



An
Bord
Pleanála

Inspector's Report PL06D.248330

Development	Sub-division of two-storey furniture shop to locate shop on first floor and change of use for portion of ground floor into coffee dock/deli.
Location	Dwarf Oaks Shopping Centre, Church Road, Ballybrack Village, Co. Dublin.
Planning Authority	Dún Laoghaire-Rathdown
Planning Authority Reg. Ref.	D16A/0938
Applicant	Joe Cully
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant	David Whelan
Observers	None
Date of Site Inspection	7/7/17
Inspector	Siobhan Carroll

1.0 Site Location and Description

- 1.1. Dwarf Oaks Shopping Centre is located on the western side of Church Road, Ballybrack Village. It comprises two parades which contain a mix of retail units including a hairdresser's, two takeaways, IT distribution company and a bed store. It is served by a surface car park to the front which also facilitates deliveries and serving of the units. The car park is served by two vehicular access points.
- 1.2. The subject site, which has a stated area of 0.167 hectares comprises a section of the ground floor of 100sq m and the first floor of a two-storey detached building. The ground floor of the building was formally occupied by a furniture store and is now vacant. The Comfort Bed & Furniture Shop operates from the first floor of the building.
- 1.3. The retail core of the village is located along Church Road to the north of the crossroad with Wyattville Road. The Village is served by a good mix of retail, commercial and service uses. These include a Public House, bookmakers, pharmacy, barbers, beauty clinic, post office, funeral home, Solicitors, convenience store and service station with convenience store.
- 1.4. There are three existing takeaway premises within the Village. There are 2 no. Chinese takeaways and an Italian Fish and Chip takeaway and there is a recently opened café at the crossroads on the southern side of Wyattville Road.

2.0 Proposed Development

- 2.1. Sub-division of two-storey furniture shop to locate shop on first floor and change of use for portion of ground floor into coffee dock/deli. Features of the scheme include;
 - Site area – 0.167 hectares
 - Floor area of overall building – 1,095sq m
 - Floor area of proposed coffee dock/deli – 100sq m

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 7 no. conditions

3.2. Planning Authority Reports

3.2.1. Planning Reports

Report of 14/2/17 – Further information was requested regarding the submission of a revised site location map showing the entire site to which the planning application relates outlined in red.

Report of 15/3/17 – The proposed change of use is considered acceptable having regard to the nature and scale of the proposed development.

3.2.2. Other Technical Reports

3.2.3. Transportation Planning – No objections subject to conditions

3.2.4. Drainage Planning – No objections subject to conditions

3.2.5. Environmental Health Officer (Food Control) – No objections subject to conditions

3.2.6. Environmental Health Officer (Air Quality & Noise Control) – No objections subject to conditions

3.3. Prescribed Bodies

Irish Water: No objections subject to conditions.

3.4. Third Party Observations

The Planning Authority received one observation/submission in relation to the application. The main issues raised are similar to those set out in the third party appeal.

4.0 Planning History

4.1.1. There is an extension planning history pertaining to the site which is detailed in the Planner's report. The most recent relevant decisions refer to;

4.1.2. **Reg. Ref. D13A/0451 & PL06D.243462** – Permission was refused by the Planning Authority and refused on appeal for works to the ground floor retail unit to accommodate a shop of circa 350sq m gross floor area and all ancillary works. Permission was refused for the following reason;

Having regard to the intensification of use involved in the operation of a convenience food store, and to the layout and access arrangements for the site, it is considered that the proposed development would result in an increased intensity of vehicular activity associated with deliveries and servicing that would impact on the operation of car parking and further interfere with sightlines that are restricted in a southern direction for motorists egressing the site. It is considered, therefore, that the proposed development would endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.

4.1.3. **Section 5 Declaration – RL06D.RL3464**

It was determined that (i) the retail use at ground floor level was not development; (ii) the provision of an emergency exit at ground floor level was development but was exempted development and (iii) the use of a part of the ground floor as a coffee shop does not constitute use as a "shop" and is development and is not exempted development.

5.0 Policy Context

5.1. Development Plan

The site is governed by the provisions of the Dún Laoghaire – Rathdown County Development Plan 2016-2022. The is located on Map 10 of the Dun Laoghaire Rathdown Development Plan 2016-2022 and is identified as being Zoned Objective 'NC'- which seeks to 'protect, provide for and/or improve mixed-use neighbourhood centre facilities'.

- A Tearoom/café is a permissible use under this zoning objective
- Policy RET6 refers to Neighbourhood Centres

It is Council policy to encourage the provision of an appropriate mix, range and type of uses – including retail and retail services - in areas zoned objective 'NC' subject to the protection of the residential amenities of the surrounding area.

- Table 8.2.4 refers to Non Residential Land Use – Maximum Car Parking Standards

Cafes, Restaurants, Fast foods require – 1 space per 15sq m gross floor area

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal was lodged by McGill Planning on behalf of Mr. David Whelan on the 12th of April 2017. The main issues raised concern the following;

- The appeal case PL06D.243462 (Reg. Ref. D13A/0451) is cited. The permission was refused for works to the ground floor unit to accommodate a convenience shop with ancillary alcohol sales.

- The Board refused permission for the following reason;

Having regard to the intensification of use involved in the operation of a convenience food store, and to the layout and access arrangements for the site, it is considered that the proposed development would result in an increased intensity of vehicular activity associated with deliveries and servicing that would impact on the operation of car parking and further interfere with sightlines that are restricted in a southern direction for motorists egressing the site. It is considered, therefore, that the proposed development would endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.

- It is contended that the current proposal would result in the same issues arising. That it would be an intensification of use, would result in an increased intensity of vehicular activity associated with deliveries and servicing which

would impact on the operation of car parking and would interfere with sightlines that are restricted in a southern direction for motorists egressing the site and therefore it would result in a traffic hazard.

- The under provision of car parking was an issue in the previous application. The Transport Planning Section of the Council considered that the proposed development would require 40 no. car parking spaces. The applicant could not provide this level of car parking and the Planning Authority refused permission on the basis of a shortfall of car parking.
- It is considered that the current proposal would generate parking requirements for 3 no. separate retail units.
- As per the determination of the Board on the referral case Ref. 06D.RL3464 the ground floor of the building can be used as a shop. Therefore, the remaining area of the ground floor could operate as a convenience retail store.
- The proposed café would require 7 no. car parking spaces, the furniture store 35 no. car parking spaces and the convenience retail unit 19 no. car parking spaces. Therefore, a total of 61 no. car parking spaces would be required with 23 no. car parking spaces provided and therefore, there would be a shortfall. The proposal represents a significant intensification which should warrant a refusal of permission.
- The level of servicing required will also increase significantly consequent of the creation of 3 no. retail units.
- There is a service yard indicated on the current plans to the rear of the premises. It is indicated on the plans that trucks can egress via the lane to the south of the building.
- Under the previously proposed scheme the servicing area was proposed to the front of the building from the car park. It is understood that the service vehicles which would have served the convenience retail store could not make the vehicular turning manoeuvres into and out of the service yard. Permission was refused by the Board on the basis of unsatisfactory servicing arrangements.

- No swept path analysis was provided for trucks expected to service the unit.
- The lane to the service yard also provides access to a residential unit to the rear of the shop to the south. The use of the lane by three retail units and the residential unit is not considered appropriate.
- The appellant considers that the issue of sightlines has not been addressed in the current proposal.
- The comments made by the Inspector in his report on PL06D.243462 are cited;

“I observed from site visit that the sightlines to the south of the access for egressing motorists is restricted by vehicles parking in the loading/taxi bay and owing to the rising gradient from the car park up to the level of the road. The proposed development will give rise to increase usage of this egress by motorists, and coupled with the presence of larger vehicles blocking this sightline, I consider that there are unresolved issues with respect to this visibility splay.”

“I would be concerned that the proposal would result in the intensification of use of a junction onto a main street where adequate sight lines are not available owing to the presence of a loading bay, the use of which may be intensified as a result of the proposed development. I would therefore be of the opinion that the proposed development would endanger public safety by reason of a traffic hazard.”

- The sub-division of the ground floor of the existing retail unit result in the creation of 3 no. retail units which would result in an intensification of use by customers and service vehicles. The current proposal fails to address the traffic hazard and safety issues.

6.2. Applicant Response

A response to the third party appeal was submitted by Architectural Construction Technology on behalf of the applicant Mr. Joe Cully on the 9th of May 2017. The main issues raised concern the following;

- The level of business at the Comfort Bed & Furniture Shop fell in recent years and the ground floor of the unit was temporarily closed. The entire property was sold to the applicant Mr. Joe Cully.
- Mr. James Mc Clumiskey has leased back the first floor and the Comfort Furniture store operates from this area.
- Previously an application was made for Tesco to operate a convenience retail store from the ground floor of the building, however this was refused planning permission.
- It is unclear if another suitable tenant will be found for the ground floor unit. Mr. Mc Clumiskey considered another option for the ground floor was to provide a coffee dock within a section of the unit. A Section 5 Declaration was lodged in relation to the proposal and the Board determined that it was development and was not exempted development.
- It is stated that there will be no lorry deliveries to the coffee dock/deli and that all deliveries will be by van. The waste generated will be minimal and the operator will enter into a waste management contract with a service provider.
- The refrigeration units and freezer store will require external equipment to support them are not envisaged to generate significant noise levels. It is noted that the nearest window is approximately 9.5m from and 3.5 above the noise source.
- The proposed use is permissible under the neighbourhood centre zoning. Details of the signage have not been established and will depend on the operator and will be subject to a separate application.
- The opening hours are expected to be between 8am and 8pm.
- It is anticipated that the custom will be primarily walk-in and not car based.
- In relation to the matter of car parking. The appellant's calculations are not considered correct. The furniture store is a furniture showroom and not a shop and it requires 5 no. car parking spaces and not 35 no. spaces as stated in the appeal. The coffee dock/deli will also require approximately 5 no. car

parking spaces. The floor area of the proposed unit is 100sq m with less than half proposed for customers.

- There are 26 no. car parking spaces and 4 no. large delivery van spaces available in area which is directly controlled by the applicant. There are a further 13 no. car parking spaces in the area controlled by Dwarf Oak Management which the applicant forms part of. There are 5 no. car parking spaces and one lorry loading bay provided by the Local Authority outside the Dwarf Oaks Shopping Centre.
- It is noted that no 10m lorries deliver to Dwarf Oaks Shopping Centre and it is not envisaged that such deliveries would take place. Therefore, there was no requirement to provide a swept path analysis for such vehicular movements.
- It is suggested that the furniture shop may move back to the remaining ground floor area and that other uses including a hairdresser's or beauticians could occupy the unit or the first floor area.
- In relation to the matter of sightlines on exiting the car park it is noted that the Local Authority provided the lorry lay-by and off-street car parking spaces which have resulted in the restricted sightlines. The applicants Planning and Design Consultants have spoken to the Transport Planning Department who advised them that they are satisfied with the existing situation.

6.3. Planning Authority Response

- The Planning Authority refer the Board to the Planner's Report and the Transportation Planner's Report in relation to the proposed development.
- The Planning Authority have no further comments regarding the proposed development and subject appeal.

7.0 Assessment

- 7.1. Permission is sought for the sub-division of two-storey furniture shop to locate a shop on first floor and a change of use for portion of ground floor into coffee dock/deli. The coffee dock/deli with an area of 100sq m is proposed to the southern section of the ground floor. The site is located with an area with the zoning objective

'NC', which aims 'to protect, provide for and/or improve mixed-use neighbourhood centre facilities'. A tearoom/café is a permissible use within this zoning.

- 7.2. Ballybrack Village is designated a Neighbourhood Centre. The retail core of the village is located along Church Road to the north of the crossroad with Wyattville Road. The Village is served by the traditional mix of retail, commercial and service uses. These include a Public House, bookmakers, pharmacy, barbers, beauty clinic, post office, funeral home, Solicitors, convenience store and petrol station with convenience store.
- 7.3. Regarding food outlets, there are three existing takeaway premises within the Village. There are 2 no. takeaways within Dwarf Oaks Shopping Centre a Chinese takeaway and an Italian Fish and Chip takeaway. There is another Chinese takeaway on the eastern side of Church Road. Permission was granted under (Reg. Ref. D16A/01115 & PL06D.247166) for a takeaway at no. 22C Church Road. As yet this permission has not been enacted. There is a recently opened café located at the crossroads on the southern side of Wyattville Road. The convenience shop on Church Road and the convenience shop at the Service Station also provide food and beverages for takeaway consumption. These existing premises provide a variety of foods and I consider the proposed coffee dock/ deli will enhance the existing provision with the addition of a location where food can be consumed on the premises. The site is located within the heart of the village and I consider that the proposed use as coffee dock/ deli is appropriate at this location.
- 7.4. Regarding the overall proposal to sub-divide the two-storey furniture shop to locate shop on first floor, I note that formally the ground and first floor were occupied by the Comfort Bed & Furniture Shop. The Board determine in the Section 5 Declaration relating to the ground floor of the building (Ref: RL06D.RL3464) that retail use at ground floor level was not development.
- 7.5. In considering the proposal in its detail I consider, that having regard to the scale of the operation 100sq m (gross floor area) coffee dock/ deli with circa 40sq m laid out for customer seating, the potential for negative impact on the amenity of adjacent dwellings or the amenities of the area in terms of noise, traffic, litter and other nuisance is limited.

- 7.6. As regards the issues raised by the third party appellant in relation to parking, traffic and deliveries, the appeal site is located in an established shopping centre served by a surface car and within the centre of the Village. Car parking standards for Non Residential Land Use are set out in Table 8.2.4 of the Development Plan. It is required in the Development Plan that there is provision of one car parking space per 15sq m of gross floor area for Cafes, Restaurants and Fast foods outlets. The proposed unit has a gross floor area of 100sq m which would generate the requirement for circa 6.6 no. car parking spaces.
- 7.7. The previous use of the subject floor area was a Furniture Shop and as per Table 8.2.4 Retail - Comparison requires 1 no. car parking space per 20sq m. The existing permitted use requires circa 5 no. spaces for that floor area and therefore the two uses generate a roughly comparable level of car parking. In the response to the appeal the applicant has confirmed that there are 26 no. car parking spaces which are directly controlled by him. With approximately 6 no. spaces provided for the coffee dock/ deli and further 20 no. spaces are available for the remaining ground floor area and the first floor currently occupied by the Comfort Bed & Furniture Shop. Accordingly, I consider that there is satisfactory provision of off-street car parking to serve the proposed development.
- 7.8. The Planning Authority attached a condition that the applicant provide a total of 4 no. bicycle parking spaces, two for staff and two for customers. Having regard to the fact that the applicant has confirmed that the car parking area to the front of the site is directly controlled by him, I consider it is appropriate and reasonable to require the provision the bicycle parking in accordance with Section 8.2.4.7 of the Development Plan which seeks to promote cycling in accordance with the principle of sustainable transportation. Therefore, should the Board decide to grant permission, I would recommend the attachment of a similarly worded condition.
- 7.9. Concern was raised by the appellant in relation to deliveries and specifically that difficult would arise with the use of service lane to the side of the building by large trucks. The applicant has confirmed in the appeal response that there are 4 no. large delivery van spaces available which are in his control. They are indicated on the revised plans in service yard area to the rear of the building. The applicant also confirmed in the submitted response that there will be no lorry deliveries to the coffee dock/deli and that all deliveries will be by van. Given the nature of the proposal a

coffee dock/deli and the limited scale of the premises, I am satisfied that it would not require to be serviced by larger delivery vehicles. In relation to the matter of waste generated the applicant has stated that it would be a minimal amount and the operator of the premises will enter into a waste management contract with a service provider. Having regard to the issues set out above, I am satisfied that the proposed premises can be serviced in a manner which would not result in congestion or traffic hazard within the existing car park.

- 7.10. The issue of sightlines to the south at the vehicle access specifically for egressing motorists was raised by the appellant. It would concur that due to the presence of the loading/taxi bay sightlines to the south are restricted. This is an existing situation and given that I do not consider the proposal would generate additional parking or servicing requirements which result in an intensification of traffic movements, therefore, I do not consider that it is a matter which would warrant a refusal of permission in this instance.

Appropriate Assessment

- 7.11. Having regard to the nature and scale of the proposed development, nature of the receiving environment and proximity to the nearest European site, 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.

8.0 Recommendation

- 8.1. I have read the submissions on file, visited the site, and had due regard to the provisions of the Development Plan and all other matters arising. In the light of this and the assessment above, I recommend that permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the zoning objectives for the area, to the nature and extent of the development proposed and to the pattern of land use in the vicinity, it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the amenities of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the plans and particulars received by the planning authority on the 23rd day of February, 2017, 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. 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. A grease trap shall be fitted on the kitchen drain to the satisfaction of the planning authority.

Reason: In the interest of public health and to ensure a proper standard of development.

3. 4 no. number bicycle parking spaces shall be provided by the applicant for staff and customer use. The layout, demarcation of these spaces and the proposed bicycle stand design shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

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 buildings, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

Siobhan Carroll
Planning Inspector

20th of July 2017