



An  
Bord  
Pleanála

## Inspector's Report

### ABP-305089-19

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<b>Development</b>	Change of use from retail to public house at ground floor and associated site works
<b>Location</b>	Ground Floor, Unit 4 Parkside, Navan Road, Main Street, Mulhuddart Village, Dublin 15
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	FW19A/0026
<b>Applicant(s)</b>	Endotron Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Endotron Ltd.
<b>Date of Site Inspection</b>	30 <sup>th</sup> October 2019
<b>Inspector</b>	Ciara Kellett

## 1.0 Site Location and Description

- 1.1. The appeal site is a retail unit located on the ground floor of a three-storey contemporary development named Parkside. Parkside is located on the Main Street in Mulhuddart Village, Dublin 15. The Main Street runs parallel and north of the Navan Road (N3). Blakestown Road to the south-east of the building forms a T-junction with Main Street. Parkside currently contains a mix of retail, gym, takeaways and insurance services. The subject unit is currently occupied by the convenience store 'Eurospar' and is located towards the south-eastern end of the building. The upper floors appear to be occupied by offices and casino type uses.
- 1.2. The nearest residential areas are The Green and The Hill located to the north-west and south-west of Parkside. A green area serving the residential development is located to the rear of Parkside. At the front Parkside opens directly on to a wide footpath on the Main Street, and parallel parking is provided along the road. In addition, there is surface parking provided to the south-east and basement parking is available which is accessed from the other end of the building, i.e. the north-western end. Another contemporary development is located on the opposite side of the Main Street comprising of a betting office, An Post and a Spar unit.
- 1.3. Appendix A includes maps and photos.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for a change of use from an existing retail 'Eurospar' to a Public House at Unit 4, Parkside. The proposal is for a single storey lounge bar with a maximum occupancy of the order of 220 persons with a floor area of 361sq.m. It is stated that there will not be a function room or late opening activities. Deliveries will be made to the rear and the storage of kegs will take place in an enclosed store at the rear. The cold room will be accessed from within the premises. The initial application form and public notices indicated that a smoking area would be located to the rear. Following Further Information, the smoking area is now proposed to the front of the building in a cordoned off area.
- 2.2. No drawings of the existing layout are provided. The drawings of the proposed development indicate a layout of lounge seating areas, as well as a corner serving

bar. Toilets and an office are indicated as well as the cold room which is accessed from the office. Car parking spaces in the basement are indicated as being for the use of the public house. A timber fence is indicated to the rear of the development separating it from the green area to the south-west.

- 2.3. It is stated that the name of the public house, and therefore detailed signage, has not been decided and it is requested that a condition of any planning permission would be included to enable signage to be agreed.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to refuse permission for one reason:

*The proposed development would result in a smoking area to the front of the property, outside of the site edged red, and the control of the applicants, on an area that appears as part of the public footpath, the applicant has not demonstrated that they have the legal entitlement or ownership to extend out to the front of the premises. Furthermore this would lead to people congregating in the front of the building for extended periods. This would seriously injure the amenities of the property in the vicinity, and be contrary to the proper planning and sustainable development of the area.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority's decision. In summary it includes:

- Site is located in an area zoned 'LC' i.e. Local Centre – 'protect, provide for and/or improve local centre facilities'.
- Considers the principle of development is acceptable within the zoning 'LC' and will not impact unduly in a negative manner on the visual amenities of the area.
- Notes signage will require a separate planning application.

- Considers that the development may have a positive impact on the amenities of the area but there is potential for negative impact from noise, light, and disruptive behaviour. In this context it is considered that the applicant has not indicated the location of the smoking area, the purpose of the area at the southern end of the premises adjacent to the cold room, the nature and quality of light and noise screening at the southern area having regard to the fact that it abuts public open space and residential accommodation to the south-west. Other concerns include access to cold store and transference of product to and from the cold store. Furthermore, it has not been indicated how deliveries will be achieved.
- Considers the proposal is acceptable with respect to the availability of parking.
- The Planner's report concludes by saying there are a number of issues to be addressed by way of Further Information including the use of the external yard area to the rear of the building. It is stated that this area should not be open to customers or staff during the opening hours of the premises.
- Four items of Further Information are requested including additional plans and written details to: 1. Clarify the use of the external area, clarify what arrangements are proposed to store refuse, kegs and bottles which should be internalised within the building, clarify accommodation of smokers, ventilation arrangements, provide full details of cooling equipment for cold room and details of external lighting, and to provide location of all sensitive receptors in the immediate vicinity; 2. Provide details of deliveries; 3. Provide information related to the preparation and sale of food; and 4. Detail opening hours.
- The applicant responded with additional drawings. The applicant indicated that the external yard to the rear is now not accessible except for emergencies and will not be used as a smoking area. Deliveries will be made via this yard. An amendment has been made whereby a refuse store is adjacent to the cold room directly accessible by staff from the interior of the premises. It is stated that the forecourt at the front of the premises is owned by the applicant and will be cordoned off for smokers. Ventilation is detailed and the air conditioning units will be located in the basement. Bulkhead

lighting to the front is indicated. Another drawing indicates the location of the nearest sensitive residential receptors – 25m from No. 14 The Green and 23.6m from the house across the road. All other premises are commercial in nature and as such are not considered to be sensitive receptors.

Deliveries/refuse collections will occur from the private access roadway leading to the car park to the yard at the rear and smaller deliveries will be made at the front. Car parking and loading bays are provided at the front. No food preparation will be done on the premises, hence no kitchen is provided. Any food will be of the soup-sandwiches variety and will be prepared off-site. Normal public opening hours will be maintained.

- The Planner in a follow up report considers the response. The proposal to make the rear yard inaccessible to patrons is considered acceptable. It is also considered that the proposal to make the cold room deliveries and refuse collection from this area during normal working hours acceptable. However, there are concerns with the proposal for the smoking area to the front of the building outside the red line and outside of the control of the applicants on the public footpath. It is considered that it has not been demonstrated that the applicant has legal entitlement or ownership to extend out to the front of the premises and it would lead to people congregating in the front of the building which would be detrimental to the amenities of the area.
- Concludes that the applicant has addressed a number of items but that the issue of the smoking area has not been resolved. It is considered that the design of the smoking area will need to be appropriately designed, sound-proofed and ventilated and in the absence of such details it is considered that the proposal should be refused. Ventilation and food preparation responses are considered acceptable.
- The Planner recommends refusal.

The decision is in accordance with the Planner's recommendation.

### 3.2.2. Other Technical Reports

- **Transportation Dept:** Following response to FI, no objection subject to conditions.

- **EHO:** Following response to FI, no objection subject to conditions.
- **Water Services:** Following response to FI, no objection subject to conditions.

### 3.3. Prescribed Bodies

- **Irish Water:** No objection subject to conditions

### 3.4. Third Party Observations

- 3.4.1. There were two submissions objecting to the proposal which were not from nearby residents. In summary objections related to lack of parking, traffic and deliveries, noise and litter, waste management and lack of 'as existing' drawings.

## 4.0 Planning History

There are a number of planning applications relating to the development of the Parkside building, as well as for a bar in the subject unit. Of relevance:

- **FCC FW16A/0110:** This application for a change of use from retail to a public house was deemed to be withdrawn in March 2017, when a request for Further Information in a similar vein to the subject application was not responded to within 6 months.

In the vicinity there have been a number of applications for commercial activity including:

- **ABP 303919/FCC FW19A/0187:** Permission was refused by the Board in July 2019 for the demolition of the existing two storey public house and construction of 3 no. Commercial Units and 46 No. Apartments. There were two reasons for refusal of permission including absence of information with respect to flooding concerns due to the location of the development, as well as absence of proposals to divert a foul sewer pipe. In addition, the Board was not satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on European sites.

## 5.0 Policy Context

### 5.1. Fingal County Development Plan 2017 – 2023

5.1.1. The area is located in the village of Mulhuddart in an area zoned 'LC – Local Centre – Protect, provide for and/or improve local centre facilities' as illustrated on Map 12.

5.1.2. Chapter 7 refers to Noise Pollution and states that

*When considering applications for new developments or uses likely to increase noise levels and cause an unacceptable degree of disturbance, the Council will seek to contain and minimise noise. This is of particular concern in the urban areas where night-time activities such as public houses, clubs and restaurants and day-time uses such as factories have a significant impact on residential amenity.*

5.1.3. Chapter 11 identifies Land Use Zoning Objectives and Chapter 12 refers to Development Management Standards.

5.1.4. Chapter 11 lists uses that are Permitted in Principle within the LC zoning. A Public House is included on the list.

5.1.5. Chapter 12 considers Town and Village Centres. It is stated that

*Town, village, district and local centres are the primary focus of economic, community and residential development throughout the County. To ensure this development takes place in a sustainable and efficient manner, mixed use developments are essential. Such mixed uses should complement each other and where this is not possible segregation of uses should take place*

Objective **DMS04** states:

*Assess planning applications for change of uses in all urban and village centres on their positive contribution to diversification of the area together with their cumulative effects on traffic, heritage, environment, parking and local residential amenity.*

## 5.2. Natural Heritage Designations

There are no designated sites in the vicinity. The nearest site is the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A First Party appeal has been submitted on behalf of the applicant accompanied by drawings, and a copy of the Land Folio Map indicating land ownership to the middle of the road. In summary it includes:

- Reference to Request for Further Information at Planning Authority stage - states that from that request it was clear that the Planning Authority was adamant that the rear yard was to be inaccessible except as an emergency escape route and was not to be used by patrons of the premises.
- In response it was proposed that smokers would be accommodated in an area to the front of the premises in the ownership of the landlord. The area is outlined in Drawing AI-03. It is stated that there is no other option but to make provision at the front, if the rear is to be unavailable.
- Considers that it is known to the Council that the footpath is vested in the landlord because the Council sought the landlord's permission to locate a disabled parking space to the front of the premises.
- The overall width of the footpath from the front wall of the premises to the kerb is 5.3m. When the smoking area is deducted the net clear width is 4.1m. The smoking area proposed extends 1200mm to the front and will be enclosed by a rail and canvas barrier.
- The nearest dwelling to the smoking area is 23.5m across the busy Main Street.
- Concludes that this local pub will provide a much-needed amenity which the village is sorely lacking and restates the entitlement of the applicant to provide



a smoking area to the front, and the appropriateness of so doing given its location on a busy commercial street and its distance from dwellings.

## 6.2. **Planning Authority Response**

The Planning Authority responded to the appeal. In summary it includes:

- Consider the issues were adequately raised in the Planner's Report.
- Consider reasons for refusal should stand as while public bars can contribute in a positive manner there are important amenity issues that are required to be taken into account.
- Each application must be judged on its own merits and the Planning Authority are firmly of the opinion that if the development was permitted, it would lead to people congregating in front of the building for extended periods detrimental to occupants of neighbouring properties and the area generally.
- Request the Board to uphold their decision.

## 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. I am satisfied that the principle of a public house in this location has been deemed acceptable. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Location of Smoking Area – Impact on amenities
- Appropriate Assessment

### 7.2. **Location of Smoking Area – Impact on Amenities**

7.2.1. The Planning Authority are satisfied that the principle of a public house on the Main Street of Mulhuddart in a commercial centre is acceptable which I concur with. I am satisfied that the loss of a retail unit is not an issue having regard to the various other retail options including a Spar and an Aldi supermarket in the vicinity. Following the Request for Further Information and the applicant's response, issues such as

deliveries, location of waste and refuse collection, location of kegs, etc. have been resolved. The outstanding issue and the only reason for refusal of permission is the smoking area and the proposed location to the front of the premises. The revised location of the smoking area to the front was deemed unacceptable by the Planning Authority due to concerns regarding congregation of people, as well as queries about land ownership.

- 7.2.2. The applicant has supplied information indicating that ownership extends over the proposed area, and therefore, the provision of a smoking area to the front of the premises can be provided. I draw the Board's attention to the Planning and Development Act which states that a grant of permission is subject to the provisions of section 34(13) of the Act, and the developer must be certain under civil law that he/she has all rights in the land to execute any grant of permission. However, based on the information on file, I am satisfied that this ownership issue is not a reason for refusal.
- 7.2.3. In my opinion the issue to be addressed is the potential impact on amenities due to the location of the smoking area to the front or failing that, to reconsider a smoking area to the rear as per the original proposal.
- 7.2.4. In the first instance, I draw the Board's attention to the drawing submitted with the appeal and the Further Information response, indicating the nature of the surrounding uses. The building in which the unit is located would appear to have no residential uses. At ground floor there are a variety of commercial uses as listed previously, e.g. insurance services, a butcher, a tanning salon, car parts, and takeaways. At first floor and above there are offices, a gym and a casino. At the front of the building there is a wide footpath, parallel parking and across the road there is what appears to be a single dwelling as well as another contemporary building housing several commercial units. There are no other dwellings in the vicinity on the Main Street. The nearest dwellings are to the west and south-west of the building c.25m away and behind well-established trees and hedgerows.
- 7.2.5. Having regard to this, it could be argued that a smoking area would not unduly impact on the amenities of sensitive receptors due to the distances involved. With respect to the rear yard originally proposed by the applicant, I note that the Environmental Health Officer (Air and Noise Unit) did not object to the proposal but

requested various conditions be appended in the event of a grant relating to noise limits and emissions of odours. Furthermore, I note that there were no objections from residents in the neighbourhood. Notwithstanding this I have concerns with a rear yard smoking area overlooking a green area for residents use, as well as concerns with acoustic and odour screening. The Board may wish to seek further information from the applicants with respect to noise and odour screening, should it be of a mind to grant permission and of the opinion that the option of the rear yard as a smoking area is preferable.

- 7.2.6. The smoking area now proposed extends 1200mm from the front of the premises and is enclosed with a rail and canvas barrier. Currently there are planters either side of the building which provide an approximate indication of the width with respect to the footpath. The applicant states that there will be a footpath of 4.3m in width remaining (and as measured on the drawing). I am satisfied that there will continue to be more than sufficient room for pedestrians to comfortably pass without being obstructed by the smoking area.
- 7.2.7. Having established that there is sufficient room for the smoking area without causing difficulties for pedestrians, I now address concerns regarding people congregating which can lead to problems with noise and impacts on amenities. I note that there is no seating area proposed and the area is unlikely to be conducive for prolonging any stay. There are very few sensitive receptors nearby and a certain degree of noise, light and activity should be expected having regard to the location on a busy main street with or without the public house.
- 7.2.8. The general area is that of a typical busy main street with modern contemporary buildings and currently there is no public house in operation. As previously stated, a public house is a use acceptable in principle in the zoning and in my opinion a Main Street is where a public house is best located. There are few sensitive receptors in close proximity, there were no objections from local residents, and this type of use would improve night time activity in the area. Moreover, in the planning application documents, the applicant has confirmed that the premises will not be opened beyond normal pub operating hours and they will not seek to trade as a late-night venue. Of key importance, the use would be subject to other licencing requirements such as the Licencing and Liquor Act.

7.2.9. In conclusion, I am satisfied that with a suitable noise monitoring condition and an odour condition the change of use to a public house on the Main Street would not detract from amenities in the area.

### 7.3. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the 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.

## 8.0 **Recommendation**

8.1. I recommend that planning permission subject to conditions should be granted for the following reasons and conditions.

## 9.0 **Reasons and Considerations**

Having regard to the sites location on the Main Street of Mulhuddart on lands zoned “Local Centre” in the Fingal County Development Plan 2017-2023, the policies of the planning authority as set out in the Fingal County Development Plan 2017-2023, to the nature, scale and design of the proposed development, and to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area, and would be acceptable in terms of pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 **Conditions**

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 17th day of June 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the
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	<p>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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs, including signs relating to the name of the establishment and including any signs installed to be visible through the windows, advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building or within the curtilage of the site, unless authorised by a further grant of planning permission.</p> <p><b>Reason:</b> To protect the visual amenities of the area.</p>
3.	<p>(a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling shall not exceed:-</p> <p>(i) An Leq,1h value of 55 dB(A) during the period 0800 to 2300 hours from Monday to Sunday inclusive (the T value shall be one hour).</p> <p>(ii) An Leq,15 min value of 45 dB(A) at any other time (the T value shall be 15 minutes).</p> <p>The noise at such time shall not contain a tonal component.</p> <p>(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.</p> <p>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.</p> <p><b>Reason:</b> To protect the residential amenities of property in the vicinity of the site.</p>

4.	<p>Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
5.	<p>The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of public health and to protect the amenities of the area.</p>
6.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p> <p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
7.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.</p>

	<p><b>Reason:</b> 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.</p>
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Ciara Kellett  
Senior Planning Inspector

14<sup>th</sup> November 2019