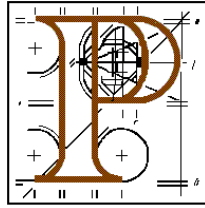


An Bord Pleanála



Inspector's Report

Development: Change of use from permitted retail use to use as a restaurant / café with ancillary take-away and associated site works.

Site Address: Unit 308, The Square Shopping Centre, Tallaght, Dublin 24.

Planning Application

Planning Authority:	South Dublin County Council
Planning Authority Reg. Ref.:	SD16A/0063
Applicants:	LASEDA
Type of Application	Application for permission
Planning Authority Decision:	Grant permission

Planning Appeal

Appellant:	SIRA Restaurants Ltd. and Others
Type of Appeal:	Third party against decision.
Date of Site Inspection:	26/07/2016

Inspector: **Joanna Kelly**

1.0 SITE DESCRIPTION

The appeal site is located within The Square Shopping Centre in Tallaght, South Dublin next to the Newbridge Silverware retail unit at Level 3. The application relates to unit 308, an existing, enclosed unit. The existing unit was boarded up on the day of inspection. The gross floor area is stated as 415sq.m.

I noted some vacant retail units within the shopping centre during the course of my inspection. The current unit is vacant and would appear to be the larger of the vacant units. Level 3 of the shopping centre houses the cinema complex and generally it would appear that this level has less pedestrian footfall to other levels. There are other food outlets at this level which would appear to complement the cinema such as Nandos, Burgerking, McDonalds. Dunnes Stores has an access at this level also.

At time of inspection, late morning, the centre was notably busy particularly within the circulation areas/central plaza. There is a good range of fast food/coffee shops within the centre, most of which were also noted as being busy with limited seating areas.

2.0 PROPOSED DEVELOPMENT

The applicant is seeking to change the use of a permitted retail unit within the Square Shopping Centre at level 3 to a restaurant use with ancillary take-away use. The floor area is 415.6sq.m.

3.0 PLANNING HISTORY

There is extensive planning history associated with various units and which pertain to the change of use from retail to restaurant/café use. Below is an outline of the more recent applications.

File Reg Ref. No. SD15A/0165 Change of use **GRANTED** from retail to restaurant with ancillary takeaway and associated site works at Unit 315, Level 3, The Square, Tallaght. Currently vacant.

File Reg Ref. No. SD14A/0083 Permission **GRANTED** for amalgamation of retail units 316,317 and 318 and change of use of retail use to restaurant with takeaway use (339.3sq.m.) and the addition of a new mezzanine (68.2sq.m.) and associated site works. This is currently the Nandos unit.

File ref. No. SD14/0201 Permission **GRANTED** for a change of use of permitted retail use to restaurant use with takeaway facilities at external Unit

123 (floor area 63.4sq.m.) and minor internal alterations and all associated site and drainage works. This permission has not been implemented.

File Ref. No. SD14A/0104 Permission **GRANTED** for change of use of play area and mall to 2 restaurants/cafes of 102sq.m. and 83.6sq.m. at Unit 165A and 165B, Level 1, The Square Town Centre, Tallaght.

File Ref. No. SD13A/0229 Permission for change of use and material alteration from existing office space into a restaurant (89sq.m.) with facility to provide hot and/or cold food for consumption off the premises at Unit 136, The Square.

File Ref. No. SD12A/0086/PL.06S.240914 Permission **GRANTED** for change of use from permitted retail use to restaurant/café use (floor area 99.5sq.m.) with designated mall seating (floor area 100sq.m.) and associated fit out works to Unit 118 at Level 1, The Square. This permission has not yet been implemented.

File Reg.ref.SD11A/0132: Permission **GRANTED** for change of use from retail shop to a restaurant (138-sq.m) with takeaway facility at Units 137/137A, The Square, Tallaght.

File Reg.ref.SD10A/0305: Permission **GRANTED** for change of use from retail to café / restaurant (95.36-sq.m) at Unit 201 A, Level 2, The Square, Tallaght.

File Reg.ref.SD09A/0167: Permission **GRANTED** for change of use from retail to café / restaurant (113.8-sq.m) at Unit 263, Level 2, The Square, Tallaght.

3.0 PLANNING AUTHORITY DECISION

The Planning Authority granted permission subject to 10 no. conditions as follows:

Condition 1	Compliance with plans and particulars
Condition 2	Water and drainage arrangements
Condition 3	Limitations on Advertising
Condition 4	Minimisation of air emissions
Condition 5	Limitation on construction hours

Condition 6 and 7	Limitation on noise
Condition 8	Wastewater Arrangements
Condition 9	Ventilation and noise
Condition 10	Section 48 Contribution

4.0 REPORTS TO THE PLANNING AUTHORITY

Planning report

The planner's report notes recent planning history, planning policy and a number of objections which raise concerns about existing level of restaurants within the centre. The planning report sets out that "*it is considered that the remaining retail units (vacant and operational), still provide a large proportion of shopping activities ...and therefore the proposal to provide additional restaurant floorspace is broadly in accordance with national guidelines.*" The proposed change of use was considered acceptable in principle and no adverse impact upon the tenant mix and competitiveness of the Square will result. It was recommended that permission be granted subject to conditions.

Water Services Report

No objections

Environmental Health Officer

Proposal is acceptable subject to conditions

5.0 GROUNDS OF APPEAL

The grounds of appeal are summarised as follows:

- The appellants represent a selection of restaurant and food outlets in The Square Shopping Centre. They are concerned with the gradual and on-going erosion of higher order retail units from the shopping centre.
- It is submitted that the function of the food outlets in a shopping centre is to provide a service to shoppers who are drawn to the centre because of the quality of the retail offer. It is believed that the quality of the retail offer is declining continually thereby creating a difficulty for themselves, the shopping centre itself and the wider community it serves.

- If the range of higher order retailing continually declines then the footfall in the centre will decline, with consequential adverse impacts on the centre and the wider area.
- It is proposed to remove a popular computer sales unit that would be catering to the digital needs of people in the area.
- It is submitted that planning policy is to strengthen retailing in the centre and attract high end fashion and consumer durable shopping.
- The grounds of appeal cite retail planning policies which are referred to in the main assessment of this report.
- It is submitted that the market is presently distorted due to the disparate ownership of the centre, the lack of central owner, short term decision making and the impact of NAMA. In this context, it is submitted a decision on planning applications should be related more to planning policy rather than to market considerations.
- Reference is made to a previous appeal and reference by the Inspector that *“there would appear to be very significant provision of restaurant, café and other food outlets within the shopping centre. Whether the proposed change of use would result in an excessive number of such facilities within the centre and adversely affect the viability and vitality of the centre is difficult to determine.”* The appellant accepts that this matter is difficult to determine but is becoming more obvious with the passage of time.
- It is submitted that whilst a previously permitted tenant, Costa may have added footfall to the lower level, the loss of Currys/PC World will reduce the footfall considerably. It would also involve the loss of a consumer durable retailer not be found elsewhere in the centre.
- It is essential that the retail environment should be improved. This will not be achieved by permitting more and more of the centre to convert to restaurant use. This will mean that fewer and fewer visitors to the centre are there to shop.
- It is the view of the appellants’ that they as food tenants are in the centre to provide a back-up service to shoppers visiting a vibrant shopping centre.
- This is the first move to convert a larger retail unit to a food outlet. If permitted, it will confirm that The Square has passed a tipping point in its decline as a shopping centre.
- In conclusion, it is submitted that the proposal is not consistent with the stated policy objectives of the Planning Authority and accordingly is inconsistent with the provisions of the county development plan. It is requested that permission be refused for this wholly unacceptable proposal.

6.0 RESPONSES

6.1 First Party Response to Third Party Appeals

The contents of this response are summarised as follows:-

- It is submitted that the current appeal is commercially motivated.
- The principle of a change of use of this type (retail to restaurant) has been established on a number of occasions in the past at the Square.
- There is a trend towards a greater provision of food and beverage offer. This includes facilities for shoppers and also extends the activity in the development into the growing food/leisure market.
- The extent of the change of use is 415sq.m. or 0.69% of the retail floor area of the overall centre (60,000sq.m.). It is submitted the claims of the appellants' that the proposed development would distort or materially affect the tenant mix within the overall centre are overstated. This is particularly the case when considering the proposed extensions planned for the centre.
- Permission has been granted for the phased construction of two independent retail extensions amounting to an additional 18,572sq.m. of retail floorspace. In particular, the southern extension, known as Plot B, will provide direct access from Level 3 to 5,110sq.m. of higher order retail space. The creation of a strong anchor in this position will help provide a more balanced footfall across the centre.
- Laseda and its parent Indego is the majority owner of The Square, owning in excess of 125 units and together with The Square Management Company are responsible for a range of investments and initiatives in recent years to enhance the overall commercial viability of the Centre. All efforts are towards trying to enhance the overall attraction and comfort of the centre as a place to shop in the face of competition from other "major town centres" in the region.
- It is anticipated that the enhanced "foodcourt" area on Level 3 will be supplemented by the planned extension known as Plot B which will provide 5,110sq.m. of new retail space at Level 3.
- The first party sets out that The Square needs more global branded fashion retail outlets and more high quality food and beverage outlets. These are both complementary and fundamental parts of the tenant mix of any modern shopping centre/town centre.
- The footfall on level 3 is less than other levels and trading position on this level is difficult.
- The current lease term on the unit in this appeal is coming to an end and the fact that durable good operators no longer wish to trade in

shopping centres but rather in the much larger retail park type settings which is more suited to their business format.

- The cinemas are also located on Level 3 and the strategy of the management company is to create a food court style arrangement on this level, where people associate this level with entertainment/leisure facilities.
- Reference is made to two of the appellant's businesses that benefitted directly and would not be operating at The Square were it not for the implementation of the Tenancy Policy now being questioned by them. There is no material planning basis in the arguments presented by the existing restaurateurs to lead to any other conclusion than that the objections are focussed on their own interests rather than those of the centre.
- It is requested that An Bord Pleanála uphold the decision of the Council to grant permission.

6.2 Response from Planning Authority

- The Planning Authority confirms its decision and issues raised are covered in planner's report.

I note reference to the Kildare Route Project Supplementary Development Contributions Scheme in initial correspondence in relation to this appeal. The appeal site is located outside the catchment for this scheme.

7.0 **PLANNING POLICY**

7.1 **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 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.

The site is zoned objective CT – to protect, improve and provide for the future development of the County Town of Tallaght. 'Restaurant' use is permitted in principle.

Section 5.6.0 refers to Retail Centres and more specifically 5.6.1 deals with Tallaght. It is the policy of the Council to maintain and enhance the primary retailing and major town centre function of Tallaght Town Centre as a Level 2 Retail centre.

7.2 Tallaght Town Centre Local Area Plan 2006

This plan was extended in 2011 and remains in force until October 2016. Section 4.9.3 refers to Future Land Use. It sets out that the focus is on sustaining an intensive and integrated working and resident population.

8.0 ASSESSMENT

Having inspected the site and reviewed the file documents, I consider that the issues raised by this appeal can be assessed under the following headings:

- Principle / policy issues
- Appropriate assessment
- Conclusion and recommendations

8.1 Principle / policy issues

8.1.1 The proposed restaurant use is permitted in principle under the County Development Plan and is consistent with the policies for the town centre area. The proposed development is consistent with the aim of the planning authority to maintain the vibrancy of, and to facilitate the provision of the highest level and broadest range of retailing in the County along with a broad range of services and functions.

8.1.2 The Third Party has raised concerns that the proposed development has the potential to adversely affect the vitality and viability of the shopping centre

through the reduction of higher order retail uses due to the excessive number and frequency of restaurant and food outlet facilities in the area. Pursuant to site inspection, I noted that there are a significant number of restaurants, cafés and other food outlets in The Square Shopping Centre. Cafés, sandwich bars and general restaurant uses are focused principally around the central atrium area. The most visible of these, such as BB's, O'Brien's / Bagel Bar are located on level 2 (middle level). There are international fast food restaurants, (e.g. Nandos, McDonalds) which are mostly also located at level 3 which would appear to be deliberate, acting as a complement service to the cinema.

8.1.3 The appellants claim that the proposal would result in the loss of a “consumer durable retailer”, i.e. PC world. The reality is, as confirmed by the first party, that the lease on the unit in question has expired. The said unit is currently vacant and boarded up. As already set out, there are a number of vacant retail units within the centre. The primary issue, therefore, is whether the use of the vacant unit would contribute more to the vitality and vibrancy of the centre as a restaurant or a vacant retail unit? The unit is located at Level 3 adjacent to the cinema complex and does, in my opinion, represent a complementary use to the cinema. I also consider that the first party has provided details of an overall development strategy for the shopping centre which would see, if completed, significantly more retail floorspace.

8.1.4 It is understandable that the third party would have serious concerns regarding the potential adverse impact on business arising from the opening of a new, café / restaurant operator within The Square. However, this is a matter of competition and, the Retail Planning Guidelines 2012 provide that the planning system should not inhibit competition, preserve existing commercial interests or prevent innovation and planning authorities should avoid adversely affecting completion in the retail market. In this regard the RPG 2012 state:

‘An Bord Pleanála should assess the likelihood of any adverse impacts on the vitality and viability of the city or town centre as a whole, and not on existing traders.’ (p.15)

On balance, I consider that the proposed change of use will not adversely affect the vitality and viability of The Square shopping centre and may actually have a positive impact through the occupation of an existing vacant unit. Whilst I note that there has been previous applications approved for change of uses from retail to restaurant/cafes uses, not all of these have been implemented. As such, the market would also determine to some degree the viability of such units within the centre. Furthermore, a grant of permission for the change of use in this instance does not preclude the existing unit from operating as a retail unit should a suitable retail tenant be found prior to the change of use being implemented.

8.1.5 Having regard to the existing nature and character of uses within the Square shopping centre, the approved permission for an extension of retail floorspace

within this centre, the proposed development is considered such that would be consistent with national and local planning policies.

8.2 **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.

9.0 CONCLUSION AND RECOMMENDATION

The proposed development is consistent with the provisions of the '*County Development Plan 2016-2021*', with the '*Tallaght Town Centre Local Area Plan 2006*' with the '*Retail Planning Guidelines 2012*', and with the proper planning and sustainable development of the area. I therefore recommend that permission be granted subject to conditions.

REASONS AND CONSIDERATIONS

Having regard to the nature and scale of the proposed development, to its location within an existing shopping centre and to the existing mix of retail and non-retail uses within the shopping centre, it is considered that the proposed change of use to restaurant use is consistent with the land use zoning objective for the site, would not seriously injure the amenities of the area or of property in the vicinity, would be in accordance with the policies and objectives, as set out in the South Dublin County Development Plan 2010-2016, with the provision of the Tallaght Town Centre Local Area Plan 2011, with Government policy, as set out in the "Retail Planning Guidelines for Planning Authorities" issued by the Department of the Environment, Community and Local Government in April 2012 and would, therefore, be 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 points of detail to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the 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 Prior to the commencement of development the developer shall submit for the written agreement of the planning authority full details demonstrating compliance with the following:
- (a) The ventilation system shall be adequately filtered and externally vented so as not to cause a nuisance to neighbouring properties.
 - (b) Any fumes emitted from the premises shall be minimised and, if necessary, treated using the Best Available Technology and emitted to the outer air.
 - (c) The noise from the operation of the ventilation system shall be attenuated so as not to cause a noise nuisance to nearby residential properties.

Reason: In the interest of public health.

- 3 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: To ensure adequate servicing of the development, and to prevent pollution.

4. 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.

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

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

Joanna Kelly
Planning Inspector
9th August 2016