



An
Bord
Pleanála

Inspector's Report ABP-302095-18

Development	Coffee shop and outdoor seating area.
Location	Old Bawn Shopping Centre, Old Bawn Road, Tallaght, Dublin 24.
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD18A/0144
Applicant(s)	Towerbright Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Colm Kenny
Observer(s)	None
Date of Site Inspection	21 st September 2018
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.0407ha, is located immediately adjacent to the Old Bawn Road in Tallaght, within the car-park of a single- and two-storey shopping centre complex. Other than the Old Bawn Road boundary – the remaining boundaries are undefined. The area is currently occupied by surface car-parking spaces (109 within the entire car-park) and associated pedestrian routes through it. Landscaping is limited to two recently-planted trees. The car-park is provided with public lighting. There is one vehicular access/egress point on Old Bawn Road, where there is a yellow box marked on the road surface. There are footpaths and cycle paths on both sides of Old Bawn Road. There is a bus shelter on Old Bawn Road immediately adjoining the site. There are a further three pedestrian access points to the shopping centre from both Old Bawn Road and Firhouse Road. There is a car-wash operation to the rear of the shopping centre – at the proposed point of connection with the foul sewer network.
- 1.2. The car-park was approximately half full at 10.30 hours on Friday 21st September 2018.

2.0 Proposed Development

- 2.1. Permission sought on 27th April 2018, to construct a single-storey, flat-roofed coffee shop, of 180m², with outdoor (64m²) seating area. The development will result in the loss of 13 no. car-parking spaces – leaving a total of 96 spaces to serve the shopping centre. The development will be connected to the public water supply and public foul and surface water sewers.
- 2.2. The application is accompanied by the following documentation of note-
- Letter of consent from the site owner, Timebrock Ltd, to the making of the planning application.
 - Planning Application Report – dated April 2018.
 - Drainage Report – dated 19th April 2018.

- Traffic Statement – dated 16th April 2018.

3.0 Planning Authority Decision

By Order dated 21st June 2018, South Dublin County Council issued a Notification of decision to grant planning permission subject to 16 no. conditions – the principal ones of which may be summarised as follows-

1. Development to be carried out in accordance with plans and particulars submitted.
2. Change-of-use is not permitted without a subsequent grant of permission. Signage on the external façade of the building is not permitted without a grant of permission. Hours of operation shall be Sunday to Thursday 07.00-22.00 and Friday & Saturday 07.00-22.30 hours.
3. Requires submission of details in relation to access to parking spaces 95-97.
4. Relates to submission of a Construction Traffic Management Plan.
5. Relates to fumes and noise.
13. Relates to construction noise and hours.
14. Relates to operational noise.
16. Requires payment of a development contribution of €14,351.40.

4.0 Planning History

There is a considerable planning history pertaining to this shopping centre site. However, none of the applications listed by the PA (dating back to 2000), relate directly to a stand-alone unit within the car-park area. The shopping centre was constructed some time before 2000.

5.0 Policy Context

5.1. Development Plan

The relevant document is the South Dublin County Council Development Plan 2016-2022. The site is zoned 'LC' – To protect, improve and provide for the future development of Local Centres. Restaurant/café use is 'Permitted in principle' within this zoning. Section 5.6.6 of the Plan deals with Local Centres. Tables 11.22 & 11.23 deal with bicycle and car-parking standards.

5.2. Natural Heritage Designations

The site is located approximately 40m to the southeast of a proposed Natural Heritage Area (pNHA) – associated with the Dodder River (downstream of the bridge on Old Bawn Road). There is a row of shops located between the appeal site and pNHA.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal from Kiaran O'Malley & Co. Ltd, agent on behalf of Colm Kenny, Unit 7, Old Bawn Shopping Centre, received by An Bord Pleanála on 18th July 2018, can be summarised in bullet point format as follows-

- The provision of an additional coffee shop within the shopping centre would threaten the viability of the appellant's bakery shop. The shop has tables and seating for 20 customers, and serves tea & coffee. The shop is hidden behind one of two staircases. This makes the attraction of passing trade difficult. Signage on staircases aims to attract customers. The proposed development would limit views of this signage from within the car-park.
- The Development Plan seeks to encourage retail use within Local Centres. The proposal is not a retail use. It would add to an existing over-concentration of food outlets within the shopping centre. The stand-alone café would presumably be occupied by one of the many multi-national café

brands. This would not contribute to maintaining or enhancing the retail function of the centre.

- Currently, the entire first floor of this shopping centre is vacant.
- The loss of car-parking spaces will impact on the appellant's business. The peak time at the shopping centre is 17.00-18.30 hours. Congestion intensifies between September and December each year. This does not square with the applicant's claim that the peak at the shopping centre is 13.00-14.00 hours. The PA should have requested the applicant to carry out a parking survey over a two-week period. There is considerable unauthorised parking on double yellow lines within the shopping centre. The loss of 13 spaces would be exacerbated by the actual requirement for a coffee shop of this size for 12 additional spaces – with four further spaces being required for the outdoor seating area. This would result in a shortfall of 29 spaces. Applying Development Plan standards – the shopping centre of 2,588m² would require 172.5 spaces, using the rate of one space per 15m² gross floor area. If permission is granted, the under-provision would be more marked.
- Traffic congestion at the entrance to the shopping centre would be exacerbated by further indiscriminate parking along the main access into the car-park, and the proximity of traffic lights on the heavily-trafficked Old Bawn Road/Firhouse Road junction. The three car-parking spaces just off the main access into the car-park would cause further congestion.
- The development would exacerbate anti-social behaviour in the area – as the outdoor seating area would provide a location for youths to congregate. There is already considerable anti-social behaviour at the shopping centre – particularly outside of business hours.

6.1.2. The appeal is accompanied by 5 no. coloured photographs.

6.2. Applicant Response

6.2.1. The response of Brock McClure, Planning Consultants, agent on behalf of the applicant, Towerbright Ltd, received by An Bord Pleanála on 15th August 2018, can be summarised in bullet point format as follows-

- It is not the purpose of the planning system to prevent competition. The subject proposal is an appropriate use within a shopping centre.
- The development will bring extra patrons to the shopping centre, which will increase vitality.
- The development will not significantly impact on the visibility of the appellant's premises.
- The applicant carried out a car-parking survey on 7th August 2018, between 17.00 and 18.30 hours – the peak claimed by the appellant. The maximum parking demand during this period was 47 spaces.
- Illegal parking was observed by the applicant within the car-park. It does not affect the permeability of the car-park. The coffee shop will not add to illegal parking. Illegal parking did not result from an undersupply of parking.
- Road safety will not be compromised by this development.
- The applicant is equally concerned in relation to anti-social behaviour at the shopping centre. The outdoor seating area will contribute to an increase in interaction and passive surveillance, and will provide an uplift to the public realm.

6.2.2. The appeal is accompanied by a series of colour photographs of the car-park, taken at 17.00 and 18.30 hours on 7th August 2018.

6.3. **Planning Authority Response**

The response of SDCC, received by An Bord Pleanála on 1st August 2018, indicated that the PA had no further comment to make.

6.4. **Observations**

None received.

6.5. **Further Responses**

The 1st Party response to the grounds of appeal was circulated to the other parties to the appeal for comment, on or before 12th September 2018.

6.5.1. 3rd Party Response to 1st Party Response

The response of Kiaran O'Malley & Co. Ltd, agent on behalf of Colm Kenny, received by An Bord Pleanála on 11th September 2018, can be summarised in bullet point format as follows-

- Youths in the area would use the outdoor seating area for congregating when the café was closed – and would engage in anti-social behaviour.
- The Pinnacle car-parking survey was undertaken on 7th August 2018, which is prime summer holiday time in Ireland.
- The Pinnacle car-parking survey noted illegal parking within the car-park, notwithstanding stated over-provision. The proposed development would lead to more illegal parking.
- Motorists, driving to work during the AM peak, will use this facility, which will contribute to traffic congestion.
- The appellant's indigenous business and livelihood are under threat from this development.

6.5.2. 2nd Party Response to 1st Party Response

There was no response received from SDCC.

7.0 **Assessment**

The principal planning issue in this appeal relates to parking provision.

7.1. **Development Plan & Other Guidance**

The zoning of the site allows for a development of the nature proposed. The Development Plan, at Table 11.23, stipulates a maximum of one parking space per 15m² for new café/restaurant use within Zone 1 (which applies to this area). It is noted that this is a 'maximum' standard, and not a 'minimum' standard, as contended by the appellant. This has the effect of allowing the PA to consider other modes of transport to the local centre and existing usage of parking facilities.

7.2. Layout & Design

- 7.2.1. The proposed single-storey building (4.2m high), is a stand-alone unit with a flat roof. The rectangular structure has extensive floor-to-ceiling glazing on three sides. External finishes comprise timber cladding, glazed aluminium curtain walling and brick. The shopping centre, within which the site is located will not be impacted in any way by the proposed design. A 2m high wall will be provided on the western side of the external seating area – presumably to act as a wind break. [I note that this feature is not shown on photomontages submitted with the application]. The proposed layout and design are acceptable within this car-park location.
- 7.2.2. The fact that there may be vacant first floor space within this shopping centre, as claimed by the appellant, is not a relevant consideration. The appeal before the Board relates to a ground-floor, stand-alone unit.

7.3. Parking

- 7.3.1. The proposed development will result in a net loss of 13 car-parking spaces within the Old Bawn Shopping Centre car-park. The development will necessitate minor rearrangement of parking spaces within the immediate vicinity of the site. There are 109 spaces serving the shopping centre at present. The application was accompanied by a Traffic Statement. There is a stated 2,588m² of gross retail floor area within the shopping centre. Visual parking assessments were undertaken between 12.00 and 14.00 hours on Thursday 11th January and on Saturday 13th January 2018 (photographs supplied). The existing quantum of parking was underutilised on both days.
- 7.3.2. Table 11.23 of the Development Plan indicates a ‘maximum’ parking standard at the rate of 1 space per 15m² gross floor area for a café – leading to a ‘maximum’ allowance of 12 spaces for the proposed development. The applicant has assessed the development using a ‘First Principles’ approach based on trip generation information gathered from TRICS, to establish arrivals and departures to/from the shopping centre and with the addition of the coffee shop – establishing a peak hour of 13.00-14.00. A traffic survey on the Old Bawn Road, carried out on 15th June 2017, established the morning peak at 08.30-09.30 hours, and the evening peak at 16.45-17.45 hours. The development will have a very small impact on peak traffic.

- 7.3.3. The 1st Party response to the 3rd Party appeal included a limited parking survey carried out on Tuesday 7th August 2018, during the early evening – which period was claimed by the appellant to be the peak. The appellant countered that August was a holiday month, and visits to the shopping centre would, therefore, be lower. The site was visited by this Inspector on a Friday morning, and the car-park was half full. The owners of the shopping centre are satisfied that the loss of 13 no. car-parking spaces would not impact on the business of the tenants of other units within the shopping centre. There may be times and weather conditions which result in heavier usage of the car-park. However, such should not dictate the overall development of this centre – where the applicant and the owners are satisfied that the parking provision at the centre is often underutilised.
- 7.3.4. Parking outside designated parking spaces within the car-park is a matter for the management of the centre. There is no sense in which the proposed development could promote increased car-parking outside of designated spaces. It is a matter for the management of the centre to control parking in the interests of free-flow of vehicles and safe pedestrian movement within the car-park area. The PA had concern in relation to traffic turning right into proposed parking spaces 95-97; and condition 3 of the Notification of decision to grant permission required submission of details to the PA to deal with this issue. It would appear that concern exists that such right-turning traffic might obstruct traffic trying to enter or leave the car-park.
- 7.3.5. The Development Plan (Table 11.22) recommends a minimum of one bicycle parking space per five staff and per 10 seats. It would be possible to attach a condition to any grant of planning permission requiring provision of bicycle parking spaces in accordance with the Development Plan standard.
- 7.3.6. The Planner's Report states, at page 9, that the Roads Department of the Council had no objection to the proposal, subject to conditions being attached. There does not appear to be any Roads Department Report on the file to confirm that statement. Such a report does not appear to be on the Council's planning application website either.
- 7.3.7. I have elsewhere in this report referred to the parking standards contained within the Development Plan. Table 11.23 indicates that standards are 'maximum' and not

'minimum'. The proposed development would not result in a quantum of parking which would breach the maximum standards.

7.4. Water

7.4.1. Water Supply

A new 100mm diameter watermain is to be constructed through the car-park area to connect to an existing 6" watermain serving the units within the shopping centre. This watermain ultimately connects with a watermain in Firhouse Road, to the southeast. Irish Water had no objection to the proposal. I would be satisfied that the proposed development would not be prejudicial to public health.

7.4.2. Foul Effluent

The development will connect to an existing 150mm diameter foul sewer at the northern end of the shopping centre site. This will involve the construction of a new 150mm diameter link from the coffee shop through the car-park. Irish Water had no objection to the proposal. I would be satisfied that the proposed development would not be prejudicial to public health.

7.4.3. Surface Water

The development will necessitate the diversion of two 225mm diameter surface water sewers within the car-park area. Surface water will be attenuated within a 19m³ tanked sub-base, below an area of permeable paving. Outflow will be throttled at 0.1 litres per second, to the diverted 225mm surface water sewer. At present, all car-park run-off discharges direct to the surface water sewerage network within the site. The proposed attenuation and throttling will represent an improvement on the existing situation. The Water Services Department of SDCC had no objection to the proposal. I would be satisfied that the proposed development would not be prejudicial to public health.

7.5. Other Issues

7.5.1. Financial Contribution

Condition 16 required payment of a development contribution of €14,351.40. A similarly-worded condition should be attached to any grant of planning permission to issue from the Board.

7.5.2. Appropriate Assessment

The application was accompanied by a short screening for appropriate assessment. The site is neither within nor immediately abutting any European site. The closest European site is the Glenasmole Valley SAC (Site code 001209) located some 2.1km as the crow flies to the southwest. The Dodder River provides a surface water linkage between the two. However, it should be noted that the site is downstream of the European site. Having regard to the nature and scale of the development within a suburban local centre site, proposals to connect to existing public foul and surface water drainage networks, and proximity to the closest European site, 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.

7.5.3. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.

7.5.4. Waste

There will be limited demolition waste involved with this project. A condition should be attached to any grant of permission to deal with the issue of construction waste. The proposal provides for the handling and storage of operational waste.

7.5.5. Signage

Drawings submitted indicate signage on the western and southern elevations of the building – without being more specific. A condition should be attached to any grant of permission requiring the exact details of signage to be submitted for the written agreement of the PA, prior to occupation of the building.

7.5.6. Opening Hours

Condition 2 of the Notification of decision to grant planning permission relates to hours of operation. I would contend that such should not be necessary for a coffee shop, located within a local centre, on the edge of a busy road. There are no houses within the immediate vicinity of the site. There is a large public house on the opposite side of the Old Bawn Road. Should the Board be minded to grant planning permission, I recommend that no such condition be attached.

7.5.7. Anti-Social Behaviour

The appellant has claimed that the outdoor seating area will result in anti-social behaviour: I do not see that this necessarily follows. The area will be paved, but it is assumed that all furniture would be removed indoors at the end of the day or else locked away. The site is located beside a busy road with a bus stop immediately adjacent. There is no reason why a coffee shop within a local centre should result in anti-social behaviour. It would be as much in the interest of the occupant of any such premises to discourage anti-social behaviour as it would for any existing tenant of the shopping centre. The fact that there has been anti-social behaviour in the past at this shopping centre is not a reason to refuse planning permission for an outdoor seating area for a café.

7.5.8. Competition

The fact that there is already a bread shop/café within the shopping centre is not a relevant planning consideration. The use proposed is 'Permitted in principle' within the local centre zoning. It is not the function of the planning system to regulate or restrict competition between commercial uses.

7.5.9. Archaeology

The site is located within an area which has already been developed as a car-park. There is no need for an archaeological monitoring condition in this instance.

7.5.10. Impact on a proposed Natural Heritage Area

Having regard to the scale of development proposed, location within a shopping centre complex, and proposal to connect to existing public sewerage, I would be satisfied that the proposed development would not have any impact on the proposed Natural Heritage Area associated with the Dodder River to the northwest of the site.

8.0 Recommendation

I recommend that permission be granted for the Reasons and Considerations set out below, and subject to the attached Conditions.

9.0 Reasons and Considerations

Having regard to the pattern of development in the vicinity and the quantum of car-parking which exists within this shopping centre complex, it is considered that the proposed development, subject to compliance with the attached conditions, would be acceptable in terms of traffic safety and convenience, would not promote anti-social behaviour, 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. Details, including samples of the materials, colours and textures of all external finishes, including external paving/hard landscaping, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

3. Details of signage for the proposed café shall be submitted to the planning authority, and written agreement obtained, prior to first occupation of the building.

Reason: In the interest of visual amenity.

4. 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, as appropriate.

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

5. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.

Reason: In the interests of visual amenity.

6. Bicycle parking spaces, in accordance with the current South Dublin County Council Development Plan standards (Table 11.22) shall be provided within the curtilage of this site for use of staff and patrons.

Reason: To encourage a modal shift from private motor car to bicycle, in the interest of orderly development.

7. Prior to commencement of development, the developer shall submit for the written agreement of the planning authority, and obtain such written agreement, in relation to vehicular access to proposed parking spaces 95-97.

Reason: In the interest of traffic safety and orderly development.

8. Prior to commencement of development, the developer shall submit, and obtain the written agreement of the planning authority to, a plan containing details for the management of waste and, in particular, recyclable materials, within the development during the site-clearance, construction and operational phases; including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

Reason: To provide for the appropriate management of waste and, in particular, recyclable materials, the interest of protecting the environment.

9. The developer shall pay to the planning authority, a financial contribution in

respect of public infrastructure and facilities benefiting development in the area of the planning authority, that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

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

**Michael Dillon,
Planning Inspectorate.**

10th October 2018.