



An
Bord
Pleanála

Inspector's Report PL06S.248674

Development	Retention of change of use of 670 sq. retail warehouse to shop, internal alterations consisting internal walls and associated works.
Location	Dealz, Unit 3, Fonthill Retail Park, Fonthill Road, Dublin 22.
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD17A/0094
Applicant	Poundland Ltd. T/A Dealz
Type of Application	Retention Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	<ol style="list-style-type: none">1. First Party v Decision2. Third Party v Decision
Appellant(s)	<ol style="list-style-type: none">1. Dealz2. Integrated Development Services Ltd
Observer(s)	<ol style="list-style-type: none">1. Right Style Furniture2. Barry Connell

3. PKB Partnership
4. Allison Maguire & Staff of Dealz

Date of Site Inspection

14th September 2017

Inspector

Susan McHugh

1.0 Site Location and Description

- 1.1. The site is located in the Fonthill Retail Park, located off the Fonthill Road and approx. 1.4km south of the Liffey Valley shopping centre. The site is accessed via the N4 Liffey Valley exit off the M50. The Park consists of a number of sectors, split by north-south and east-west distributor roads. Retail units are located in blocks with surface car parking around the perimeter. More traditional warehouse units are located to the rear of the Park.
- 1.2. The site is an existing unit accessed from the Fonthill Road roundabout via the existing estate road. The appeal site is bounded to the north and south by commercial blocks. Tenants in the block to the north comprise Intersport Elverys and Smyths Toys. Further to the north there is an Aldi Store, and there is a Power City to the south.
- 1.3. The appeal site unit 3, forms one of a number of units within a block. Existing tenants in unit 1 and unit 1A appear to be Eurasia and Polonez (supermarkets), in unit 2 RightStyle Furniture, Hearth and Home, Kavanaghs (blinds and curtains), and unit 3 Dealz, and unit 3A Cash and Carry Kitchens.
- 1.4. The appeal unit has a stated floor area of 670 sqm.

2.0 Proposed Development

- 2.1. The applicant is seeking to retain a change of use from retail warehousing to shop with internal alterations consisting of internal walls and all associated works within unit 3.

3.0 Planning Authority Decision

3.1. Decision

The decision to refuse permission was for six reasons. They can be summarised as follows;

1. Materially contravenes zoning objective 'RW'; which seeks 'to provide for and consolidate Retail Warehousing'; the use class 'Shop-Neighbourhood' is not permitted under zoning objective 'RW'.

2. Out of town location of the site, diverts trade and trips away from existing/designated town centres/major retail centres contrary to national, regional and Development Plan policies.
3. Non-bulky nature of goods being sold conflicts with national regional and Development Plan policies which seek to protect the vitality and viability of town centres.
4. Retention of permitted retail warehouse unit to a shop unit would set an undesirable precedent for other similar uses which cumulatively would be harmful to the vitality and viability of designated town centres/major retail centres.
5. Insufficient information in relation to drainage and water supply proposals, with deficiencies in labelling of drawings submitted.
6. Existing signage excessive in size and prominent location would seriously injure the visual amenities of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report (dated 17/05/2017)

Basis for planning authority decision. Includes:

Planning Policy

- The unit falls into the category of 'Shop – Neighbourhood' and is not permitted under objective 'RW'.
- The unit does not fall into the category of retail warehouse as it sells almost exclusively non-bulky goods.
- The unit is not within a core retail area, but within a retail park and as such would directly conflict with Development Plan policy.
- It is not consistent with national, regional or Development Plan policy, would be detrimental to the vitality and vibrancy of town centres and would set an undesirable precedent.

Residential and Visual Amenity

- No residential dwellings in close proximity.
- Existing signage excessively large, details of which are not shown on drawings or described in the public notices.
- Drawings labelled incorrectly with discrepancies.

3.2.2. **Other Technical Reports**

Roads Department: no objection subject to standard conditions.

Water Services: recommends further information in relation to surface water layout.

3.3. **Prescribed Bodies**

Irish Water: recommends further information in relation to waterman drawings and foul drainage layout.

HSE Environmental Health Officer: no objection subject to standard conditions.

3.4. **Third Party Observations**

33 no. submissions were received by South Dublin County Council in support of the proposed development.

The issues raised are similar to those raised in the first and third party appeals and observations submitted on appeal to the Board.

4.0 **Planning History**

Section 5 Declarations and Referrals

PA Reg. Ref. ED16/0045 ABP 06S.RL.3520: The question sought by the applicant refers to whether a material change of use arises by reason of the type of goods being sold and consequently whether it is or is not development or is or is not exempted development. The planning authority decided that the change of use was not exempted development. This case has been referred to the Board. Decision pending.

PA Reg. Ref. ED 16/0025 The question sought by a third party 'Save Our Town Centres Limited' refers to whether a change of use from the former retail warehouse to use as a discount store for the sale of non-bulky convenience goods is or is not exempted development. The planning authority decided that the use constituted development and was not exempted development.

Planning Applications

PA Reg. Ref. SD15A/0152 Permission granted 30/07/2015 for new internal subdivision walls, new loading door arrangement at south elevation, new toilets, two new fire exit doors to north elevation, new glazed double doors/screen to east elevation and signage to west elevation.

Condition no. 2 stated; *'The range of goods to be sold in the extended retail warehouse unit shall be limited solely to 'bulky goods' (as defined in Annex 1 of the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in April 2012), and shall not include the sale of toys, footwear, sportswear or other clothing.*

Reason: In order to prevent an adverse impact on the viability and vitality of the town area and so as not to undermine the retail hierarchy of the area.

PA Reg. Ref. S99A/0555 Permission granted 19/11/1999 to erect c.244sq.m. mezzanine floor incorporating showroom, sales offices, toilets and new windows to west elevation at recently constructed retail warehouse development (PA Reg. Ref. S97A/0791).

PA Reg. Ref. S99A/0265 ABP PL06S.112272 Permission granted 23/02/2000 to erect circa 550sqm mezzanine floor incorporating showroom, sales offices, toilets and new windows to west elevation at recently constructed retail warehouse development (Reg. Ref. S97A/0791). (File attached)

PA Reg. Ref. S97A/0791 Parent permission granted 03/02/1998 for retail warehousing within the overall retail park.

Enforcement

PA Ref. ENF. S7743; Warning letter issued in respect of the change of use from a retail warehouse to use as a discount store for the sale of non-bulky goods without planning permission.

5.0 National Policy

- 5.1.1. **Retail Planning Guidelines for Planning Authorities**, Department of the Environment, Community and Local Government (April 2012).
 - 5.1.2. The Guidelines define a retail warehouse unit as a large single-level store specialising in the sale of bulky household goods such as carpets, furniture and electrical goods, and bulky DIY items, catering mainly for car-borne customers and often in out-of-town centre locations. Bulky goods are defined in Annex 1 as goods generally sold from retail warehouses --where DIY goods or goods such as flat pack furniture are of such size that they would normally be taken away by car and not be portable by customers travelling by foot, cycle or bus, or that large floor space would be required to display them.
 - 5.1.3. Section 79 of the guidelines states that generally speaking, the evidence is that planned retail parks do not have any material impact on town centres provided that the range of goods sold is limited to truly bulky household goods or goods generally sold in bulk. Where the range of goods sold from retail warehouse parks extends to the type of non-bulky durables which is retailed from town centres then there is much more potential for an adverse impact on a nearby town.
 - 5.1.4. Section 81 of the guidelines states that generally speaking smaller units of less than 700m² gross floor space are more easily capable of being accommodated in town centres and, in any event tend, to sell a less bulky range of goods.
- 5.2. **Retail Strategy for the Greater Dublin Area 2008-2016, - Dublin Regional Authority and Mid East Regional Authority**

- 5.2.1. Section 4.46 of the Strategy notes that in a number of retail parks there has been a blurring of the division between bulky and non-bulky goods retailers, with some parks now containing major clothing chains and food retailers and that continuing to allow this mixing of uses is likely to result in a negative impact on adjoining town centres.
- 5.2.2. Section 6.65 states that as the retail market growth is expected to slow down over the next few years, it is critical to ensure that quality retail comparison shopping is maintained within the town centres identified for this purpose. To achieve this, the strategy recommends that conditions are applied particularly to permissions for retail warehousing developments to avoid non-bulky goods such as clothing trading in out of centre locations.

5.3. Local Policy

- 5.3.1. South Dublin County Council Development Plan 2016-2022

The site is zoned '**RW:To provide for and consolidate retail warehousing**'.

Within such areas retail warehouse uses are permitted in principle and Shop-Neighbourhood is a use not permitted within this zoning objective.

Chapter 5 refers to Urban Centres and Retailing.

Table 5.2 of the development plan sets out the County's settlement and retail hierarchy, listing Liffey Valley Shopping Centre as Major Retail Centre.

Section 5.7.0 outlines the Councils strategy for retail warehousing & retail parks.

R9 Objective 2: - to ensure that retail warehousing development would not adversely impact on the vitality and viability of established retail centres and retail warehousing cores in the County, in accordance with the Retail Planning Guidelines for Planning Authorities 2012.

Chapter 11 refer to implementation.

Section 11.3.6 Retail Development refers to Retail Warehousing;

The range of goods sold in both existing and any future retail parks will be tightly controlled and limited to bulky household goods or goods which are not portable by

customers travelling by foot, cycle, or bus (See Annex 1 of Retail Planning Guidelines (2012) for definitions of bulky goods).

Ancillary products should not exceed 20% of the total net retail floorspace of the relevant retail unit, and such space should be clearly delineated on the planning application drawings.

5.4. **Natural Heritage Designations**

There are no designated areas in the vicinity.

6.0 **The Appeal**

6.1. **Grounds of First Party Appeal No. 1**

The appeal is lodged by Ian Doyle Planning Consultant on behalf of the applicant. The main grounds can be summarised as follows;

Planning History

- Condition No. 2 attached to **PA Reg. Ref. SD15A/0152** restricted the use to the sale of bulky goods. There is a Section 5 declaration **PA Ref. ED16/0045** to the planning authority which is now currently before the Board. The application was not for a change of use but for physical alterations only. The condition may be considered invalid as it applies a restriction in terms of bulky goods retrospectively. In any event, the reference to extended retail warehouse unit can only apply to Unit 3A and not unit 3. A change of use application is not required to facilitate Dealz as the governing permission permitted the use as a shop.
- The assessment by the planning authority on the previous Section 5 Declaration **PA Ref. ED16/0025** was not based on any objective evidence in that the question raised was leading. The description of the development refers to a 'discount store' use which is no longer a distinct category as contained in the RPG's for Planning Authorities, 2012 and has no status in planning. Genuine concern that the planning system is being used on anti-competitive grounds to preserve the commercial interests of possible competitors.

Reason for Refusal No. 1

- Parent permission **PA Reg. Ref. S97A/0791** predated the Retail Planning Guidelines and there were no restrictions on the type of retail goods permitted to be sold by way of condition.
- At the time of first occupation in 2015 the site was not zoned for Retail Warehousing.
- The proposed development does not represent a material contravention of the development plan. The unit goes beyond the definition of a neighbourhood shop. It is too large to be a local shop and too small to be considered a major sales outlet. It incorporates elements of all three.
- There are a number of existing uses within the park which do not conform with the retail warehousing zoning which is an aspiration. A considerable extent of the existing floor space within the Park relates to non-bulky goods.

Reason for Refusal No. 2

- The established pattern of development in the area includes a mix of convenience, comparison, bulky and non-bulky goods retailers.
- The park has been open and trading since 1999 prior to the establishment of the RPG's, the Retail Strategy for the Greater Dublin Area and the current Development Plan and as such its impact on the vitality and viability of the designated town/major retail centres has long come to pass. It will not divert trade or have an adverse impact on the vitality and viability of the designated town/major retail centres.

Reason for Refusal No. 3

- It is accepted that Dealz could potentially conflict with current national policy with regard to Retail Warehousing Parks in general.
- The 2016 Development Plan represents the first time that the subject site was zoned for 'Retail Warehousing'. Prior to this under previous plans the site was zoned EP2 '*to facilitate opportunities for manufacturing, Research and*

Development facilities, light industrial and employment and enterprise related uses in industrial areas and business parks'.

Reason for Refusal No. 4

- The purpose of the application is to respond to the enforcement case **PA Ref. ENF.S7743** in the event that the Section 5 Declaration before the Board is unsuccessful. It should not be assumed that the making of the application represents an acceptance by the applicant or the landlord that planning permission is required.
- It will not set an undesirable precedent.

Reason for Refusal No. 5 - Drainage

- No alterations with regards foul, surface water or watermain layout are proposed.

Reason for Refusal No. 6 - Signage

- The existing signage on the front elevation does not form part of the application and will be dealt with as a separate issue once the principle of the development is deemed acceptable.

6.2. Grounds of Third Party Appeal No. 2

The appeal is lodged by Kevin Hamell on behalf of Integrated Development Services Ltd. The appeal was accompanied by a site layout plan ref 09/12/1/1D showing the extent of the retail park and range of retailers who trade from it. The main grounds can be summarised as follows;

Reasons for Refusal 1,2,3 & 4

- There were no conditions under the parent permission PA Reg. Ref. S97A/0791 imposing any restriction on the type of goods to be sold from the unit.
- Subdivision of the premises into Units 3 and 3A granted under PA Reg. Ref. SD15A/0152 and condition no. 2 of that permission applies to 'extended retail warehouse' which is Unit 3A only and not to unit 3 the subject of this appeal.
- The Planners assessment is fundamentally flawed and based solely on the South Dublin County Development Plan 2016-2022, and not the planning history of the premises.
- The Council should not move the goalposts by means of zoning objectives in the Development Plan ignoring the planning history and rendering the existing uses non-conforming.
- Queries why retail warehousing merits a zoning objective of its own under the 2016-2022 Development Plan as it never did in any previous plans. The number of businesses that conform to the bulky good 'retail warehouse' definition is very small and decreasing all the time.
- The type of goods retailed are a mix of convenience and comparison goods. None of the uses identified as permitted in principle or open for consideration under the RW zoning cover this type of retail and therefore this use cannot be classed as a material contravention of the development plan. It is not accepted that Dealz is covered under 'Shop Neighbourhood' class of use, as Dealz is a specialised hybrid form of retailing.
- Fonthill Retail Park is a Retail Park and not a Retail Warehouse Park as defined by the County Development Plan. It is a standalone destination retail centre and comprises in excess of c. 10 hectares in area and has 26,300 sqm retail space. Approx. 30% by floor area of businesses trade in bulky goods, or 6 out of 18 plus occupiers.
- Liffey Valley is not a town centre and therefore the development has no impact on any town centre.

- This large destination retail centre also deserves to have its vitality and viability protected by the planning authorities as they have been instrumental in facilitating its existence.
- The Dealz offering is totally different to all the other retailers. It complements and consolidates the existing retail offer and reduces the number of car borne journeys by having more variety in the one retail destination.
- The site of Avoca Handweavers at Rathcoole was rezoned in the 2016 County Development Plan for Retail Warehousing. There is no prospect of this Avoca outlet ever being used for retail warehousing. Therefore, it is reasonable to assume that the Council fully accepts other forms of retailing aside from 'bulky goods' on Retail Warehouse zoned lands.

Reasons for Refusal 5 & 6

- Minor matters that could be dealt with by way of condition or additional information.

6.3. **Planning Authority Response**

Confirms decision – reference to planners' report.

6.4. **Observations**

Observations have been received in support of the applicant from:

1. Right Style Furniture
2. Barry Connell
3. PKB Partnership
4. Allison Maguire & Staff of Dealz which was accompanied by a petition with over 8,000 signatures.

The issues raised in the submissions can be summarised as follows:

- The retail mix within the Fonthill Retail Park of non-traditional bulk warehouse retailers provides a sustainable model for patrons and retailers, and contributes towards its vitality and viability.
- There is a need for clarity on the nature of acceptable retail uses within the Retail Park. It is not acceptable for the planning authority to change a zoning objective effectively making the majority of existing retailers non-conforming.
- The planning authority has previously granted permission for convenience and comparison operators including four off licences at Fonthill Retail Park. These uses were not considered a material contravention of the Development Plan.
- Dealz is a specialist form of retailing and is not a material contravention of the Development Plan, and offers a mixed merchandising which is complementary to the existing operators within the Retail Park.
- The unit already has the benefit of planning permission for open retail.
- Retail warehouse as a specific zoning use is unsustainable as retail has diversified.
- The planning authority decided on a Section 5 Declaration (ED17/0005) on the use of Units 5-7 Liffey Valley Retail Park. The question was whether the sale of majority convenience goods under a bulky goods retail warehouse permission was development and or was exempt development, and it determined the use was exempt.
- There are 38 livelihoods at stake as well as rates and tax income for the government.

6.5. Further Responses

None.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings:

- Principle of Development
- Other Matters
- Appropriate Assessment

7.2. Principle of Development

7.2.1. The subject site is located within an area zoned in the current South Dublin County development plan as 'RW:To provide for and consolidate retail warehousing'. Within such areas, retail warehouses are permitted in principle and shop-neighbourhood are not permitted. The definitions of each type of retailing in the development plan are as follows;

- Retail Warehouse: *'A large single level store specialising in the display and retail sale of bulky non-food, non-clothing household goods, such as carpets, furniture and electrical goods, and bulky DIY items, catering mainly for car-borne customers and generally in out of centre locations'*
- Shop-Neighbourhood: *'This category includes smaller shops giving a localised service in a range of retail trades or businesses such as butcher, grocer, newsagent, hairdresser, dry cleaning or launderette, and designed to cater for normal neighbourhood requirements. It also includes a small supermarket design to cater for normal neighbourhood requirements. It also includes a small supermarket on a scale directly related to the role and function of the settlement and its catchment and not exceeding 2,500sqm. net retail floor space'*

7.2.2. I note that the types of goods sold in the Dealz unit comprise a mix of non-bulky goods including food and drink items. The goods sold are not those typically sold in retail warehouses. Although the unit is not necessarily a shop-neighbourhood as

defined by the planning authority, I consider that it would be more aligned with same. I do not agree with the appellants that the products on offer are specialised.

- 7.2.3. As noted above, shop-neighbourhood is neither permitted in principle nor open for consideration in RW zoned areas. The proposed development for retention therefore, contravenes materially the current zoning objective for the area.
- 7.2.4. The appellants consider that the current application of such zoning provisions is unreasonable in light of the previous zoning objectives for the area, the existing non retail warehouse uses that have evolved, and the absence of any condition precluding specific retail uses.
- 7.2.5. It is clear from the development plan zoning objective that Fonthill Retail Park is located within a Retail Warehouse zone. As noted on the day of inspection there are a number of units in the Fonthill Retail Park which similarly include a mix of convenience, comparison, bulky and non-bulky goods retailers. Many in this particular block would not be categorised as retail warehousing. Notwithstanding, the application must be assessed in the context of the current policies and zoning objective for the site under the current county development plan.
- 7.2.6. I note that in the parent permission there was no condition that explicitly precluded or restricted the nature of the retail uses. The application was, however, expressly stated to be in respect of retail warehousing. I also note that this appeal comes as a consequence of the most recent planning application and Section 5 declarations by the planning authority.
- 7.2.7. The proposed development for retention provides predominantly comparison and convenience goods in an established retail warehouse park. It is considered that the development for retention is not in accordance with the zoning objective of the development plan, nor is it in compliance with the defined retail hierarchy as set out in the development plan which has been informed by the Retail Planning Guidelines.
- 7.2.8. With regard to the consideration of retail impact on other retail centres, I am not convinced by the appellant's argument that there are no town centres in the vicinity of this Retail Park and that Liffey Valley is not a town centre. I note that Liffey Valley is designated as a Major Retail Centre in the retail hierarchy in the current development plan. The Fonthill Retail Park appears to function as a traditional retail

park, in that almost all trips are made by private car. I consider it extremely unlikely that any but the smallest number of trips are made by foot or public transport.

7.2.9. In summary, it is considered that the proposed development for retention of a predominantly non bulky comparison and convenience retail unit within an established retail warehouse park would materially contravene the provisions of the County Development Plan with regard to the retail hierarchy of the County. It is considered the proposed development could impact on the vitality and viability of existing retail centres in the wider area. The proposed development is akin to a shop-neighbourhood, a use which is not permitted or open for consideration in the zoning objective applicable to the subject site and the wider retail warehouse park. I consider the proposed development to be contrary to the proper planning and sustainable development of the area.

7.2.10. The Board will note that Reason Number 1 of the decision of South Dublin County Council to refuse planning permission for the proposed development states that the proposed development would materially contravene the South Dublin Development Plan 2016-2022. Therefore, one or more of the criteria as set out in Section 37 (2)(b) of the 2000 Planning and Development Act (as amended) applies, and must be met should the Board be disposed to a favourable decision in this instance.

7.2.11. Having considered the file, and the provisions of the Plans, as outlined above, I do not believe that one or more of the criteria are met. In my opinion the proposed development for retention is not of strategic or national importance, the objectives in the development plan are clearly stated, that it would contravene the regional planning guidelines, and I am not aware of any other comparable applications that have been granted since the adoption of the South Dublin County Development Plan 2016-2022.

7.3. **Other Matters**

Reasons for Refusal No. 5 and 6

7.3.1. Drainage and Water Supply – I note the applicants' submission that no alterations with regards to foul, surface water or the water main layout are proposed. I consider given the nature of the application which is for retention of a change of use and the

more recent application under Reg. Ref.SD15A/0152, that the details submitted are sufficient.

- 7.3.2. Incorrectly labelled drawings – I note the applicants’ submission which is in agreement with the planning authority that the drawings should have been labelled correctly as retention and not as proposed. I consider this a relatively minor discrepancy and would concur with the applicant that this and the southern elevation drawing which does not accurately reflect the roller shutter door could be dealt with by way of condition.
- 7.3.3. Signage – I note the applicants’ submission that the existing signage does not form part of the application, however I would concur with the planning authority that the existing signage is excessive in size and at this prominent location would detract from the visual amenities of the area.

7.4. Appropriate Assessment

Having regard to the nature and scale of the development to be retained and to the nature of the receiving environment, namely an urban and fully serviced location, 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 recommend that permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the zoning provisions of the Development Plan for the area within which the site is located, ‘Objective RW – to provide for and consolidate Retail Warehousing’, the ‘Retail Planning Guidelines for Planning Authorities’, issued by the Department of the Environment, Heritage and Local Government in January, 2012, the Retail Strategy for the Greater Dublin Area, 2008-2016 and the retail hierarchy set out in the South Dublin County

Development Plan, 2016-2022, it is considered that the change of use to be retained would be contrary to policies and objectives aimed at restricting the role of retail warehousing to the retailing of bulky goods and would seriously injure the vitality and viability of existing town centres in the vicinity. The change of use to be retained would, therefore, materially contravene the development plan and be contrary to the proper planning and sustainable development of the area.

Susan McHugh
Planning Inspectorate

19th September 2017