

An Bord Pleanála



Inspector's Report

Appeal Ref. No:	PL06F.246687
Proposed Development:	Reconfiguration of units, amalgamation of units, subdivision of units, and provision of 3 no. restaurants/café's, new mezzanine, construction of new bridge link and associated works.
Location:	Pavilions Shopping Centre, Malahide Road, Swords, Co. Dublin
Applicant:	Tempore
PA Reg. Ref:	F16A/0107
Planning Authority:	Fingal County Council
P.A. Decision:	Grant
Appeal Type:	Third
Appellants:	Kylemore Services Group
Date of Site Inspection:	22 July 2016
Inspector:	Una Crosse

1. SITE AND SURROUNDINGS

The subject site comprises elements of a number of existing units within the Pavilions shopping centre in Swords. The site area includes Units G45 which accommodates Reload, G46 which accommodates Tiger and G47B which accommodates Champion. In addition the appeal site includes Units 23A located above Unit G47 and Unit 24 which comprises an area of the cinema facility located on a mezzanine over the ground floor area. The overall area of appeal site is 0.135 hectares.

2. PROPOSED DEVELOPMENT

The proposed development comprises the following:

Units G45 (Reload), G46 (Tiger) & G47B (Champion)

- Create a new mezzanine floor for Unit G46 (Tiger) by amalgamating the existing Unit G45 (Reload) mezzanine store area (103sq.m) with the existing Unit G46 (Tiger) mezzanine store area (155 sq.m) for retail use associated with unit G46 (Tiger);
- Construct a new mezzanine floor area (108 sq.m) for retail use associated with retail unit G47B (Champion).
- At Ground Level works comprising the internal reconfiguration of walls, doors and vertical circulation associated with alterations to mezzanine levels above,

Unit F23A and Unit F24

- Subdivide existing retail unit F23A (347sq.m) into two units to create a new restaurant/café unit F23B (102 sqm) and change use of remaining F23A (245sq.m) from retail to restaurant/café;
- Change of use of ancillary cinema café unit F24 (280sq.m) to independent restaurant/café use;
- Associated internal reconfiguration works to walls, doors and vertical circulation at Units F23A and F23B.
- Units to be accessed from the proposed pedestrian link

In addition it is proposed to subdivide existing Unit F23A mezzanine store area (243sq.m) to create:

- an ancillary storage area (50sq.m) to Unit F23A restaurant/café area below
- an ancillary storage area (50sq.m) to Unit F24 restaurant/café area below,
- a change to restaurant/café area (113sq.m) associated with unit F23B restaurant/café below
- lobby area (23 sq.m); and
- all associated internal reconfiguration works to walls, doors and vertical circulation

New Bridge

- Construct a new bridge link which is c. 35 metres in length (128 sq.m in area) joining Phase 1 to Phase 2 with associated amendments to existing adjoining walls, balustrades and doors.

Summary

All of the above will create three new restaurants/cafes comprising Unit F23A (245 sq.m), Unit F23B over two levels (102 sq.m & 113 sq.m = 215 sq.m) and Unit F24 (280 sq.m) and increase the retail space in Units G46 (Tiger) and G47B (Champion).

3. PLANNING HISTORY

The following table provides an overview of the planning history of Phase 2 of the subject site

Reference	Description	Decision
F09A/0094	1 no. restaurant kiosk unit (Gross Floor Area (GFA) c.110 sq.), including associated seating area and 2 no. advertising totem signage zones, located centrally within the existing ground floor mall space fronted by Units G46, G47A, G47B, G32A and G32B.	Grant and expired
F08A/1414	Relocation of the existing cinema foyer to the northern gallery to occupy an existing, currently vacant area of c.284 sq.m.; a new footbridge (c. 44 sq.m.) to link the southern and northern galleries; the replacement of the existing cinema foyer with 1 no. cafe/restaurant unit (c.358 sq.m.) and associated seating area (c. 42sq.m.) and 1 no. retail unit (c. 73 sq.m.); at 1st floor level within the existing cinema complex area of Pavilions Shopping Centre.	Grant
F08A/0027	Reconfiguration of 2 no. ground floor units to create Unit G45 - c. 374sq.m. and G46 - c. 574sq.m.; change of use of proposed Unit G46 mezzanine-floor level (c. 165sq.m.) from retail to associated restaurant/cafe use; retention of 2 no. advertisement signs to Unit G48/F23B shop front windows (ZARA) and other amendments.	Grant
F07A/0723	Reconfigure Pennys Link amending configuration of Units G45, G46 & G47b and Unit F23A and F23B and increasing the cinema lobby.	Grant
F06A/1683	Revisions to Phase 2 to create new pedestrian link from the Dublin Road via Penny's with amendments to units and ground and first floor level creating units G45, G46 and G47 increasing mezzanine and creating a café ancillary to the existing cinema with access from the cinema concourse.	Grant
F04A/0054	Amendments to existing North Mall with gross floor area of 15,020 sq.m including civic square/plaza, 11 screen cinema, 13 no. retail units, 5 no. restaurants, 2 no. retail/restaurants.	Grant and expired
F98A/1100	Phase 2 of Pavilions Shopping Centre	Grant

4. PLANNING POLICY FRAMEWORK

4.1 COUNTY PLANNING POLICY

Fingal County Development Plan 2011-2017

The site is zoned 'MC' the objective of which is to 'protect, provide for and/or improve major town centre facilities'.

5. PLANNING AUTHORITY DECISION

5.1 Decision

Permission was granted subject to 10 conditions which included:

- Permission relates solely to that detailed in the statutory public notices and does not refer to any other aspects of the development that may be shown in the lodged plans (No. 2).

5.2 Planners Report

The Planners report considers the proposed works are acceptable and do not have a negative impact on the amenity of the area as it is internal. The most significant visual change is stated to be the construction of the bridge link which is to be finished in steel and glass with no impact on general amenity of the area. It is noted that part of the first floor proposed for restaurant/café use is currently vacant. In respect of conditions proposed by the EHO, it is stated that a number of the conditions including delivery times and control of nuisance are not appropriate as the development comprises a relatively minor amendment to the established shopping centre. A response to the objection received notes that the bridge is twice as wide as a standard footpath, that an alternative fire escape is available through the cinema. It is also stated that any loss of light to the ground floor foyer will be minimal with the bridge not having a significant impact on the character of the Pavilions with the materials proposed common in public areas.

5.3 Internal Submissions

Environmental Health – No objection subject to conditions

Water Services – no objection subject to conditions

5.4 External Submissions

Irish Water – no objection subject to conditions

5.5 Third Party Submissions

One submission was received which addresses the width of the Bridge.

6. GROUNDS OF APPEAL

The grounds of appeal may be summarised as follows;

- Appellant operates a restaurant at Unit F17 close to proposed new bridge;
- While uses and alterations may be acceptable assessment should not be limited to these with genuine concerns about introduction of 3 no independent restaurant units in place of one ancillary café;
- Public notices were overly complex making it difficult to understand the proposal with potential for more objections;

- Dominant use within the shopping centre should be retail with other uses ancillary with no retail/restaurant ratio submitted with absence of same impeding assessment;
- Ad hoc and piecemeal addition of additional food offers should not be allowed without understanding of retail/restaurant breakdown;
- Pavilions has had a significant impact on Swords Town centre and allowing additional food offer within the centre without proper analysis increases impact on vitality and viability of the town centre;
- Absence of details about the proposed restaurants with the proposal speculative and operators not known and not clear if fast food element proposed;
- No indication of seating numbers or potential volume of customers;
- No analysis of car parking provided and how the proposed 3 new restaurants will be provided for with car parking generated by restaurant higher than for retail;
- Bridge reads as an afterthought from a design perspective;
- Narrow nature of the bridge and fire access issues

7. RESPONSES

7.1 PLANNING AUTHORITY RESPONSE

The planning authority commented on the appeal as follows;

- Comments raised similar to those raised in their objection received by the PA and considered in the assessment;
- Public notices are acceptable and inform the public;
- Development is not exclusively food outlet orientated with additional retail floor area proposed;

7.2 APPLICANTS RESPONSE

A response to the appeal from the applicants is summarised as follows:

- Appeal made largely on basis of perceived negative market competition from the proposed restaurant element;
- Planning notice identifies the units and levels subject of the works and nature of the works and uses with difficulty in describing in brief nature and extent of development in a complex environment with 3rd parties alerted to the proposal and able to examine the drawings;
- Reject assertion that application sought to mislead or conceal the extent of development from 3rd parties with application validated;
- Proposal is not for construction of new units but creation of new retail and restaurant units within existing floorspace;
- Large majority of the units in the centre remain in retail use with proposed restaurant/café floor space contributing to the food and beverage offer representing 5.5% of the total lettable retail floorspace;
- Proposed café/restaurant units an ancillary offer to the primary retail operation and not a destination generator in their own right;
- Evidence from Bannon and Milward Associates (Surveyors and Retail Property Consultants) indicate a deficiency in the extent and variety of casual dining in the centre;

- Proposal seeks to optimise under functioning or left over space in response to the deficiency;
- Reference made to reports by the PA and ABP related to F08A/1057(PL06A.232710) (the proposed Phase 3 which has been extended until August 2012) that highlight the importance of non-retail services;
- Proposed addition of three restaurant (737 sq.m) within the centre is not considered excessive with the creation of extra choice improving experience for visitors;
- Proposal complies with County Plan and Swords Masterplan;
- Interest expressed from a number of operators as set out in the letter from Bannon appended to the response;
- Table in Bannon letter outlines the % of food and beverage offerings in other centres in the Greater Dublin Area with the Pavilions the lowest at 4% of the square footage of total area;
- Prescriptive design layout of seating areas may dissuade potential operators and is not essential with 70/30 breakdown dining/ancillary likely;
- Considered that in context of Pavilions centre which is served by extensive shared parking that there is no requirement for further parking;
- Reference made to report of PA on Pavilions Phase 3 report where uses such as restaurants are considered complementary;
- Bridge design integral part of the proposal harmonising with the existing centre;
- Similar design found between the main floor plate at first floor level which links to the multi-storey car park;
- Bridge is crucial to the operation of the proposal with the scale and design designed to accommodate the occupancy;
- Design and safety aspects of the bridge are unfounded;

8. ASSESSMENT

This assessment will consider the following;

- Principle of Proposal
- Impact of Proposed Increase in Restaurant Café Use
- Pedestrian Link/Bridge
- Other Matters
- Appropriate Assessment

8.1 Principle of Proposal

The proposal herein provides for three main elements – retail, restaurant/café and a new pedestrian link. The first element provides for the amalgamation of the mezzanines in Units G45 and G46 to create a new mezzanine area for unit G46 currently trading as Tiger. In addition it is proposed to create a new mezzanine floor area for use as retail floor space for Unit No. G47B. I note that the appellants do not appear to have any issue with these amendments. In that regard and given the location of the amendments within existing retail units within an existing retail centre I do not consider there could be any reasonable objection to same. The appellant's main concern appears to relate to the creation of new restaurant/café floorspace and change of use of

existing ancillary restaurant space to an independent restaurant. The appellant, I would note, operates an existing restaurant business known as Kylemore close to the proposed location of the pedestrian link. The proposal herein would create three new restaurant spaces albeit the ancillary cinema café (Unit F24 - 280 sq.m) has an existing café use. In respect of the principle of the proposal, it is my opinion that the principle of the restaurant/café use is acceptable in this centre given the zoning of the site. The matter of the impact of same on the centre is assessed in the next section. I would note that the appellant states that retail use should be the dominant use in the centre with other uses such as restaurants ancillary. It is clear from a visit to the centre that retail is and would remain the dominant use in the Pavilions. The details in respect of percentages of retail/restaurant floor area is discussed in the next section. However, I consider that the principle of the proposed development is acceptable.

8.2 Impact of Proposed Increase in Restaurant Café Use

The appellant has a number of concerns regarding the proposed increase in Restaurant/Café floor area within the centre. It is stated, as noted above, that the dominant use within the centre should be retail with other uses ancillary to same. It is stated that no retail/restaurant ratio was submitted. The applicants agent has submitted a number of supporting submissions from Retail Consultants, Millward Associates and Property Consultants Bannon, who both refer to the deficiencies in the extent and variety of the casual dining offer in Swords. Bannons, submission provides a table of c.15 operators with an interest in taking space in Swords. An additional table is included which outlines the Pavilions Centre in the context of the four other major centres in the Greater Dublin Area, Blanchardstown, The Square, Liffey Valley and Dundrum. The number and percentage of Food and Beverage (F&B) units in each centre is outlined with the Pavilions the lowest with 12% of the total units comprising F&B units. Blanchardstown has 16%, The Square, 18%, Dundrum 31% and Liffey Valley 38%. The table also outlines the square footage of F&B units in each of the centres and then expresses same as a % of the total area (Sq.ft) of the centre. Again the Pavilions with 4% of its square footage comprising F&B is below each of the other centres. Therefore I would suggest to the Board that the applicants have provided satisfactory evidence to support the proposal and to refute the claims made that the restaurant/café use would undermine retail as the dominant use in the centre.

There is concern that the proposal is leading to an ad hoc and piecemeal addition of food offers. As with any centre of this scale, variations and amendments to parent permissions are sought in order to meet market demands which change over time. The second phase of the centre was permitted c.1998/9 and given changing economic conditions, the demand for uses within such a centre change. Therefore I do not consider that the proposal herein is ad hoc or piecemeal. While the vitality and viability of Swords Town Centre is a material consideration for any development within the area of Swords, I would note that the site in question is located on lands zoned for Major Town Centre. In addition there is a link from the area of the centre in question out to the Dublin Road with access to the site from Swords Main Street available. I would suggest that rather than impacting on the vitality

and viability of Swords Town Centre that the proposal will assist in increasing the offer of the centre. It is stated that there is an absence of details about the proposed restaurants with the operators unknown. I do not consider that this is a significant issue as most commercial developments for which permission is sought do not have operators identified at planning stage. Notwithstanding, given the existing operators within the centre, the sites location and the cinema use they are likely to be similar to those already existing within the centre. The site is zoned Major Town Centre and the units proposed comprise in this instance existing unused floorspace with one unit already permitted as a café use associated with the cinema. I would suggest that the absence of details on seating numbers and volume of customers is not critical to the consideration of this planning application. The applicant's agent refers to a 70/30 ratio of the units between dining area and ancillary areas. As I have stated the units are existing within the centre and currently not utilised. I would therefore conclude that the proposal would not have a negative impact on the centre itself or Swords Town Centre but will add to the offer of the centre.

8.3 Pedestrian Link/Bridge

The appellants consider that the design of the pedestrian link reads as an afterthought in the design process. However I do not consider that this is reasonable as the materials used reflect and respect the existing design and finishes within the centre and used on similar links within the scheme. The link provides access to proposed restaurant units and therefore creates a functional link rather than a through way within the centre. I do not consider that the link has a width which is too narrow and fire access issues are not part of the planning code. I consider that the link proposed is acceptable.

8.4 Other Matters

Matters raised relating to the content of the public notices are matters for the consideration of the Planning Authority at validation stage. I would also note that the appellant has been able to submit observations to the Planning Authority and appeal to the Board. The appellant claims that there has been no analysis of car parking provided with restaurants generating a higher parking requirement. I would note that the centre is serviced by considerable parking. In addition, the restaurant/café uses proposed, in addition to catering for shoppers using the retail centre will also assist in adding to the night-time economy of the centre anchored by the existing cinema facility and Swords town centre which has a variety of pubs and other night time uses. In this regard there would appear to be potential for greater use of existing spaces over a longer period of time.

8.5 Appropriate Assessment

Having regard to the nature and scale of the proposed development, nature of the receiving environment, the likely emissions arising from the proposed development, the availability of public water and sewerage in the area, and proximity to the nearest European sites, I am satisfied that 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 RECOMMENDATION

Having regard to the foregoing I recommend that permission is granted for the development as proposed subject to the conditions set out below.

REASONS AND CONSIDERATIONS

Having regard to the provisions of the Fingal Development Plan 2011-2017, it is considered that, subject to compliance with the conditions set out below that the proposal would not impact on the vitality and viability of Swords Town Centre, would be acceptable in terms of traffic safety and convenience and would 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 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 (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, 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.

4. The developer shall pay to the planning authority a financial contribution in respect of the proposed Metro North Scheme in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Una Crosse
Senior Planning Inspector
September 2016