



An
Bord
Pleanála

Inspector's Report PL06F.248180

Development	Use of part of ground floor at Retail Park as Starbucks Coffee Shop with seating and signage.
Location	Unit A, Airside Retail Park, Swords, Co. Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F16A/0578.
Applicant	Tanrat Limited.
Type of Application	Retention of Planning Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party v. Refusal
Appellant	Tanrat Limited.
Observers	None.
Date of Site Inspection	28 th April, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

PL06F.248180 relates to a first party appeal against the decision of Fingal County Council to issue notification to refuse retention of planning permission for use of part of the ground floor of Unit A, Airside Retail Park as a Starbucks Coffee Shop area together with the retention of signage. Retention of permission was refused on the grounds that it contravened the zoning objective in the development plan.

2.0 Site Location and Description

- 2.1. The appeal site is located in the Airside Retail Park in the eastern environs of Swords in County Dublin. The Airside Retail Park is a substantial retail park accommodating a large number of retail stores including Smyths, Halfords, Harvey Norman, McGuirk's Golf, Woodies DIY etc. There are also a number of car sales outlets and a number of eateries, restaurants and coffee shops such as TGF's and an Esquires Coffee Shop.
- 2.2. The application site is located at the western end of a very large retail warehouse building which is located in the northern area of the retail park and faces southwards towards a large area of surface car parking located on the northern side of Nevinstown Lane, the internal road which traverses the retail park. The Starbucks Coffee Shop occupies an area of approximately 239 square metres. It is located in part of Unit A which accommodates a Smyth's Toy Store. Customer access to the coffee shop is provided via two direct entrances from the footpath outside the store as well as an existing entrance via a lobby area at the Smyths Toy Store.
- 2.3. According to the information contained on file, the Starbucks premises is used as a coffee shop area only and does not include the preparation or cooking of any food products within the coffee shop. Sandwiches and other confectionary which can be purchased at the store are purchased from wholesalers and are individually wrapped and sold on the premises. It is stated that there is no kitchen, no cooker or no food preparation area within the store. The Starbucks Café has been cordoned off as a completely separate unit from the Smyth's Toy Store although as already mentioned,

direct access from the toy store can be gained to the coffee shop through two sets of double doors and a small lobby area (see photograph attached).

3.0 Proposed Development

Retention of planning permission is sought for the use of part of the ground floor of Unit A as a Starbucks Coffee Shop together with seating and counter area etc. The coffee shop together with the seating area is c.239 square metres. Planning permission is also sought for a wall mounted sign comprising of aluminium lettering with a black plastic trim. This sign is located on the projected canopy area which runs along the front elevation above ground floor level (see photographs attached).

4.0 Planning Authority Decision

4.1. Decision

Fingal County Council issued notification to refuse planning permission for a single reason which is set out in full below.

The subject site is zoned retail warehousing where the land use zoning seeks to “provide for retail warehousing development” and where restaurant/café is only permitted where such a use is “contained within and ancillary to a retail warehousing unit”. The coffee shop by reason of its separation and lack of sufficient connectivity to the adjoining retail warehouse unit cannot be considered to comply with the foregoing requirements pertaining to such uses within a retail warehousing environment. As such it would contravene materially the land use zoning objective of the site. The development would therefore be contrary to the proper planning and sustainable development of Airside Retail Park.

4.2. Planning Authority Assessment

The application for retention of permission was submitted on 16th December, 2016. A covering planning letter was submitted with the application prepared by John Spain and Associates, Planning Consultant. It sets out the site location and description, the description of the proposed development, the planning history and the planning policy context as it relates to the site. It notes that just 9% of the floor area of the

overall unit is given over to the coffee shop use and is therefore ancillary in nature. It is argued that the use of the development as a coffee shop is considered to be appropriate and compliant with the zoning objective relating to the site and it is therefore recommended that planning permission be granted for the proposal.

4.3. Internal Reports

An internal report from the Planning and Strategic Infrastructure Department Water Services Section states that there is no objection to the proposed development.

The Transportation Planning Section has no objection to the proposed development as it is unlikely to have any material effect on car parking demand.

The planner's report notes that the key consideration in respect of the proposed development is whether or not it complies with planning policy and whether it is "contained within and ancillary to" the retail warehouse unit. In this regard it is noted that a dividing wall separates the café from the toy store and on foot of a number of site inspections, it was observed that the majority of patrons visited the facility off the street rather than through the shared lobby. The planner's report also argues that in terms of being ancillary, the unit should function as a supplementary or as a supporting role and this does not occur in this instance. It is considered that the signage is deemed to be acceptable. Nevertheless, it is recommended that planning permission be refused.

5.0 Planning History

- 5.1. No planning history files are attached. However, the planner's report sets out an extensive planning history for the subject site and its immediate environs the most pertinent of which is outlined below.

The parent permission relating to the overall development for nine retail warehouse units was granted under Reg. Ref. F99A/0084.

Under Reg. Ref. F05A/0027 planning permission was granted for the subdivision of Unit No. A (unit currently accommodating Smyth's Toy Store).

Under Reg. Ref. F10A/0354, Fingal County Council refused planning permission for a change of use of Unit A1 from retail warehouse to discount foodstore for two reasons both of which related to zoning objectives.

Under Reg. Ref. F12A/0389 planning permission was granted for the incorporation of a mezzanine floor into retail unit A1.

Under Reg. Ref. 14A/0442 planning permission was granted for the amalgamation of Units A1 and A2 and the construction of an additional internal mezzanine floor for ancillary storage and staff use.

Under RL06F.RL3481 An Bord Pleanála determined under the provisions of a Section 5 referral, that the change of use of part of a unit from a toy shop to use as a coffee shop by Starbucks was development and not exempted development.

6.0 Grounds of Appeal

A first party appeal was submitted on behalf of the applicant by John Spain and Associates, Town Planning Consultants. It is noted that the inclusion of café uses within retail warehouse parks is an increasingly established ancillary feature of retail parks across the country and is in response to market and customer demand for such facilities, there is a requirement for coffee shops to be in close proximity to the retail offer. The submission goes on to outline the site location and description, the proposed development and the relevant planning history as it relates to the subject site. Reference is made to the zoning provisions of the Fingal Development Plan. It is stated that in terms of acceptable land uses under the retail warehousing zoning objective, (which relates to the site) a restaurant/café are uses that are acceptable in principle where they are contained within, and ancillary to, the retail warehouse unit. The restaurant/café use is permitted in principle subject to being contained within and ancillary to a retail warehouse unit. It is stated that the existing Starbucks Coffee Shop area with seating is clearly located within the retail warehousing unit and shares a common entrance with Smyth's Toys. The proposal will primarily serve the needs of customers and employees of the retail park and is therefore a supporting and ancillary facility for this retail park.

It is considered that the local authority planner's interpretation of the development plan is unduly prescriptive and in the appellant's opinion the effect of this strict

interpretation is to make the café/restaurant not implementable in practice. The proposal is contained within retail warehouse Unit A1 and is ancillary to the retail warehouse unit. The Starbucks element represents a mere 7.3% of the total gross floor area of the unit. There is no merit in the argument put forward by the Planning Authority that in respect of the potential closure of Smyth's Toys, that the café would be able to operate independently. The caveat contained in the development plan does not mention the issue of ownership. It is considered that a general member of the public would come to the conclusion that the proposed development is not only contained within the warehouse unit but is also ancillary to the unit.

Furthermore, the Fingal Development Plan does not specify the level of connectivity required nor does it require the café to be under the control or ownership of the main planning unit. There is an internal lobby joining the two uses. The roof of the retail warehouse oversails the coffee shop and the coffee shop is merely a partitioned area ancillary to the overall warehouse unit.

It is further submitted that there is no planning rationale to restrict the provision of a discreet restaurant/café element amounting to just 7.3% of the overall floorspace. The proposal will not give rise to any adverse amenity issues.

With regard to the alleged contravention of the land use zoning objective, it is stated that the café use is permitted in principle and as such the proposed use cannot materially contravene the zoning objective on site. In fact, in relation to the signage, the planner's report notes that the signage will not have a negative impact or will not be out of character with the form of signage in the area.

It is argued that the Planning Authority did not consider the merits of the proposal but rather relied on an overly prescriptive interpretation of a footnote on the land use zoning matrix. It is argued that this approach is contrary to the Development Management Guidelines which states that a statement of objectives in a development plan should not be regarded as opposing a blank prohibition on particular classes of development and does not relieve the Planning Authority of its responsibility for considering the merits or otherwise of particular applications. The Guidelines state that caution should be exercised when refusing permission on the grounds that the proposed development will materially contravene the development plan. Having regard to the above, it is submitted that the Planning Authority has

failed to demonstrate how the proposed development would be contrary to the proper planning and sustainable development of the area and it respectfully requested the Board overturn the decision of Fingal County Council.

7.0 Appeal Responses

- 7.1. The Planning Authority submitted the following response to the grounds of appeal. Of fundamental importance in determining whether the provision of a coffee shop within a retail warehouse is in compliance with the land use zoning objective, lies in the ability to satisfactorily address caveats attached to such uses. In this instance the coffee shop and the toy store are separated by a solid dividing wall with no connectivity between the two units other than a limited shared lobby space with separate entrance doors. No internal connections are provided between the units in question. The coffee shop is also served by two separate independent entrances on its western elevation. It is considered that the unit, with the exception of the internal lobby, is wholly independent of the adjoining toy store and cannot be construed as being contained within the larger unit. Therefore, notwithstanding the fact that the café constitutes just 7% of the floor area, the units operate as separate and disparate entities.
- 7.2. The proposal in this instance does not comply with the definition of 'ancillary'. Airside Retail Park is one of the premier retail warehousing parks in the North Dublin area. While café/restaurant use is one which is compatible and complementary to retail warehousing, it is important that such uses do not dilute the primary function of the retail floorspace. This is clearly reflected in the caveat contained in the zoning objectives for the plan. To date restaurants/café provision within Airside has been focussed within a standalone pavilion building distinct and separate from the retail units. It is therefore contended that the development would materially contravene the land use zoning objective and would set an undesirable precedent for similar uses within this retail warehouse complex. In the event that An Bord Pleanála overturn the decision of the Planning Authority and grant planning permission for the proposed development, it is recommended that a development contribution be attached. The development contribution is calculated in the response to the grounds of appeal and the amount of €15,334 is deemed to be appropriate.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Fingal County Development Plan 2017 – 2023. The Board will note that the current Plan became operative on 16th March 2017, one month after the Planning Authority's decision was made and one day after the first party appeal was lodged. Notwithstanding this fact the zoning provisions as they relate to the site have not been altered in the new Plan. The subject site is zoned 'RW - Retail Warehousing' and restaurant/café is permitted in principle '*only where it is contained within and ancillary to the warehouse unit*'.
- 8.2. In terms of general policies in relation to retail warehousing, the development plan notes that survey work undertaken by Fingal Planning Department in 2015 identified very low levels of vacancy in retail warehousing particularly in the Airside Retail Park and Blanchardstown Retail Park reflecting the health of this component of the retail sector in Fingal.

9.0 Assessment

- 9.1. I have read the entire contents of the file, visited the site and its surroundings, have had particular regard to the reason for refusal and the grounds of appeal relating to this reason for refusal. I consider that the Board can restrict its deliberations to the sole issue raised in Fingal County Council's reason for refusal, namely that the retention of the Starbucks Coffee Shop at Unit A contravenes the zoning objective of the Fingal County Development Plan.
- 9.2. Prior to evaluating this issue it is appropriate to state that I would concur with the views of the Planning Authority and the appellant that the retention of the signage in this instance is appropriate having regard to the site's location within a retail warehousing park where similar type signage on the size and scale of the signage to the retained is evident. I therefore do not consider that the signage in this instance would in any way adversely impact on the visual amenities of the area.
- 9.3. In relation to the zoning issue, it is clear from the development plan that a café/restaurant use is permitted in principle under the Retail Warehouse Zoning Objective subject to it being contained within and ancillary to a retail warehouse unit.

Thus the key issues before the Board is whether or not the coffee shop in this instance is “contained within” and “ancillary to” the adjacent toy store.

- 9.4. In relation to the first issue I would generally concur with the views of the Planning Authority that the coffee shop in this instance is not “contained within” the toy store. Although connected to the toy store via a lobby area connecting the units, the coffee shop in this instance is physically separate from and physically partitioned from the toy store. The coffee shop therefore for all intents and purposes represents a separate unit from the toy store and as such is not “contained” within the toy store.
- 9.5. With regard to the question of whether or not the coffee shop is ancillary to the toy store, I would refer the Board to the inspector’s report in respect of 06F.RL3481. In the evaluation the inspector notes that *“it also has an independent and separate access/egress than that linked to the overall retail warehouse unit”*. Accordingly, in my opinion, the change of use is *“material” not ancillary* (my emphasis) *to the main use of toy sales and thus constitutes development within the meaning of section 3 of the Planning and Development Act, 2000, as amended*. (page 19).
- 9.6. It is apparent therefore that the previous inspector came to the conclusion that the change of use is material and therefore not ancillary to the main use of toy sales. Again I would be in agreement with the above conclusion. The fact that the coffee shop can operate as a separate unit with direct access to and from the shop from the public car park indicates that the coffee shop is trading independently of as opposed to ancillary to the adjacent toy store. I also note that the local authority planner carried out multiple site inspections and noted that the main trade to and from the coffee shop related to customers accessing and egressing via the separate entrances directly onto the car park as opposed to access and egress via the toy store.
- 9.7. It is also important to note that Starbucks Coffee Shop at Airside opens from 7 a.m. to 10 p.m. during weekdays and 8 a.m. to 7 p.m. on Saturday and 9 a.m. to 7 p.m. on Sunday. In the case of Smyth’s toy store it opens from 9 a.m. to 6 p.m. on weekdays and 9 a.m. to 9 p.m. on Thursday and Fridays. It is therefore apparent that the opening times of the two units do not coincide. This again suggests that the coffee shop is operating independently of the toy store. As such I do not consider

that it can be reasonably argued that the coffee shop is contained within and ancillary to the toy store.

- 9.8. With regard to the applicant's argument that Fingal County Council are applying an overly rigorous interpretation of the stipulation set out in the development plan with regard to cafes and restaurants being contained within an ancillary to retail warehouse units, the Planning Authority and indeed the development plan, point out that Airside Retail Park is one of the premier retail warehousing parks in the North Dublin area and it is important to maintain an appropriate composition and mix of tenants which is compatible with the site's primary land use objective. I would therefore agree that permitting a café/restaurant by way of a subdivision of an existing retail unit would set an undesirable precedent in allowing the creeping intensification of non-retail warehousing units within the retail park. I consider that the issue of precedent is therefore an important consideration in determining the application and appeal before the Board. Thus, the Planning Authority's rationale behind prohibiting the spread of separate coffee shops and restaurants which are not deemed to be contained within or ancillary to the main retail units is reasonable and appropriate in my view. It should also be noted that there is a separate block to the south of the retail park which accommodates eateries and restaurants. The coffee shop would be more appropriately located in this block in my view.

10.0 Conclusions and Recommendation

Arising from my assessment above therefore I consider the Planning Authority's decision in this instance to be reasonable on the grounds that the proposed development contravenes the zoning objective of the development plan as it relates to the incorporation of cafes and restaurants in retail warehouse developments. I therefore recommend that the Board uphold the decision of the Planning Authority and refuse planning permission for the retention of the coffee shop at this location.

11.0 Appropriate Assessment

- 11.1. Having regard to the nature and scale of the proposed development and the nature of this receiving environment together with the proximity to the nearest European site which is over 2.5 kilometres away, no Appropriate Assessment issues arise and it is

not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

12.0 **Decision**

Refuse planning permission for the retention of planning permission based on the reasons and considerations set out below.

13.0 **Reasons and Considerations**

The subject site is zoned for retail warehousing where the land use zoning seeks to provide for retail warehousing development and where restaurant/café use is only permitted where such a use is contained within and ancillary to, a retail warehouse unit. The coffee shop by reason of its physical separation, lack of sufficient connectivity, separate opening hours and direct access onto the public domain cannot be considered to comply with the foregoing requirements and as such would contravene materially the land use objective of the site. The development would therefore be contrary to the proper planning and sustainable development of the area.

P. Caprani
Senior Planning Inspector

26th June, 2017.