



An
Bord
Pleanála

Inspector's Report

ABP-304284-19

Development	Permission for part off-license use in existing retail
Location	Moldova Shop, Porters Avenue, Coolmine Industrial Estate, Dublin 15
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW19A/0020
Applicants	The Moldova Retail Store Ltd
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellants	The Moldova Retail Store Ltd
Date of Site Inspection	25 June 2019
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The subject site is located within the Coolmine Industrial Estate Dublin 15, at the junction of Porters Avenue and Porters Road. This is a prominent junction near the main entrance to the Coolmine Industrial Estate. The adjacent uses in the area are a mix of showrooms, workshops, services and industrial uses. The structure to which the application relates is an industrial type unit currently in use as a shop. The adjoining premises is a car repairs/servicing garage.
- 1.1.2. The site area is not given.

2.0 Proposed Development

- 2.1.1. The proposed development is described as part off-license use in existing retail. The area is stated to be 20.62 sq m.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to refuse permission for 3 reasons:

1 The subject site is located within an area zoned GE General Employment with seeks to 'Provide opportunities for general enterprise and employment', in the Fingal Development 2017 – 2023. Having regard to the nature of the retail use proposed, it is considered to materially contravene the GE land use zoning objective set an undesirable precedent for similar type development and, as such, is considered to be contrary to the proper planning and sustainable development of the area.

2 Having regard to the location of this type of retail facility in a GE zoning, it is considered that development for retail use would seriously militate against the policies and objectives of land zoned in the Fingal Development Plan 2017 – 2023. For this type of development such as Local Centres, Major Town Centres and Town and District Centres and would undermine their function. The proposal would therefore be contrary to the proper planning and sustainable development of the area.

3 Having regard to the nature and type of the retail facility proposed and its location within GE zoned lands, it is considered that the proposed development represents an incompatible land use, compromises the existing adjoining industrial

uses and future expansion or changes to same and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report recommending refusal of permission includes:

- Details of the planning history on the subject site and area.
- Relevant provisions of the Fingal County Development Plan 2017-2023 are cited.
- The proposed development is contrary to the zoning. There is no evidence that the existing retail use is a lawful use.
- To permit this development would be tantamount to permitting the overall use.

3.2.2. Other Technical Reports

- EHO – recommending conditions.
- Transportation Planning Section - no objection.
- Water Services Section - no objection.

3.3. Prescribed Bodies

- Irish Water - recommending conditions.

4.0 Planning History

F96A/0569 – Permission granted for the erection of a single storey warehouse extension to existing showroom and warehouse.

Other relevant histories in area:

F03A/0046 change of use of ground floor from light industrial to retail/wholesale of Asian foods for consumption off the premises and changes to front elevation, unit 6 Porter's Avenue, Coolmine Business Park; refused – zoning.

F03A/0439 signage and change of use from light industrial to retail/warehousing unit 42/44 Coolmine Industrial Estate; refused – zoning.

F05A/0388 change of use of ground floor and first floor from workshop/showroom to local retail and office, unit 9 Porter's Avenue, Coolmine Business Park; refused – GI zoning.

F05A/1783 change of use of ground floor and first floor from workshop/showroom to local retail and office; refused – GI zoning.

F08A/0761 retention change of use from retail to deli-carvery for existing commercial unit 2, Coolmine Business Park; refused – GI zoning.

FW10A/0031 change of use of 1m² existing ground floor cash and carry retail area to off licence sales, refused – GI zoning

FW13A/0123 retention of change of use retail area to off licence sales, refused.

PL06F.243532 PA Reg Ref FW14A/0045 temporary change of use industrial to retail area, refused - GE zoning

change of use industrial to retail area to off licence sales, refused –

FW17A/0230 retention of change of use of ground floor of unit 31 Porter's Avenue, to local food store, dog groomers and tattoo parlour, granted LC zoning

5.0 Policy Context

5.1. Development Plan

Fingal County Development Plan 2017-2023 is the operative plan, relevant provisions include:

Zoning Objective 'GE' General Employment, Provide opportunities for general enterprise and employment.

Vision: Facilitate opportunities for compatible industry and general employment uses, logistics and warehousing activity in a good quality physical environment.

General Employment areas should be highly accessible, well designed, permeable and legible.

Permissible uses include Retail - Local < 150 sqm nfa - to serve the local working population only.

The GE' zoning applies the eastern side of Porters Road and the northern side of Porter's Avenue. The western side of Porters Road and part of the southern side of Porter's Avenue. are zoned 'LC' Local centre.

5.2. Natural Heritage Designations

- 5.2.1. The nearest Natura sites are South Dublin Bay and River Tolka SPA (site code 004024) located c 11 km to the east and Rye Water Valley / Cartron SAC (site code 001398) located in excess of 7km to the west, straight line distance, from the subject site.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development and to 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 and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. RG Greene & Associates, Consulting Engineers have submitted this appeal on behalf of the First Party. The grounds includes:
- The Moldova Retail Store Ltd has occupied the premises and has operated a retail unit at this location since May 2012.
 - It has provided an essential service to the extensive residential hinterland since that time.
 - The subject of the application was permission for an off-licence in a specific part of the premises. The historical usage of the remainder of the premises was not the subject of the application.
 - The zoning GE applies to a small pocket of land. The adjoining small pocket of land is zoned LC. There is a substantial residential hinterland surrounding.
 - Retail local is permitted in this zone.
 - A retail element has been associated with the premises since 2006.
 - A broad range of commercial and retail activities have developed in the area because of its central position.
 - The premises is located at a focal point.

- FW18A/0063 – re permission for subdivision and change of use light industrial to restaurant and take away, unit 40 Porters Road, located within 100m of site.
- FW18A/0184 – re permission for retention of change of use from butcher's shop to café/restaurant, 8b Porters Avenue, located within 100m of site.
- Reason 1
 - Retail is permitted in this zone.
 - The proposed development does not set an undesirable precedent in an area which contains a broad range of services appropriate to a local centre on the opposite side of the roadway.
 - The use of the premises for part off-licence use would be an appropriate ancillary use of a retail premises in a local centre.
 - The substantial residential hinterland is poorly served by off-licence uses.
- Reason 2
 - It will enhance the restricted local centre on the opposite side of the roadway.
 - It will contribute to the sustainability of the local centre
- Reason 3
 - A retail element has been in existence 22 years.
 - The use is not incompatible.
 - It does not compromise the existing adjoining industrial uses or future expansion or changes to same. Some of the adjoining industrial units remain vacant because of the incompatibility of scale and location with the needs of modern industrial use.
 - The demand for retail and associated services in this area is expanding.

6.2. Planning Authority Response

- 6.2.1. The planning authority has responded to the grounds of appeal. The response includes:

- The existing use of the building on site does not appear to be authorised for retail use. As such and notwithstanding the material contravention of the land use zoning a change of use if permitted could be interpreted as being tantamount to permitting the overall use of the site.
- Re precedent cited, each case must be considered on its own merits.
- A portion of the Coolmine Industrial Estate was rezoned as part of the current Development Plan process from GE to LC. The LC zoning did not include the application site.

7.0 **Assessment**

7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, material contravention. impact on local centres, major town centres, town and district centres, and compatibility with existing adjoining industrial uses, and the following assessment is dealt with under those headings.

7.2. **Appropriate Assessment**

7.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment 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.

7.3. **Material Contravention**

7.3.1. The first refusal reason is based on material contravention of the zoning, that having regard to the nature of the retail use proposed, it is considered to materially contravene the GE land use zoning objective.

7.3.2. The site is zoned GE in the current Fingal County Development Plan, the objective for which is to provide opportunities for general enterprise and employment. The vision for the zone is to facilitate opportunities for compatible industry and general employment use, logistics and warehousing activity in a good quality physical environment. Retail units with a net floor space less than 150 sq.m. and which serve the needs of the local working population would be favourably considered. Other types of retailing are not permitted.

- 7.3.3. The grounds of appeal refers to the resident population as justification for the proposal. This is not the population which permissible shops within this zoning are intended to serve.
- 7.3.4. I consider that section 37(2)(b) of the Planning and Development Act 2000, as amended, is applicable in this instance in that the planning authority has decided to refuse permission on the grounds that the development materially contravenes the development plan. I would concur with the said conclusion for the reasons set out above. The Board is only at liberty to grant permission save where a development meets one of four criteria. In this regard I submit that:
- (a) The proposed development is not of strategic or national importance,
 - (b) The objectives of the development plan are quite clear insofar as the proposed development is concerned.
 - (c) There are no specific requirements set out in policy directives, relevant policies of the government nor regional planning guidelines which would support such a proposal.
 - (d) The pattern of development and permissions granted in the area since the making of the development plan do not suggest a predisposition to such type development.
- 7.3.5. As the proposal does not meet any of the criteria I do not consider that this provision can be invoked, therefore the Board may not overturn this refusal reason of the planning authority's decision.

7.4. Impact on local centres, major town centres, town and district centres.

- 7.4.1. The second refusal reason refers to the impact on designated centres. The grounds of appeal states that this development will enhance the restricted local centre on the opposite side of the roadway and contribute to the sustainability of the local centre.
- 7.4.2. The planning authority response states that although a portion of the Coolmine Industrial Estate was rezoned as part of the current Development Plan process from GE to LC, the LC zoning does not include the application site.
- 7.4.3. Planning for retail development in terms of its location and need is an important tenant of the proper planning and sustainable development of an area. The area in which the site is located is not a designated centre. Its location outside any

designated centre, albeit in proximity to one, cannot be said to contribute to the sustainability of the local centre.

7.4.4. I concur with the second refusal reason.

7.5. Compatibility with existing adjoining industrial uses.

7.5.1. The third refusal reason refers to the development being incompatible with existing adjoining industrial uses, that having regard to the nature and type of the retail facility proposed and its location within GE zoned lands, the proposed development represents an incompatible land use, compromises the existing adjoining industrial uses and future expansion or changes to same. The grounds of appeal arguing that the use is not incompatible, states that a retail element has been in existence 22 years; the development does not compromise the existing adjoining industrial uses or future expansion or changes to same. It argues that the scale and location of units does not meet the needs of modern industrial use and the demand for retail and associated services in this area is expanding.

7.5.2. I do not accept that the scale or location of the industrial units does not meet the needs of modern industrial use. Even in this area, the scale of units can be seen to be diverse. It appears to be the case that demand for retail space is displacing industrial uses and therefore I accept that to allow the proposed development at this location would set an undesirable precedent and would militate against the aims of the development plan to support and consolidate existing industrial areas.

8.0 Recommendation

8.1.1. In the light of the above assessment I recommend that planning permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

The site is within an area zoned GE 'General Employment' in the current Fingal County Development Plan, the objective for which is to provide opportunities for general enterprise and employment. This objective is considered reasonable. Having regard to the nature of the retail use proposed which would serve a population greater than that of the general employment zone, it is not considered to meet the needs of the local working population, only. The proposed development

would, therefore, materially contravene the said development objective of the current Fingal County Development Plan and would militate against the consolidation of existing industrial areas as advocated in the said Plan. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

Planning Inspector

15 July 2019

Appendices

Appendix 1 Photographs

Appendix 2 Fingal County Development Plan 2017-2023 extract.