



An  
Bord  
Pleanála

## Inspector's Report ABP-300351-17

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<b>Development</b>	The installation of 1 No. self-contained 20ft. (6048mm) length, 8ft. (2438mm) width, 8.5ft. (2591mm) height frozen storage unit to be located in the goods delivery yard of the M&S Store, Frascati Shopping Centre annually from 30 <sup>th</sup> October to 31 <sup>st</sup> January.
<b>Location</b>	Marks & Spencer, Frascati Shopping Centre, Rock Road, Blackrock, Co. Dublin.
<b>Planning Authority</b>	Dún Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D17A/0821
<b>Applicant(s)</b>	Marks & Spencer Ireland Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	Third Party v. Decision
<b>Appellant(s)</b>	Frascati Park Residents Association
<b>Observer(s)</b>	None.

**Date of Site Inspection**

27<sup>th</sup> March, 2018

**Inspector**

Robert Speer

## **1.0 Site Location and Description**

1.1. The proposed development site is located within the goods delivery yard to the rear of the existing Marks & Spencer Store at the Frascati Shopping Centre, Rock Road, Blackrock, Co. Dublin, and thus forms part of a larger mixed-use / retail / commercial development (which is presently undergoing significant redevelopment / extension / refurbishment works) that is bounded by the N31 (Frascati) National Road to the northeast; the rear of properties along George's Avenue to the southeast; the rear of properties within Frascati Park to the west and southwest; and the rear of the Lisalea apartment units to the north. The site itself has a stated site area of 0.0015 hectares, is irregularly shaped, and comprises part of an existing goods delivery / loading area in addition to a section of the adjacent car parking area / circulation aisle.

## **2.0 Proposed Development**

2.1. The proposed development involves the repeated annual installation of 1 No. self-contained refrigerated / frozen storage unit (floor area: 14.75m<sup>2</sup>) within the goods delivery yard to the rear of the existing Marks & Spencer Store within the Frascati Shopping Centre between the 30<sup>th</sup> day of October and the 31<sup>st</sup> day of January in order to provide for additional refrigerated storage space during the Christmas trading period.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 6<sup>th</sup> November, 2017 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 3 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 – Requires the applicant to ascertain and accord with the requirements of the Environmental Health Air Pollution & Noise Control Unit.

Condition No. 3 - Seeks to prevent any mud, dirt, debris or building material from being carried onto or placed on the public road or adjoining property during the course of the construction works. It is further stated that the applicant will be required to repair any damage to the public road arising from the construction works.

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports:

Having established the policy context for the assessment of the subject proposal, the report notes the site location on lands zoned as 'District Centre' and states that, in light of the established use of the property for retail purposes, the proposed development is acceptable in principle. With regard to the potential impact of the proposal on the residential amenity of neighbouring dwelling houses, with specific reference to the concerns raised by third parties in relation to possible noise levels, the report notes the separation distance of c. 50m between the proposed storage unit and those residences within Frascati Park and states that the applicant should adhere to the requirements of the Environmental Health Office's Air Pollution and Noise Control Unit. The report subsequently concludes that the proposal will not seriously injure the residential amenities of property in the vicinity and proceeds to recommend a grant of permission, subject to conditions.

#### 3.2.2. Other Technical Reports:

*Environmental Health Officer (Air Pollution & Noise Control Unit):* States that the proposed development will only be acceptable subject to the applicant demonstrating that the installation of the proposed unit will not result in such an increase in the existing ambient noise levels at the subject location as to give rise to a noise nuisance to local residents.

*Transportation Planning:* No objection, subject to conditions.

### 3.3. **Prescribed Bodies:**

None.

### 3.4. **Third Party Observations:**

A total of 8 No. submissions were received from interested parties and the principle grounds of objection contained therein can be summarised as follows:

- Detrimental impact on the residential amenity of neighbouring properties by reason of excessive noise levels / noise pollution.
- Inadequacies / deficiencies with regard to the site notice.
- Previous instances of non-compliance on site.

## 4.0 **Planning History**

### 4.1. On Site:

PA Ref. No. D14A/0134. Was granted on 31<sup>st</sup> October, 2014 permitting Frascati Investments Limited permission for the part demolition and extension of the shopping centre to the north-east (towards Frascati road) and to the north-west to provide for an expansion of the retail, retail services, restaurant/café and ancillary floor space at lower ground, ground, first and second floor level, including a terrace for the second floor level restaurant. A lower ground and podium level of car parking is proposed in the north-east and north-west part of the site. The development consists of a building comprising part two/part three storeys over existing lower ground (basement) level of retail and a proposed lower ground floor level car park. The rejuvenation of Frascati Shopping Centre will comprise of 19,592 sqm gross floor area (GFA) of existing retained and proposed floor space, in addition to a lower ground floor level car park with a GFA of 6,158 sqm (total GFA including lower ground level car park of 25,750 sqm). The existing centre has a total GFA of 10,239 sqm. The rejuvenated shopping centre will consist of 16,020 sqm GFA of lettable retail, retail services and restaurant/café floor space, compared with 9,358 sqm lettable floor space in the existing centre. The proposed development provides for a net increase of 6,662 sqm GFA of lettable retail, retail services and restaurant/café floor space. the total floor space to be demolished, including mall floor space, is 1,708 sqm GFA. The proposal also provides for the demolition of the entrance lobby and canopy to the north-east elevation, the entrance lobby and canopy to the south-west elevation and the canopy

to the north-west elevation of the existing shopping centre building. The development will be served by 556 no. car parking spaces and 170 no. cycle spaces at lower ground, ground (surface) and podium level. The proposal incorporates associated signage, including one no. totem sign fronting Frascati Road, a 'Frascati' centre sign and two no. anchor store signs on the north-east elevation, one no. anchor store sign and one no. 'Frascati' centre sign on the north-west elevation, one no. entrance sign on the south-west elevation and one no. sign on the south-east elevation. A new landscaped open space area is provided to the north-east of the rejuvenated shopping centre adjacent to Frascati Road. The proposal also involves the realignment of the existing Priory Stream culvert which passes under the north-west car park, diversion of watermains, roof mounted screened plant area and 2 no. loading bays. The proposal includes all hard and soft landscaping work; all associated site development works; and all other ancillary works. The proposal provides for road improvement works to Frascati Road. These include the reconfiguration of the existing site access from Frascati Road (N31) adjacent to George's Avenue, including the closure of the existing site exist at this location. The reconfiguration of the existing site access at the traffic light intersection on Frascati Road opposite Rock Hill and adjacent Rock Road/Mount Merrion Avenue, including a new right turn into the site for southbound traffic on Frascati Road, a new straight movement exit to Rock Hill and a new right turning exit for southbound traffic exiting the site, including modifications to traffic islands to facilitate the revised arrangements. The development includes associated revisions to traffic circulation with the application site including the provision of ticket machines and barriers to facilitate pay on foot parking facilities.

PA Ref. No. D15A/0751. Was granted on 28<sup>th</sup> January, 2016 permitting IMRF II Frascati Limited Partnership acting through its general partner Davy IMRF II GP Limited permission for modifications to the development permitted under Reg. Ref.: D14A/0134 (which provides for the rejuvenation). The proposed modifications consist of the following: Lower Ground Floor Plan - Reconfiguration of the lower ground floor level, including reduction in area, relocation of back of house areas to first and second floor level, revised circulation and minor alterations to the car park layout. There is a proposed net reduction in the permitted GFA at lower ground floor level of 319sq.m. Ground Floor Plan - Alterations to the configuration of the mall and

units, including circulation, provision of a colonnade access to the podium car park, and alterations to the car park layout. There is a proposed net reduction in the permitted GFA at ground floor level of 11sq.m. First Floor Plan - Reconfiguration of units, including reduction in floor area of Anchor 2, provision of mall circulation area, provision of additional restaurant floorspace (replace retail / retail service floorspace), and provision of public toilets, showers and locker facilities (previously permitted at lower ground floor level). There is a proposed net increase in the permitted GFA at first floor level of 50 sq.m. Second Floor Plan - Reconfiguration of restaurant unit and circulation, including omission of 1 no. terrace area, provision of an management suite (relocated from lower ground floor level), provision of lock up area for restaurants, new store / plant room, new glazed roof structure over mall, and minor revisions to roof layout including a new plant room and plant enclosure. There is a proposed net increase in the permitted GFA at second floor level of 580 sq.m. The proposed modifications result in associated consequential alterations to elevations, including the new roof profile over the mall. The proposed amendment result in an overall net increase in the gross floorspace of 300 sq.m. from the permitted development (including lower ground floor level). There is a proposed reduction in the total lettable retail, retail services and restaurant / cafe floorspace from 16,020 sq.m. to 15,737 sq.m. GFA. A proposed increase in restaurant / cafe floor space from 1,507 sq.m. to 1,656 sq.m. GFA and there is a consequential reduction in retail / retail services floorspace. No overall reduction to the permitted car parking (556 no. permitted) or cycle parking (150 no. permitted) numbers is proposed.

PA Ref. No. D16A/0065. Was granted on 24<sup>th</sup> March, 2016 permitting IMRF II Frascati Limited Partnership c/o Davy IMRF II GP Limited permission for modifications to the development permitted under Reg. Ref. D14A/0134 (which provides for the rejuvenation of Frascati Shopping Centre) consisting of the following: Lower Ground Floor Plan - Reconfiguration of the lower ground floor level, including reduction in area, relocation of back of house areas to first and second floor level, revised circulation and alterations to the car park layout. There is a proposed net reduction in the permitted GFA at lower ground floor level of 177 sqm. Ground Floor Plan - Alterations to the configuration of the mall and units, including revisions to the circulation, provision of a colonnade access to the podium car park

and alterations to the car park layout. Extension of the retail floor space into the colonnade area fronting Frascati Road and associated alterations to the landscape arrangement. Revisions to access arrangement to the podium car park. Permitted extension to Anchor 2 reconfigured and allocated as a new retail unit. There is a proposed net increase in the permitted GFA at ground floor level of 341 sqm. First Floor Plan - Alterations to the configuration of units, including reduction and reallocation of floor area previously permitted for Anchor 2, provision of mall circulation area, reduction in width of mall void, provision of additional restaurant/café floor space (replace retail/retail service floor space) and provision of public toilets, showers and locker facilities (previously permitted at lower ground floor level). There is a proposed net reduction in the permitted GFA at first floor level of 277 sqm). Second Floor Plan - Reconfiguration of restaurant unit and circulation, including omission of 1 no. terrace area, provision of a management suite (relocated from lower ground floor level), provision of lock up area for retail/restaurants, new glazed roof structure over mall, new boiler house/plant room and minor revisions to roof layout including additional plant room enclosures. There is a proposed net increase in the permitted GFA at second floor level of 584 sqm. The proposed modifications result in associated consequential alterations to elevations, including a new roof profile over the mall. Relocation of external electrical rooms from the rear of the centre to the north-west of the podium car park. Alterations to the landscape area fronting Frascati Road as a result of the partial infill and infill of the colonnade area. Alterations to the layout and configuration of the surface level car park. The proposed amendments result in an overall net increase in the gross floor space of 471 sqm from the permitted development (including lower ground floor level). There is a proposed reduction in the total lettable retail, retail services and restaurant/café floor space from 16,020sqm to 15,738sqm GFA. A proposed increase in restaurant/café floor space from 1,507sqm to 1,657sqm GFA and there is a consequential reduction in retail/retail services floor space. No overall reduction to the permitted car parking (556 no. permitted) or cycle parking (170 no. permitted) numbers is proposed.

PA Ref. No. D16A/0235 / ABP Ref. No. PL06D.246810. Was granted on 18<sup>th</sup> October, 2016 permitting IMRF II Frascati Limited Partnership acting through its general partner Davy IMRF II GP Limited permission for modifications to the



development permitted under planning register reference number D14A/0134 (which provides for the rejuvenation of Frascati Shopping Centre). The proposed modifications to the permitted scheme (planning register reference number D14A/0134) consist of the following:

- Lower Ground Floor Plan - Reconfiguration of the lower ground floor level, including increase in car parking area, relocation of back of house areas to first and second floor level, revised circulation, and alterations to the car park layout. There is a proposed net increase in the permitted gross floor area at lower ground floor level of 210 square metres.
- Ground Floor Plan - Alterations to the configuration of the mall and units, including revisions to the internal circulation, provision of a colonnade access to the podium car park and revisions to access from podium car park to the mall. Extension of the retail floorspace into the colonnade area fronting Frascati Road and associated alterations to the landscape arrangement. Permitted extension to Anchor 2 reconfigured and allocated as a new retail unit including an extension of the retail floorspace onto part of the previously approved podium car park and associated alterations to the car park layout. There is a proposed net increase in the permitted gross floor area at ground floor level of 745 square metres.
- First Floor Plan - Alterations to the configuration of units, including reduction and reallocation of floor area previously permitted for Anchor 2, provision of mall circulation area, reduction in width of mall void, provision of additional restaurant/café floorspace (replace retail/retail service floorspace), and provision of public toilets, showers and locker facilities (previously permitted at lower ground floor level). A new mezzanine level management suite (relocated from lower ground floor level) is provided at this level with a gross floor area of 222 square metres. There is a proposed net reduction in the permitted gross floor area at first floor level, including the mezzanine level, of 88 square metres.
- Second Floor Plan - Reconfiguration of restaurant unit and circulation, including omission of one number terrace area, provision of lock-up area for retail/restaurants, new glazed roof structure over mall, new boiler house/plant

room, and minor revisions to roof layout including additional plant room enclosures. There is a proposed net increase in the permitted gross floor area at second floor level of 539 square metres.

- The proposed modifications result in associated consequential alterations to elevations, including a new roof profile over the mall.
- The proposals also provide for relocation of external electrical rooms from the rear of the centre to the north west of the podium car park, alterations to the landscape area fronting Frascati Road as a result of the partial infill and infill of the colonnade area, and minor alterations to the layout and configuration of the surface level car park.

The proposed amendments result in an overall net increase in the gross floorspace of 1,406 square metres from the permitted development (including lower ground floor level), as a result of an increase in floor area of the lower ground floor car park, back of house areas at all levels and of the mall area at ground and first floor level. There is no increase proposed to the total lettable retail, retail services and restaurant/café floorspace which remains at 16,020 square metres. The restaurant/café floorspace is proposed to increase from 1,507 square metres to 1,971 square metres gross floor area and there is a consequential reduction in retail/retail services floorspace. No overall reduction to the permitted car parking (556 number permitted) or cycle parking (170 number permitted) numbers is proposed, all at Frascati Shopping Centre, Frascati Road (N31), Blackrock, County Dublin. The application site comprises of 2.67 hectares and is bound by the N31 Frascati Road to the north-east, the rear of properties on George's Avenue to the south-east, the rear of properties on Frascati Park to the west and south-west and the rear of Lisalea Apartments to the north and adjacent terrace of houses on Mount Merrion Avenue to the north-west.

PA Ref. No. D16A/0843. Was granted on 18<sup>th</sup> January, 2017 permitting IMRF II Frascati Limited Partnership acting through its general partner Davy IMRF II GP Limited permission for modifications to the development permitted under Reg. Ref. D14A/0134, as amended by Reg. Ref. D16A/0235 and ABP Ref. PL06D.246810, consisting of the following: 1) Lower Ground Floor Level Reconfiguration of the lower ground floor level, including revised extent of basement car parking area, associated

alteration to the car park layout and cycle parking location, provision of electrical rooms and electric car charging spaces which are relocated from ground level and provision of an external staircase. There is a proposed net reduction in the permitted GFA at lower ground floor level of 391 sqm. 2) Ground Floor Level Alterations relating to the configuration of the mall and units, including revised width of mall and size and layout of units, revisions to corridors accessing the units, and minor extension of retail floor space into colonnade area, resulting in alteration to the north-east elevation and landscape area fronting Frascati Road. Alterations to the car park layout, including relocation of staff car parking, relocation of disabled car parking spaces and revised layout of podium car park and cycle parking locations. Relocation of electrical rooms to Anchor 1 service yard. There is a proposed net reduction in the permitted GFA at ground floor level of 26 sqm. 3) First Floor and First Floor Mezzanine Level Alterations to the configuration of the mall and restaurant and retail unit layouts at this level. Alterations to the layout of public toilets, shower facilities and retail storage layouts. Revisions to the layout of the management suite at mezzanine level. There is a proposed net reduction in the permitted GFA at first floor level, including mezzanine area of 19 sqm. 4) Second Floor and Roof Level Revisions to the access to the second floor restaurant unit and mall from first floor level. Internal layout changes to the second floor restaurant and back of house areas. Revisions to the location/ extent of roof plant rooms/area, minor revisions to the permitted roof light, relocation of green roof and provision of protective handrail. There is a proposed net reduction in the permitted GFA at second floor of 231 sqm. 5) The proposed modification as set out above result in associated consequential alterations to elevations and the roof profile. In addition alterations to the design, including location of access doors, and the materials of the proposed north east, south west, south east and north west elevations are proposed. The proposed amendments result in an overall net reduction in the gross floor space from 27,156 sqm in the permitted development (as amended) to 26,489 sqm. A reduction in the total lettable retail services and restaurant/cafe floor space from 16,020 sq.m to 16,002 sq.m is proposed. The restaurant/cafe floor space is proposed to be reduced from 1,971 sqm to 1,786 sqm with a consequential increase in retail/retail services floor space. No overall reduction to the permitted car parking (556 no. permitted) or cycle parking (170 no. permitted) numbers is proposed.

PA Ref. No. D17A/0599. Was granted on 24<sup>th</sup> August, 2017 permitting IMRF II Frascati Ltd Partnership permission in respect to the development permitted under Reg. ref.; D14A/0134, as amended by Reg. Ref.: D16A/0235 & ABP Ref.: PL06D.246810, Reg. Ref.: D16A/0798 and Reg. Ref.: D16A/0843, and which provides for the rejuvenation of Frascati Shopping Centre, for an increase of permitted GFA at first floor level of 359 square metres (sq. m.) (comprising retail storage and back of house facilities), the provision of a lift and staircase between the ground floor back of house area and the proposed first floor extension, along with associated internal to the existing retail area of Anchor 2 at ground floor level (resulting in an additional 106sq.m. net sales area) and associated elevational amendments. The proposed amendments result in an overall net increase in the gross floor space of the development from 26,489 sqm from the permitted development (Reg. Ref.: D14A/0134, as amended by Reg. Ref.: D16A/0235 & ABP Ref.: PL06D.246810, Reg. Ref.: D16A/0798 and Reg. Ref.: D16A/0843) to 26,848 sqm. An increase in the total lettable retail, retail services and restaurant /café floor space from 16,002 sqm to 16,361 sqm is proposed. No overall change to the permitted car parking (556 no. permitted) or cycle parking (170 no. permitted) numbers is proposed.

PA Ref. No. 14216. Was determined pursuant to Section 5 of the Planning and Development Act, 2000, as amended, wherein it was held that the temporary installation of 1 No. single phase refrigerated unit within the car park to the rear of the Frascati Shopping Centre from 19<sup>th</sup> December to 2<sup>nd</sup> January on an annual basis was not exempted development.

## 5.0 Policy Context

### 5.1. Development Plan

#### **Dun Laoghaire Rathdown County Development Plan, 2016-2022:**

##### Land Use Zoning:

The proposed development site is located in an area zoned as 'DC' with the stated land use zoning objective '*To protect, provide for and-or improve mixed-use district centre facilities*'.

Other Relevant Sections / Policies:

*Chapter 3: Enterprise and Employment Strategy*

*Section 3.2: Retail and Major Town Centres:*

- *Policy RET5: District Centres:*

It is Council policy to maintain the District Centres at Blackrock, Stillorgan, Nutgrove and Cornelscourt and to promote a mixed-use sustainable town centre in Cherrywood in accordance with the approved SDZ Planning Scheme.

*Chapter 8: Principles of Development:*

*Section 8.2: Development Management:*

*Section 8.2.6: Retail Development:*

*Section 8.2.6.1: Assessment of Retail Development Proposals*

*Section 8.2.9: Environmental Management:*

*Section 8.2.9.2: Noise Pollution*

**Blackrock Local Area Plan, 2015-2021:**

*Chapter 7: Retail:*

## 5.2. **Natural Heritage Designations**

The following Natura 2000 sites are located in the immediate vicinity of the proposed development site:

- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 350m northeast of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 350m northeast of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The proposed refrigeration unit gives rise to an intermittent, high-pitched & pulsating compressor motor noise 24-hours a day which is clearly audible from within neighbouring dwelling houses. The pulsating nature of this noise is highly unusual and in excess of any tolerable ambient noise level which could be associated with an urban district shopping centre.
- The noise emissions from the unit in question are most readily audible at night-time when the ambient noise level of the shopping centre has reduced. The noise is particularly intrusive when bedroom windows are left open at night and serves to disrupt sleep. In effect, the noise emissions prevent windows to the rear of the neighbouring dwelling houses from being opened and inhibits the ventilation of rooms.
- There has been no adequate measurement of the range / nature of the noise levels emanating from the proposed refrigeration unit when experienced within the bedrooms to the rear of Frascati Park which would serve to support a decision to grant permission.
- Given the type of industrial machinery proposed, the proximity of the proposal to neighbouring dwellings, and the nature of the noise emissions emanating from the development, it is submitted that there is a need for a more comprehensive investigation and understanding of the environmental impact.
- Due to the siting of the proposed storage unit to the rear of the shopping centre, the noise emissions reverberate off the walls of the centre towards the neighbouring dwellings within Frascati Park.
- It is considered that the installation of the industrial machinery proposed within an urban district centre that serves to deprive local residents of peace and quiet at night-time is contrary to proper planning.
- A refrigeration unit previously installed on site was the subject of widespread complaints from local residents in both 2015 and 2016 (as detailed in the accompanying correspondence). This refrigeration unit was installed without

the benefit of planning permission and was the subject of enforcement action taken by the 'Air and Noise Pollution' division of the Local Authority in February, 2016. The accompanying documents show that the refrigeration unit in question was subsequently decommissioned on 15<sup>th</sup> February, 2016 after an investigation.

- Attempts were previously made to manage the noise pollution emanating from the refrigeration unit through the use of sound barriers and other noise abatement methods, however, these were not effective and the complaints regarding the noise continued.
- There are serious concerns that permission was granted for the proposed machinery, subject to a condition requiring the implementation of effective noise abatement, when it is already known to the Local Authority that previous attempts at noise abatement proved to be ineffective. Accordingly, it is submitted that the decision to grant permission despite the previously inadequate and inefficient noise control methods employed by the operator is contrary to the proper planning of the area.
- Any grant of permission for the subject proposal would serve to set an undesirable precedent in terms of urban planning for the residents of Frascati Park. In this respect it is submitted that a grant of permission would lead to a proliferation in the use of industrial machinery at the existing shopping centre with a consequential increase in day-to-day noise levels.
- There was scant oversight of the refrigeration unit when previously installed. For example, in one instance, the operator initially promised that the unit would only be in place for three months, however, it subsequently operated for 6-7 No. months.
- The noise emanating from the refrigeration unit will have a detrimental impact on the residential amenity of neighbouring dwelling houses and will serve to devalue those properties.
- Any grant of permission for the subject development would amount to poor land management whilst there are also safety concerns for both operators and local residents as regards the installation of such industrial machinery at this location.

- Given the significant redevelopment of the Frascati Shopping Centre presently underway, it is submitted that provision should be made for the additional storage accommodation required within the new construction.

## 6.2. Applicant's Response

None.

## 6.3. Planning Authority's Response

- States that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

## 6.4. Observations

None.

## 6.5. Further Responses

None.

## 7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Impact on residential amenity
- Appropriate assessment

These are assessed as follows:

### 7.2. **The Principle of the Proposed Development:**

7.2.1. Having regard to the site location on lands zoned as 'DC' with the stated land use zoning objective *'To protect, provide for and-or improve mixed-use district centre*



*facilities'*, the established use of the property for retail purposes, the planning history of the site, and the wider strategy of the Development Plan to support and maintain the District Centres, I am satisfied that the proposed development is acceptable in principle.

**7.3. Impact on Residential Amenity:**

- 7.3.1. Concerns have been raised in the grounds of appeal that the proposed development will have a detrimental impact on the residential amenity of the neighbouring dwelling houses within Frascati Park by reason of the noise levels / emissions attributable to the operation of the proposed refrigeration unit, with particular reference to the intermittent and high-pitched noise associated with the running of the compressor unit / fan motor serving same. In this regard it is of relevance to note that the appellants have sought to lend support to their concerns by referencing previous instances of similar types of refrigeration units having been placed on site without the benefit of planning permission which gave rise to unacceptable levels of noise, including during night-time hours, thereby culminating in a series of complaints to the Local Authority. It has also been asserted that the inadequacy of the noise control / abatement procedures previously implemented by the operator in an effort to mitigate the noise impact of those refrigeration units demonstrates the overall unsuitability of the proposal and its adverse impact on the residential amenity of adjoining properties.
- 7.3.2. Having reviewed the available information, whilst it is apparent that the compressor / fan of the proposed refrigeration unit will open onto the existing shopping centre car park and thus will face directly towards nearby housing, I am inclined to suggest that cognisance must be had to the site location within an existing delivery yard where some degree of noise / intrusion is already likely to be associated with the current loading / delivery activities (including late-night / early morning deliveries). Moreover, I would draw the Board's attention to the separation distance in excess of 50m between the proposed refrigeration unit and the site boundary in addition to the screening provided by the existing planting along those boundaries with Frascati Park. Furthermore, the use of the intervening lands as a car park most likely already contributes in part to the ambient / background noise levels in the area.

7.3.3. At this point of my assessment I would refer the Board to Drg. No. 00005: ‘Proposed external elevations showing location for temporary peak container’ which includes details of the manufacturer’s specifications (i.e. Spacewise Product Engineering) of the proposed ‘Refrigerated 20ft. Container’ and its projected noise emission levels as follows:

<b>Noise Level:</b>			
<i>Type</i>	<i>At 3 metres from front</i>	<i>At 10 metres from front</i>	<i>Average noise level at 10 metres from sides and front ISO</i>
Zanotti Bas 235	64dB	54dB	45dB

7.3.4. On balance, whilst I would acknowledge the legitimacy of the appellants’ concerns, I am inclined to suggest that given the particular circumstances of the site, and on the basis of the information available, the potential noise impact of the proposed development on the residential amenity of surrounding housing can be satisfactorily mitigated to within acceptable limits through the implementation of appropriate noise control / abatement procedures. In this regard I note that the Board has previously imposed noise restrictions on this particular site by way of condition in its determination of ABP Ref. No. PL06D.246810 as follows:

*Condition No. 3:*

*‘The noise level shall not exceed 55 dB(A) rated sound level, as measured at any point along the boundary of the site. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.*

*Reason: To protect the residential amenities of property in the vicinity of the site’.*

7.3.5. However, having regard to the previous experience of local residents, I would accept that any tonal or impulsive components of the noise emissions emanating from the proposed development would be likely to result in a greater degree of intrusion / disruption of local amenity. Accordingly, I would recommend that any condition imposed in a grant of permission in relation to the control of noise should take account of the potential tonal nature etc. of any noise.

7.3.6. The Board may also wish to consider if it would be appropriate in this instance to issue a temporary grant of permission in order to allow for a review of the situation at a future date when monitoring / policing activities may have established the magnitude of any noise impact on neighbouring residences.

7.3.7. In closing, it should also be noted that the Board has no function with regard to enforcement and that compliance with any conditions imposed in respect of a grant of permission will be the responsibility of the applicant / developer / operator whilst the Planning Authority will be empowered to enforce adherence to same.

7.4. **Appropriate Assessment:**

7.4.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## 8.0 Recommendation

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

9.1. Having regard to the established retail use of the site, the zoning objective for the area, the planning history of the site, and the nature and scale of the proposed development, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential amenities of the area or of property in the vicinity and 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, 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. During the operational phase of the proposed development, the noise level shall not exceed 55 dB(A) rated sound level (that is, corrected sound level for a tonal or impulsive component) at the nearest dwelling or at any point along the boundary of the site. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

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Robert Speer  
Planning Inspector

6<sup>th</sup> April, 2018