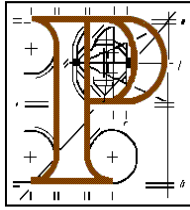


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL29S.246646

Development: Retention for a single storey shed for the sale of fuel and cars and retention for a temporary single storey portacabin for office use at 11 Ballyfermot Road, Dublin 10.

Planning Application

Planning Authority: Dublin City Council
Planning Authority Reg. Ref.: 2444/16
Applicant: Solum Ltd
Planning Authority Decision: Refuse

Planning Appeal

Appellant(s): Solum Ltd
Type of Appeal: First Party
Observers: None
Date of Site Inspection: 22nd of August 2016

Inspector: Angela Brereton

1.0 SITE LOCATION AND DESCRIPTION

The application site is located on the northern side of the Ballyfermot Road. It is currently in mixed commercial use for the sale of fuel i.e. coal and timber and cars. There are two buildings on site proposed for retention, a larger open sided shed divided for the sale of coal and timber and cars proximate to the western boundary and a portacabin used as an office proximate to the north eastern boundary. There is a sizable surfaced yard area used to display cars for sale. There are also two steel shipping containers used for storage at the north western corner of the site.

There is a palisade fence/wall around the site boundaries and two gated accesses onto the Ballyfermot Road. There is residential development 'The Steeples' proximate to the northern and western site boundaries. The two storey red brick blank wall of the public house 'The Lawrence Lounge' adjoins the site to the east. Further to the east along this stretch of the Ballyfermot Road there is a commercial business 'United Tyres'. There is a pedestrian crossing at the junction with O'Hogan Road and a bus stop to the west of the site.

There is signage advertising the usage within and outside of the site boundaries (sandwich board on the footpath) and the site is visible from the road. There is residential development on the opposite side of Ballyfermot Road facing.

2.0 PROPOSED DEVELOPMENT

Retention permission is sought for the following:

- A single storey shed (open on one side) as a Local Enterprise Centre to accommodate the sale of fuel (coal and timber only) and the sale of cars;
- A temporary single storey portacabin for use as office.

The planning application provides that the total site area is 1685sq.m, the total area of buildings to be retained within the site is 141sq.m. The area of the Enterprise Centre Shed is given as 122sq.m and the area of the Portacabin Office is given as 19sq.m. It also provides that the applicant is the leaseholder of the site.

Drawings showing the Site Layout Plan, Floor plans and Elevations have been submitted.

3.0 PLANNING HISTORY

There is no planning history on record relative to this site.

Enforcement: The application form indicates that enforcement has commenced under E0641/15. The Planner's Report provides that there is no record of Enforcement Proceedings in APAS.

4.0 PLANNING AUTHORITY APPLICATION

Planning and Technical Reports

Engineering Department – Drainage Division

They do not object to the development subject to compliance with standard drainage conditions. However it is noted that there is an existing public sewer running through

the site and they provide that a clear distance of 3m needs to be maintained between sewers and structures on site.

Roads and Traffic Planning Division

They have concerns that the drawings submitted do not show the layout of the car sales display area and customer car parking. As this is an application for retention permission and there are no objections on file regarding overspill car parking onto the surrounding road network they do not object subject to recommended conditions.

Planner's Report

The Planner has regard to the locational context of the site, planning history, policy and to the interdepartmental reports submitted. They provide an assessment of the development including the structures proposed for retention. They note that the retention of car sales outlet and fuel store sales facility uses are not permissible in principle under the Z1 land use zoning objective and consider that the use would materially contravene this objective. Also that it would set an undesirable precedent for similar undesirable development, contrary to the proper planning and sustainable development of the area. They recommend that retention permission be refused.

5.0 PLANNING AUTHORITY DECISION

On the 29th of April 2016 Dublin City Council refused permission for the development proposed for retention for the following reason:

- *The proposed uses for retention, motor sales outlet and household fuel sales are not permissible uses in principle under the zoning objective. The provision of a fuel storage and sales area would be seriously injurious to the amenity of nearby residents. Therefore the proposed development materially contravenes the zoning objective Z1. 'To protect provide and improve residential amenities', which in itself and in the precedent such a decision would set for similar undesirable development would be contrary to the proper planning and sustainable development of the area.*

6.0 GROUNDS OF APPEAL

Enda Fanning Architect has submitted an appeal on behalf of the First Party, Solum Ltd. The grounds of appeal include the following:

- They have regard to and provide a list of the uses that are 'permissible' and 'open to consideration' in the DCDP 2011-2017.
- Within these permissible and possible uses are - use as an Enterprise Centre, a neighbourhood shop and even a garage.
- There was ample opportunity for the Council to facilitate the retention of this planning application, and they now ask the Board to do so.
- Appendix 29 (Land use Definitions) of the Development Plan provides a definition of 'Shop'. It is their client's contention that this small fuel yard and shed is clearly a small local convenience store and is therefore a 'local' shop.
- The site at 11 Ballyfermot Road was previously the site of a Garage and operated for many years. A Garage use is 'open for consideration' under the Z1 zoning.

- The current use also facilitates local employment and refusal of permission will put these jobs in jeopardy.
- Having regard to Appendix 29 the 'Enterprise Centre' could be seen as a start up facility permissible within the Z1 zoning.
- The structures proposed for retention support the current use of the site as a car sales outlet and an ancillary coal yard/household fuels outlet and they contend that such proposed uses are permissible.
- The provision of the small fuel storage and sales area would also be appropriate to the amenity of nearby residents, providing a local shop facility.
- The proposed development plan being currently considered by DCC to be voted on later this year, will include a proposed rezoning of this site to facilitate the uses outlined in this retention planning application.

7.0 RESPONSES

Dublin City Council has not responded to the grounds of appeal.

8.0 POLICY CONTEXT

As shown on Map D of the DCDP 2011-2017 the site is located within the Z1 landuse zoning. Section 15.10.1 provides that the Z1 zoning objective is: *To protect, provide and improve residential amenities.*

Appendix 29 provides Land use definitions and includes regard to Enterprise Centre Use, Garage, and Retail.

9.0 ASSESSMENT

9.1 Principle of Development and Planning Policy

The issue for consideration in a retention application is whether the development would be sustainable and permission would have been granted in the first instance in accordance with planning policies and taking into account the character and amenities of the area, if the unauthorised development had not taken place in the first instance. In this case the applicant has applied to retain both structures on site, and their associated uses. The issue is whether the modifications that have taken place would now be deemed to be acceptable, in compliance with planning policies and in the interests of the character and amenity of the area and would not be detrimental for neighbouring residents.

It has been noted in the Policy Section above that the site lies within the Z1 residential zoning where the objective is: *To protect, provide and improve residential amenities.* Regard is had to Section 15.10.1 of the DCDP 2011-2017, this provides details relative to uses that are 'acceptable in principle' in this land use zoning and those 'open to consideration'. The Council's reason for refusal includes that the proposed uses for retention i.e. motor sales outlet and household fuel sales are not permissible uses in principle under and would materially contravene this zoning objective and would be seriously injurious to residential amenity of nearby residents. The First Party considers that the uses in this retention application are not incompatible with and the uses can be considered under the Z1 zoning.

9.2 Regard to the usage of the site

It is of note that the larger structure on site is a shed open on one side facing the yard to accommodate the sale of fuel (coal and timber only) and a separate section of this shed is used for car sales. This is described on the Public Notices as a 'Local Enterprise Centre'. The First Party refers to Appendix 29 of the Development Plan this includes land use definitions relative to various uses and provides: *Enterprise Centre Use of a building, or part thereof, or land for small-scale 'starter type' industries and services usually sharing grouped service facilities.*

Garage encompasses a range of uses which includes motor repair, private garage and motor sales. Petrol Station is subject to a separate definition. However it is clear relative to the definition of 'garage' that the site is used for motor sales and car wash/valet only and not as a garage. This definition in Appendix 29 also provides: *A motor sales outlet is not a shop.* Petrol Stations are included under a separate definition. Section 4.11.9 of the RPG refers to Retailing and Motor Fuel Stations i.e *Convenience shops are part of the normal ancillary services provided within motor fuel stations.* However this is not a motor fuel station and ancillary convenience store. It is of note that while there may have been a historic use of garage on this site, that this is no longer there and a garage is not included in the permissible or open to consideration uses in the Z1 zoning.

Section 15.10.1 includes that a local shop is 'permissible in principle in the Z1 zoning. Shop: - A Shop – Class 1 - 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 and includes:

- For the retail sale of goods
- For the display of goods for sale

Appendix 29 provides a definition i.e - *A local shop relates to a small convenience store, newsagent or other tertiary services such as butcher, vegetable, hairdresser and other similar basic retail services.*

It is considered that the uses proposed for retention would fall into other separate use classes to that of Shop, and particularly to that of 'local shop' as defined in Appendix 29. Local shops are also referred to in the Retail Planning Guidelines 2012 which includes a glossary of terms in Annex 1 and refers to a Local Centre or Neighbourhood Centre i.e. *Comprise a small group of shops, typically comprising newsagent, small supermarket/general grocery store, sub-post office and other small shops of a local nature serving a small, localised catchment population.* Section 2.2.6 also refers to Local Shopping i.e: *Shopping at the most local level is provided by a mixture of neighbourhood shops in suburban areas and village stores/post-offices in rural areas.* Section 4.11.6 provides: *Local retail units such as corner shops or shops located in local or neighbourhood centres serving local residential districts perform an important function in urban areas.*

It is also of note that Part 2 of the Planning and Development Regulations 2001 as amended provides a definition of 'shop' ie. - *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 list of such services is provided - but does not include any use to which class 2 or 3 of Part 4 of Schedule 2 applies. Part 4 provides that a Shop falls within a Class 1 use class, financial/professional services –Class 2, other office – Class 3, light industrial building – Class 4.

Therefore having regard to these definitions and to the use classes, it is not considered that the uses seen on site or proposed for retention which provide for fuel and motor sales would fall into either 'permissible' or 'open to consideration' uses taking into account the Z1 zoning.

9.3 Design and Layout

As shown on the Site Layout Plan there are two separate structures on site proposed for retention. The floor area of the Enterprise Shed is given as 122sq.m. It is shown adjacent to the western site boundary and c.70sq.m is used for coal and timber sales and the remainder in a separate section for car sales. As shown on the elevations it is c.3.8m at the rear with a slight slope to the overhang at 3.45m in height at the open frontage.

The portacabin for retention is in temporary office use. This is shown adjacent to the north eastern corner of the site and the floor area is 19sq.m. and 2.8m in height. There are also two shipping containers used for storage proximate to the north western site boundary.

There is temporary advertising signage around the site boundaries of the site for 'D10 Autos Quality Used Vehicles' and a sandwich board sign for hand wash and valeting on the footpath in front of the site.

The predominant area of the site encompasses the surfaced yard area which is used for the sale of motor vehicles. The yard is bounded by block walls on its northern and western boundaries, with palisade fencing bounding its southern and eastern boundaries. The southern boundary has two gated entrances in the palisade fencing providing access to/from the Ballyfermot Road.

9.4 Impact on the Character and Amenities of the Area

The area is predominantly residential. The residential development in The Steeples is to the north and west of the site. The development to the north is at a higher level and looks towards the site and yard area. The development to the west faces the Ballyfermot Road, there are two windows in the side elevation facing. There is a boundary wall and fencing which provides some partial screening. There are also houses on the opposite side of the Ballyfermot Road facing the site. The yard area is sizable and it did not appear that there would be an overflow of cars from the site into the surrounding residential area. It is of note that the yard and site area appear to be kept in a clean and tidy condition and are not unsightly.

While it is not considered that the usage seen on site visually detracts from the residential amenities of the area, it also does not significantly add to or reinforce the residential function of the area as a whole. It does not provide facilities supporting

local residential amenities such as a local shop, community facilities etc. It is therefore considered that the uses proposed for retention do not comply with the Z1 land use zoning.

9.5 Appropriate Assessment

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and fully serviced location, no appropriate assessment issues arise.

10.0 CONCLUSIONS AND RECOMMENDATION

Regard is had to the documentation submitted, planning policies, the First Party grounds of appeal, to the site visit and to the issues as discussed in the Assessment above. It is considered that the uses proposed for retention do not comply with planning policy relative to the Z1 residential zoning objective.

It is recommended that retention permission be refused for the reasons and considerations below.

11.0 REASONS AND CONSIDERATIONS

The site is located within the Z1 zone of the Dublin City Development Plan 2011-2017 where the objective is: *To protect and improve residential amenities*. The proposed retention development, including the structures to accommodate the sale of fuel (coal and timber) and the sale of cars is not considered to fall within the uses either 'permissible' or 'open to consideration' within this land use zoning. Accordingly it is not considered to be compatible with or to reinforce the overall residential function of the area or to be in compliance with the proper planning and sustainable development of the area.

Angela Brereton,
Planning Inspector
Date: 23rd of August 2016