



An
Bord
Pleanála

Inspector's Report PL06D.247262

Development	Change of use from storage use of unit E-G23 to retail and amalgamation with a Spar retail unit D-01 to incorporate ancillary retail with all associated works.
Location	The former Montrose Hotel, Stillorgan, Dublin 4
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	D16A/0466.
Applicant(s)	Aicron Limited
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Aicron Limited
Observer(s)	1.Daniel Brennan
Date of Site Inspection	17.12.2016
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.0227 hectares and is located on the north eastern side of the Stillorgan Road, adjacent to the Belfield flyover. It is accessed by the old Stillorgan Road, which now forms a parallel, limited access road to the N11 at this location.
- 1.2. The site is broadly triangular in shape with a frontage of 100 metres onto the Stillorgan Road. It encompasses the former Montrose Hotel, this building is L shaped, four stories in height to the front and was constructed in the 1960's. The upper floors of the former hotel have been converted, with permission in recent years, to student accommodation. The ground floor of the building, adjoining the subject appeal premises comprising Spar convenience shop and a vacant unit retail unit, is occupied by Insomnia coffee shop and a Bank of Ireland branch. The entrance foyer to the upper floors of student accommodation occupies the adjoining south eastern ground floor area.
- 1.3. The site is adjoined to the southwest by the existing car park, to the northwest by Woodbine House which is a residential property consisting of 5 storey apartments, to the northeast by a development of two storey dwellings in Glenomena Park, to the southeast by a single storey detached dwelling (Ashfield House) and two storey dwellings in Ashfield Park. The majority of the existing residential housing stock in the area is mature and traditional in form and tenure.
- 1.4. The site is located within 300 metres of University College Dublin (UCD) and is adjacent to the N11 Quality Bus Corridor (QBC)

2.0 Proposed Development

- 2.1. Permission for Change of use:
 - From Storage Use of unit E-G23 (67 sq. m) to Retail and Amalgamation with Spar Retail Unit D-01 (119 sq. m)
 - To incorporate:
 - Ancillary retail, - broader range of goods,
 - New delicatessen food preparation area,

- New public wc, staff wc, disabled wc with baby changing area, staff facilities
- Associated works.

The Gross Floor Area of the amalgamated units is stated in the planning application form on file as 192 sq. m. The drawings submitted also indicate the GFA of amalgamated Unit D – 01 and Unit E-G23 as 192 sq. m with 'net internal floor area' ('NIA') of 119 sq. m and 67 sq. m, respectively, totalling 186 sq. m.

Inspectors Note: There is a discrepancy in terms of the stated net floor areas indicated on the drawings submitted. Cognisance has been had to this discrepancy in the assessment of the application.

3.0 Planning Authority Decision

3.1. Decision

Planning permission refused. The reason for refusal states:

'Having regard to the residential zoning objective at this site, it is considered that the proposed development, by virtue of the size and scale of the retail offering proposed, would **materially contravene** Section 3.2.2.7, Policy RET7 of the 2016-2022 Dún Laoghaire-Rathdown County Development Plan, would likely attract business from outside the local community and would, therefore, be contrary to the residential zoning objective at this site, Objective 'A', which is 'to protect and/or improve residential amenities. The proposed development would, therefore, seriously injure the residential amenities of the area and of property in the vicinity and would be contrary to the proper planning and sustainable development of the area'.

3.2. Planning Authority Reports

- 3.2.1. Planning Report: The planning report supports the draft decision to refuse planning permission. It raises concerns with respect to the size and scale of the retail offering proposed. It is considered that the proposed scale of the retail offering would attract business from outside the local community which would be contrary to the land use

zoning objective 'A' of the site and would seriously injure the residential amenities of the area and of property in the vicinity.

3.2.2. Other Technical Reports

- Drainage Planning Report: No objection subject
- Transportation Planning Report: No objection
- Environmental Health: No objection subject to condition

3.3. Third Party Observations

Observations / Objections received concerns raised are similar in nature to those raised in the observation on file, summarised below.

4.0 Planning History

4.1. D16A/0563 Permission Granted (2 Sept 2016) for signage. The signage comprises of (i) facade signage and (ii) totem signage (i) The proposed facade signage comprises of illuminated logo. The facade sign is located on the west side (Stillorgan Road) of the building and is circa 9.7 metres above ground level. (ii) The proposed totem sign is located to the south east of the subject site to the left of the entrance. The totem sign is stainless steel with a double sided ground mounted directional light for signage, inset into paving

4.2. D15A/0763 Permission Refused (4th February 2016) for change of use from storage use of units E-G22-E-G23 to retail and amalgamation with Spar Retail Unit D and associated works

Reason for refusal is similar to the reason for refusal in the subject appeal case, regard is had to the change in County Development Plan.

4.3. D15A/0587 Permission Granted (9th November 2015) for the amalgamation of the existing branch of Bank of Ireland with the adjacent Unit B (granted Planning

Permission D14A/0552), including internal demolition of wall between the units, modifications to the existing glazing, relocation of main entrance door, relocation of 1 no. ATM, installation of an additional 1 no. ATM and Cash Transfer Hatch, new fascia signage with back-lit corporate lettering and logo and an externally located totem sign, all to the south-west elevation, at ground floor level and all associated site works

- 4.4. D14A/0552 Permission and Retention Permission Granted (18th February 2015) for the upper floors and part of the ground floor of the former hotel being converted to student accommodation pursuant to Reg. Ref. D12A/0483/An Bord Pleanála Ref.
- 4.5. D14A/0415 / PL06D.244141 Permission Granted (17.11.2014) for installation of 8 no. 1.6m antenna and 4 no. .3m dishes, supporting poles, ancillary equipment and 4 no. equipment cabinets at roof level at The Montrose Building, (former Montrose Hotel) Stillorgan Road, D4
- 4.6. D12A/0483 / PL06D.241957 Permission Granted (20/09/2013) for change of use of part of hotel to student accommodation, addition of 1 no. part set back storey, including the demolition of structures at rear and at roof level.

5.0 Policy Context

5.1 Development Plan

The operative plan for the area is the Dún Laoghaire-Rathdown County Council Development Plan 2016 - 2022. The site is located in an area where the land use zoning objective is 'A' – to protect and/or improve residential amenity'

The following Sections of the County Development Plan are of relevance:

Section 3.2.2.7, - Policy RET7

5.2. Grounds of Appeal

The grounds of the First Party Appeal can be summarised as follows

The Site and Scale

- The shop as proposed is very modest in size and the scale of development cannot be considered excessive
- The access to the site is via the R138 main road, via a slip road which only serves the local neighbourhood
- Anyone driving past this slip road would have to take the next turn at Booterstown Avenue and return via the Rock Road adding two kilometres onto their journey
- The addition of a small storage space on to an already small unit will not encourage additional business from outside of the area
- The existing shop only carries 700 items compared with modest local neighbourhood Spar shop at Woodbine Park which carries 1370 units, this is unsustainable for retailer and for customers.
- The local shop at Woodbine is 185 sq. m in GFA which compares favourably with this application which proposes GFA of 177 sq. m (Main customer area 99 sq. m cash area 9.5 sq. m, Deli prep area 26.8 sq. m staff area and toilets 23.8 sq. m, staff office and stores 17.4 sq.m)
- The proposed plan will result in a shop with net retail sales area of less than 100 sq. m in keeping with Development Plan.
- There is customer dissatisfaction at the size of and facilities offered at the shop. Customer survey carried out by the first party.

Material Contravention of the County Development Plan

- The proposal does not materially contravene the Plan, nor is it contrary to the residential zoning of the site
- The net retail sales area is less than 100 sq. m
- The current shop layout does not have any of the following disabled accessible facilities:

- Staff room and facilities disabled accessible
- Proper toilet facilities for staff disabled accessible
- Proper toilet facilities for customer disabled accessible
- Baby changing facilities for staff disabled accessible
- Proper toilet facilities for staff disabled accessible
- Adequate deli food prep facilities disabled accessible

There is a need for the additional floorspace

- The application seeks to address the above short comings / problems which the current shopkeeper inherited from the original grant of planning permission,
- Seeks to provide proper facilities for both staff and customers for the overall development.
- Providing full disabled accessible facilities requires extra space
- Current standards for DAC in retail are onerous
- The existing shop as designed and approved does not meet the minimum standard for Convenience Retail Stores and cannot compete on a level playing pitch with other local shops in the area, leading to existing customers in Montrose being disadvantaged

Precedent set by Garage shops

- The nature of the application is no different than the local garage shops recently built which also had restrictions on the overall net retail size but were built with additional space for staff facilities, restaurant, prep areas and seating of which there are many examples and precedent.
- The proposal would not injure the amenities of the area

5.3. Planning Authority Response

5.3.1. Response received it is summarised as follows:

- The proposed development, by virtue of the size and scale of the retail offering proposed would materially contravene section 3.2.2.7 policy RET7
- Would be likely to attract business from outside the local community
- Be contrary to the residential zoning objective 'A'
- The appeal site is well served in terms of the existing provision of convenience shopping facilities within walking distance of the site
- The Cranford Centre which is a zoned neighbourhood centre is located approx. 150 m distant – there are currently no convenience shopping facilities within the Cranford Centre.
- Question the need for a public toilet and baby changing facility within a local convenience shop particularly given the coffee shop located next door.

5.4. Observations

5.4.1. An observation was received from Daniel Brennan, 19 Glenomena Park, Blackrock, it is summarised as follows:

- It is quiet easy for passing traffic on the N11 to access the Spar store on Montrose site via the slip road and to return to the N11 further south via the Old Stillorgan Road
- The applicant seeks to attract extra business from passing traffic on the N11 and from UCD
- Enlarging the Montrose Spar store with deli / fast food section would attract business and associated traffic from outside of the area and would be contrary to proper planning and sustainable development of the area.
- The objective zoning A of the Montrose site is critical in the evaluation of this appeal.
- It is important that ABP defends the central role of zoning in the planning process and does not create dangerous precedents.

- Provision of toilets for customers / baby changing facility / disabled access in Montrose Spar are unnecessary as they are available in the Insomnia coffee shop next door
- None of these facilities are available in the Woodbine Spar
- The measurement of the floor area is a technical matter for the p.a.
- The applicant appears to consider that areas behind the counter e.g. cash and deli area not part of the net floor area.
- There is a discrepancy regarding the enlarged GFA of the store appellant – 177 sq. m and DLRDCC -192 sq. m
- The Spar Montrose is only 700m from the Spar at Woodbine with 1370 items stocked.
- Given the central location of the Woodbine Spar in the local area and the peripheral location of the Montrose Spar the claim of having to drive miles for local shopping is grossly exaggerated.
- The proposed development would attract significant traffic from outside of the local area
- Observation accompanied with letter of Objection to the planning authority

6.0 Assessment

I consider the key issues in determining this appeal are as follows:

- **Compatibility with Development Plan**
- **Size, Scale and Residential Amenity**
- **Material Contravention Issue**
- **Appropriate Assessment**

6.1. Compatibility with Development Plan

This is the second planning application at this site for change of use of unit E-G23 from storage use to retail and amalgamation with the permitted retail unit (Unit D). The previous planning application Reg. Ref. D15A/0763 (decision date 4th February 2016) also included for a change of use of Unit E-G22. However it was considered that the development, by virtue of size and scale of the retail offering proposed, would materially contravene Section 7.3.7, Policy RET8 of the 2010 – 2016 Dun Laoghaire Rathdown County Development Plan, would likely attract business from outside of the local community and would therefore, be contrary to the residential zoning objective at this site.

I note the change in circumstances in the subject case with respect to the adoption of a new County Development Plan (2016 – 2022) and that the subject planning application seeks change of use and amalgamation of Unit E-G23, only, to retail use to provide a retail unit of 192 sq. m GFA / 186 sq. m NIA, as opposed, to the previous application which including Unit E-G22 had a NIA of some 204.5 sq. m

The proposed change of use and amalgamation in the subject application would increase the size of the Spar convenience shop from 119 sq. m to some 186 sq. m NIA.

The proposed development is located within an area zoned 'A' – 'to protect and/or improve residential amenities'. 'Shop Neighbourhood' is 'Open for Consideration' in areas zoned Objective 'A'.

A Neighbourhood Shop is defined in section 8.3.12 of the 2016 – 2022 DLRDCDP as one which primarily serves a local community and does not generally attract business from outside that community. It further states that they will primarily serve a walk in population and will typically have limited car parking.

Paragraph 3.2.2.7, Policy RET7 of the 2016 – 2022 DLRDCDP, in respect of convenience shops states:

'It is Council policy to facilitate the provision of local convenience shops in residential area where there is a clear deficiency of retail provision, subject to protecting residential amenity. Within residential areas, the Council recognises the need for convenience shopping provision and accepts that a neighbourhood centre may not always be available within easy walking distance. When evaluating proposals for such a use, the Council will have regard to the distance from the proposed development to existing shopping facilities and to its impact on the amenity of adjoining dwellings. Local convenience shops shall not have a floorsapce greater than 100 sq. m net'.

It is the opinion of the planning authority that the community is well served with existing convenience shopping facilities within walking distance of the subject site. The planning assessment by the planning authority points out that the nearest convenience shop to the subject site is Spar in Woodbine Park, a zoned Neighbourhood Centre, which is approx. 700 m away. The Student Union shop and Molloys Centra within the UCD Belfield Campus, Supervalu in Mount Merrion and Tesco at the Merrion Shopping Centre are all within 2 – 2.5 Kilometres walking distance of the subject site. It is also noted that located some 150m from the appeal site is the Cranford Centre which is zoned Neighbourhood Centre and within which there is no convenience shopping facilities. I note that on foot of D13A/0665 / PL06D.243363 (September 2014) planning permission was granted by both DRDCC and ABP for change of use of retail unit to funeral home at Unit 6 Cranford Centre Montrose, Dublin 4

In the subject appeal case the planning authority refused planning permission for one number reason which considered that the proposed development, by virtue of the size and scale of the retail offering proposed, would materially contravene Section 3.2.2.7, Policy RET7 of the 2016-2022 Dún Laoghaire-Rathdown County Development Plan, would likely attract business from outside the local community and would, therefore, be contrary to the residential zoning objective at this site.

While the issues of size, scale and residential amenity shall be assessed in the succeeding section of this report I highlight that 'shop neighbourhood' is 'Open for Consideration' within zoning objective 'A'.

The principle of a convenience shop has been established on the subject site and I consider a small extension such as that proposed, in particular given the vacant nature of the adjoining unit would be wholly reasonable.

It is my opinion that the subject proposal with stated net retail floor space less than 100 sq. m (definition of net retail floor space shall be discussed in detail in the subsequent section of this report) would not conflict with policy in particular in terms of Policy RET7: Convenience Shops. Should the Board agree that permission be forthcoming in the subject appeal case instance I recommend that a condition be attached which restricts the net retail floor space to 100 sq. m maximum.

6.2. Size, Scale and Residential Amenity

I note that Drg. No. 381-PP-AM-01A indicates that the proposed internal layout of the amalgamated unit is as follows: office stores 17.4 sq. m, staff areas & toilets 23.8 sq. m Deli area 26.8 sq. m, Cash area 9.5 sq. m and main customer area of 99 sq. m

These figures give a total of 176.5 sq. m which I note does not correspond with the overall stated NIA of 186 sq. m for the proposed development. There appears to be some confusion with respect to the Net Internal Areas (NIA's) on the drawings submitted. I also note the doorway linking the office area to Unit E- G22 storage / communal area which appears to be a new doorway not currently in place and not included in the description of the proposed development. Such irregularities are minor in nature and can be dealt with by way of conditions should The Board consider that planning permission should be forthcoming for the proposed development.

The first party submit that the shop as proposed is very modest in size and the scale of development cannot be considered excessive. It is strongly argued that the proposal would result in a shop with a net retail area of less than 100 sq. m in keeping with the Development Plan and a gross area which would be less than the nearest shop, the Spar at Woodbine Park. Reference is made to the 100 sq. m Petrol filling station shops floorspace cap.

Annex 1 Glossary of Terms of the Retail Planning Guidelines for planning authorities (2012) defines Net Retail Floorspace as ‘the area within the shop or store which is visible to the public and to which the public has access including fitting rooms, checkouts, the area in front of checkouts, 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’.

From observations made during my site visit I agree with the first party that the existing shop is restricted in area. There is clearly a demand for convenience shopping at this location. The Spar retail unit is located within a student accommodation complex adjoining an Insomnia coffee shop and Bank of Ireland branch, commercial services are an established use at this location. The appeal site is within easy walking distance of surrounding residential community, I do not agree that an extension to a Spar shop, such as that proposed, in such close proximity to student accommodation and UCD campus generally would attract business from outside of the local community and therefore be contrary to the residential zoning objective ‘A’ to protect and / or improve residential amenity’.

Given the precedent set on the site, the nature and scale of the local convenience shopping proposed and the restricted nature of car parking available I am of the opinion the proposed development would not attract significant traffic from outside of the local area and would not negatively impact on the amenity of adjoining dwellings.

6.3. Material Contravention Issue

The reason for refusal in the notification of decision to refuse planning permission states that the proposed development would “materially contravene” section 3.2.2.7, Policy RET7 of the 2016 – 2022 DLRDCDP. The Board is restricted in granting permission where the Planning Authority has refused permission on the grounds of material contravention. According to Section 37(2) of the 2000 Planning Act (as amended),

“(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that —

- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”

In my opinion the proposed development does not materially contravene the residential zoning objective, ‘A’, as ‘shop neighbourhood’ is ‘open for consideration’. It also does not materially contravene section 3.2.2.7, Policy RET7 of the 2016 – 2022 DLRDCDP as the proposed development does not have a net retail floor space in excess of 100 sq. m, regard being had to the glossary of terms provided in Annex 1 of the Retail Planning Guidelines for Planning Authorities 2012.

6.4. Appropriate Assessment

- 6.4.1. Overall I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature of the proposed development, urban location and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

7.0 Recommendation

- 7.1.1. I recommend that the decision of the planning authority be overturned and planning permission be Granted to the proposed development.

8.0 Reasons and Considerations

- 8.1.1. Having regard to the provisions of the Dun Laoghaire Rathdown Development Plan 2016 - 2022 to the land-use zoning of the site 'residential', the existing pattern of development on the site and to the nature, form, scale and design of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not adversely affect the residential amenities of the area, conflict with paragraph 3.2.2.7 Policy RET7: Convenience Shops set out in the Plan nor would it give rise to a traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 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. Prior to the commencement of development the developer shall submit a revised internal layout drawing clearly demarcating the following for the written agreement of the planning authority:

(a) A well-defined net retail floor space, as per the glossary of terms provided in Annex 1 of the Retail Planning Guidelines for Planning Authorities 2012, which shall not exceed 100 sq. m

(b) Omission of the interconnecting door between the office of Unit D-01 (Spar retail Unit) and Unit E-G22 (store).

Reason: In the interest of clarity and to protect the residential amenity of the area.

3. The external finishes of the proposed development shall be as indicated on the plans and drawings submitted.

Reason: In the interest of the visual amenity.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity

6. No additional advertising signs, symbols, flags, emblems or logos shall be erected externally on the buildings or anywhere on site whether or not such signs would constitute exempted development or not without a prior grant of planning permission. No internally illuminated or neon signage shall be permitted.

Reason: In the interest of visual amenity and in the interest of the proper planning and sustainable development of the area.

7. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the

application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Fiona Fair

Planning Inspector

20.12.2016