to the appeal PL.244191 filling station in Dundalk, I would comment that the Inspector did not include the deli area (similar in size to the existing area in this appeal) within the net floor space. In this case however, I note that there was a seating area of approx. 40sq.m. provided with 20 seats. This is not the case in this instance. I acknowledge that a revised drawing has been submitted with this appeal which provides for the provision of two number tables and seating indicated for 4 no. people. The lack of any meaningful number of seats would in my opinion support the view that the proposal is not a café but rather a deli area that is fully in accordance with the provision of sub-section (d) of the definition of a shop, whereby the sale of hot food or sandwiches is for sale for consumption off the premises.

11.2.3 I do not consider that either of these cases provide precedent which can be cited in this instance. The application before the Board should be assessed as any other normal retail application in the same location as provided for in national guidance.

11.3.0 Planning Assessment of proposal

11.3.1 Having determined that the net retail sales area of the shop currently exceeds the 100sq.m. cap as provided for in the Retail Planning Guidelines for Planning Authorities, 2012 for petrol filling stations, the guidelines provide that where permission is sought for a floorspace in excess of 100sq.m., the sequential approach to retail development shall apply. In this regard the retail element of the proposal shall be assessed by the planning authority in the same way as would an application for retail development in the same location.

11.3.2 I note that the site retains the land-use zoning objective “to protect and/or improve residential amenity” in the recently adopted development plan. The land use zoning matrix indicates that a local shop is acceptable on such lands and a neighbourhood shop is open for consideration. In essence, the proposed change of use is 9sq.m., which is considered small in retail terms. The petrol filling station will remain the primary use on the site. With regard to the sequential approach, I note that the site whilst not located on town centre lands is located approx. 600m from the village centre. The site is located in close proximity to residential properties and as such provides a valuable ‘local’ shop amenity. I do not consider given the relatively marginal increase in floor area that the proposed development would compromise the viability or vitality of the existing village centre. I note reference in the reason for refusal to ‘district centre’ however the recently adopted development plan

clearly indicates the lands along the Main Street in Rathfarnham as 'village centre'.

11.3.3 Whilst there is evidence of queuing on the forecourt, I do not consider that the increase in the proposed retail floor space is such that would give rise to an increase in traffic movements. The primary reasons for visiting the shop appeared to be for the purchase of petrol/diesel. I note the concerns of the observer, however, consider that the proposal in this instance is considered to represent a *de minimis* increase in net retail floor area. I note that the transportation department had no objection to the proposal. The Board may consider it appropriate to condition timing of deliveries to the site. However in this instance having regard to the location of the site and nature of established use I do not consider it necessary to do so.

11.3.4 Having regard to the established commercial nature of the site, I do not consider that the proposed change of use and increase in net retail floor area, given its limited scale, would unduly compromise existing residential amenities of the area. The proposal relates to a re-configuration of existing floor space. I, therefore, consider that the proposed development is acceptable and generally accords with national and local planning policy.

11.4.0 Appropriate Assessment

Having regard to limited nature and scale of the proposed development and the nature of the receiving environment and proximity to the nearest 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.

12.0 CONCLUSION

There is an established petrol filling station use on the site and the proposal is for the increase in net retail floor area by 9sq.m. and also a change of use to provide for off-license use, which is not in itself considered such that would detract from the existing town centre in terms of viability or vitality. The proposal will not detract from the existing residential amenities of the area and as such would be generally in accordance with the proper planning and sustainable development of the area.

13.0 RECOMMENDATION

Having regard to the foregoing, I recommend that permission be **granted** subject to conditions for the following reasons and considerations:

REASONS AND CONSIDERATIONS

Having regard to the existing established retail use on the appeal site which is ancillary to the main use- a petrol filling station, and the limited increase in proposed net retail floor space along with the change of use to retail with off-license, the proposal will not compromise the existing retail offer or detract from the nearby town centre. The proposal would not detract from existing residential amenities of the area or otherwise be prejudicial to public health. The proposed development would not compromise traffic safety and would therefore be considered in accordance with 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 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. 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.

3. 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, 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.

Joanna Kelly
Inspectorate
27th July 2016