



An  
Bord  
Pleanála

## Inspector's Report

### ABP-305159-19

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<b>Development</b>	Change of use from industrial/warehouse use to retail warehouse use at ground floor.
<b>Location</b>	Unit 5, Long Mile Road Business Park, Dublin 12
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	4369/18
<b>Applicant(s)</b>	Forecourt Promotions
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Goldstein Property ICAV
<b>Date of Site Inspection</b>	12 <sup>th</sup> November 2019
<b>Inspector</b>	Colin McBride

## 1.0 Site Location and Description

- 1.1 The appeal site is located in Long Mile Business Park, a business unit that would appear to contain 8 separate units and which is located to the east of the junction between Long Mile Road and Walkinstown Avenue in the south western city suburb of Walkinstown. The units are in submissions referred to as the Long Mile Business Park. The overall unit is perpendicular to the Long Mile Road and has a south to north axis. The unit which is the subject of this appeal is located centrally within the business park units and there are similar units to north and south of the appeal site.
- 1.2 The site, which is rectangular in configuration, has a stated area of 772m<sup>2</sup> with the unit itself having a stated internal floor area of 704m<sup>2</sup>, 517m<sup>2</sup> on the ground floor and 187m<sup>2</sup> at the mezzanine level. The structure is a modern frame building with the walls externally clad and with metal low A pitched gable roofs on the western and eastern elevations. The units vary in visual appearance with some better visually maintained than others. The units are also used for a variety of commercial uses
- 1.3 There is an internal roadway adjoining the western elevation serving the appeal site and adjoining units with provision for parking on the western side of the roadway. There is no public footpath adjoining the western elevation. This road ends in a cul de sac at the northern end of the road. There is also a roadway to the east of the eastern elevation serving a number of retail/commercial units including an Aldi retail unit with a narrow footpath separating the eastern elevation of the appeal site from this roadway. Many of units including the appeal site have openings on the eastern elevation which appear to be a fire door or constructed initially for that purpose. There is also parking associated with the group of eight units located to the south of the overall building.
- 1.4 Specifically in relation to the subject site at the western elevation there is a canopy extending across the service road which adjoins a major section of this elevation. There are two doorways, one a large roller shutter door at the northern end of the elevation under the canopy and a convention door opening at the southern end. On the eastern elevation there are two doorways with an advertising sign over the

southern doorway referring to “wallpaper warehouse and paint clearances”. There were also freestanding signs on the footpath associated with the use/unit and traffic cones on roadway.

## **2.0 Proposed Development**

- 2.1. Permission is sought to extend the temporary planning permission previously granted under ref no. 3678/15 to a full planning permission which related to the change of use from industrial/warehouse use to retail warehouse use at ground floor only (300sqm in total) selling DIY items such wallpaper, paint and related items.
- 2.2. The proposal was revised in response to further information with the provision of a public access through an existing doorway on the western elevation with a reconfiguration of the internal layout.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission granted subject to 6 conditions. Of note is the following condition.

Condition no. 2: Adequate access to be maintained to the right of way along the eastern boundary.

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

#### **3.2.1. Planning Reports**

Planning report (12/11/18): Further information including clarification of location and level of car parking to serve the development, details of safe access routes for pedestrians, details of signage and the information sought by the Transportation Planning Section.

Planning report (19/07/19): The proposed use was considered to be in accordance with proper planning and sustainable development of the area. A grant of permission was recommended subject to the conditions outlined above.

### 3.2.2. Other Technical Reports

Drainage Division (23/11/18): No objection.

Transportation Planning (11/01/19): Further information including submission of accurate floor plans, revised drawings showing how entrance will be re-orientated towards the western side and revised drawings showing markings and signage for car parking.

Transportation Planning (08/07/19): Clarification of further information including details of signage identifying parking and details of road marking and signage directing customers to dedicated parking.

### 3.3. Prescribed Bodies

3.3.1 None.

### 3.4. Third Party Observations

3.4.1 Submission from Goldstein Property ICAV. The issues raised can be summarised as follows...

- Rights of access inadequate to the east, the area to the west would be inadequate for the provision of car parking, turning movement and safe pedestrian access.

## 4.0 Planning History

4.1 PL29S.243452 (2137)14: Permission refused for a change of use from industrial/warehouse use to retail at ground floor level only, new cladding, signage and access. Permission refused for one reason...

*1. The proposed development is reliant on access and car parking on the western side of the subject site, which is an area restricted in size and serving a multiplicity*

*of industrial/warehouse units, without appropriate provision for safe pedestrian movement and for safe vehicular turning movements and as proposed the primary access for pedestrians to the development is on the eastern elevation. The proposed development would, therefore, give rise to a disorderly and haphazard form of development and would endanger public safety by reason of traffic hazard, arising from the generation of conflicting pedestrian and traffic movements on this cul-de-sac devoid of defined pedestrian circulation routes and which also includes conflict with vehicular access, parking movements and loading/unloading for the existing industrial/warehouse units. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

4.2 PL29S.242319 (2063/13): Permission refused for retention of change of use from industrial/warehouse to retail, retention of fire exit doors and signage. Permission refused based on two reasons...

*1. The Z14 – Strategic Development and Regenerations Areas – zoning objective for the subject site, as set out the Dublin City Development Plan 2011–2017, is to seek the social, economic and physical development and/or rejuvenation of an area with mixed use. It is considered that the proposed low-end retail development would, in the absence of any rejuvenation/regeneration as sought under the said zoning objective, give rise to uncoordinated piecemeal retail development in an existing industrial/warehouse area, would give rise to ad hoc and haphazard development, and would fail to support the zoning objective set out for the area in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

*2. The proposed development is reliant on access and car parking on the western side of the subject site, which is an area restricted in size and serving a multiplicity of industrial/warehouse units without appropriate provision for pedestrians, for safe vehicular turning movements, or for adequate car parking. The proposed development, which does not provide for adequate car parking, would therefore give rise to a disorderly, cramped form of development and would endanger public safety by reason of traffic hazard, arising from the generation of conflicting traffic*

*movements on this cul-de-sac, including conflict with vehicular access, parking movements and loading/unloading for the existing industrial/warehouse units. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1 The relevant Development Plan is the Dublin City Development Plan 2016-2022. The appeal site is zoned Z14 with a stated objective ‘to seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and ‘Z6’ would be the predominant uses’.

Warehousing (retail/non-food)/retail park is a use identified as being open for consideration within this zoning.

The site is identified under Chapter 14 as a Key District Centre

Key District Centre 6 Naas Road

Within these identified key district centres, the following general development principles shall apply:

- Population: Establish significant residential population bases with diversity in unit types and tenures capable of establishing long-term integrated communities.
- Density: Ensure the establishment of high-density developments capable of sustaining quality public transport systems and supporting local services and activities. Account should be taken in any such development of any distinct or valuable architectural or historical features that influence the urban form, character and scale of the existing area.
- Transport: Ensure provision is made for quality public transport systems. Provide improved access to these systems and incorporate travel plans, which prioritise the primacy of pedestrian and cyclist movement and address the issue of parking facilities and parking overflow.

- Commercial/Retail: The creation of a vibrant retail and commercial core with animated streetscapes.
- Community and Social Services: The centres will be encouraged to become the focal point for the integrated delivery of community and social services.
- Employment: Encourage the provision of mixed-use developments incorporating retail, office, residential and live-work units, and the creation of small startup units. (The floor area limitations in respect of offices given in the land-use zoning objective Z4 shall not apply in the case of identified key district centres, and applications involving office development in these areas shall be assessed on their merits, taking account of the overall objective to provide for a mixed-use environment.)
- Built Environment: The creation of high quality, mixed-use urban districts with a distinctive spatial identity and coherent urban structure of interconnected streets and child-friendly public spaces and urban parks. Development should have regard to the existing urban form, scale and character and be consistent with the built heritage of the area. Capacity for development: Encourage the development/re-development of under-utilised sites.

#### Section 15.1 Development Principles for Strategic Development and Regeneration Areas

The city contains a number of strategic development and regeneration areas (SDRAs) capable of delivering significant quanta of homes and employment for the city, either through the development of greenfield sites or through the regeneration of the existing built city. Many, though not all, of these sites are zoned Z14 within the development plan, where the overall focus is To seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and 'Z6' (enterprise and employment use) would be the predominant use. The active land management approach as referred to in the core strategy and paragraph 6.5.4 will be pursued in the development of the SDRAs set out below.

The appeal site is part of a Strategic Development and Regeneration Area, SDRA 5 Naas Road Lands.

## 5.2. Natural Heritage Designations

5.2.1 None.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by Goldstein Property ICAV. The grounds of appeal are as follows...

- The appellants own the car park and commercial units that adjoin the appeal site to the east. The appellants note that there have been issues concerning unauthorised access and use of car parking facilities by customers and staff of the unit subject to the appeal on the appellants' lands to the east. This is a result there being inadequate parking associated with the appeal site and the Long Mile Business Park (LMBP) within which the appeal site is located.
- It is noted that the units in question have a right of access to a 1.2m strip running to the east of the units on the appellants' property for fire escape purposes. It is noted in time the units in the LMBP provided shop fronts and public access from the eastern side including the unit on the appeal site.
- The existing fence between the LMBP and the appellants' property do not facilitate internal access within the LMBP to the footpath along the eastern elevation of the units with the business park.
- It is noted that the use in question and adjoining uses have a high requirement for car parking spaces with insufficient spaces within the LMBP as well as insufficient space to cater for delivery vehicles. The appellants notes the intention of applicants to increase access instead of relying on access from the eastern elevation however the applicants have not demonstrated sufficient consent from the adjoining owners to cross their lands within the LMBP. It is also noted that the area to the rear of the site



earmarked for turning of vehicles is a gated area and not in control of the applicant.

- It is noted that the units 6 and 7 of the LMBP do not have the right of access to enter onto the appellants' lands apart from the narrow strip of land located along the eastern elevation despite claims by the applicants.
- It is noted that the proposal has insufficient car parking and facilities for turning movements and would be traffic hazard and pose a serious safety risk.

## 6.2. Applicant Response

6.2.1 A response was received from the applicants Forecourt Promotions Limited.

- The response indicates that the applicants were granted easements on both the western and eastern side of the building in 1996 (documents included regarding such). The applicants noted that the unit in question has operated for four years without issue until the appellants acquired the lease to lands to the east to the rear of the Aldi unit.
- The applicants note that the further information submitted is accurate.
- It is noted the easement on the eastern side of 3.5m wide for the purposes of emergency access and maintenance of the external wall.
- The fire escape doors on the eastern elevation were required by the fire officer and having planning permission.
- The fence at the Farmhouse Café does not curtail use of either centre as the lease of easement runs to the Long Mile Road.
- Unit 5 has designated car parking spaces for staff as well as sufficient customer spaces. The internal gate is temporary and is open during business hours. The applicants have sufficient rights of access and control on the western side of the building to facilitate access, parking, deliveries and turning movements.

### 6.3. Planning Authority Response

6.3.1 No response.

### 6.4. Further Responses

6.4.1 Response by the appellants, Goldstein Properties ICAV.

- The appellants dispute the width of easement available on their lands to the east of the units in the LMBP.
- There were objections to the proposal prior to the appellants acquiring the property to the east.
- The appellants have attempted to resolve issue of trespass in an amicable manner.
- The appellants reiterate the concerns that the arrangements on site are inadequate to cater for the turning movements, pedestrian safety issues and that the reason for refusal under previous cases still apply.
- It is noted that none of the units in the LMBP can be facilitated access for traffic or parking from the property to the east with only rights of access for emergency/fire escape only.

## 7.0 Assessment

7.1. Having inspected the site and examined the associated documents, the following are the relevant issues in this appeal.

Principle of the proposed development.

Right of access, car parking and traffic.

Appropriate Assessment.

7.2 Principle of the proposed development:

7.2.1 Permission is sought to extend the temporary planning permission previously granted under ref no. 3678/15 (five year period) to a full planning permission which

related to the change of use from industrial/warehouse use to retail warehouse use at ground floor only (300sqm in total) selling DIY items such wallpaper, paint and related items. The permission granted was for a period of two years. As noted under planning policy section, warehousing (retail/non-food)/retail park is a use identified as being open for consideration within this zoning.

### 7.3 Right of access, car parking and traffic:

7.3.1 One of the main issues being raised in the appeal concerns right of access. The site is part of the Long Mile Business Park (LMBP) which consist of a number of units. Access to the site is from the Long Mile Road with a 15m wide access laneway with parking located along the majority of western boundary of the LMBP. Based on the information on file the units in the LMBP have a right of way along the eastern boundary. The appellants who are the owners of the development to the east (retail warehousing units and associated car parking) raise concerns that the right of way along the eastern boundary is only for the purposes of fire escape and that the unit in question or other units in the LMBP have no right of access in terms of vehicular traffic, car parking or for main access on the eastern elevation. The applicant has noted that they have easement rights to both the west and the east of the building and that this issue of right of access has only become an issue in recent times since change of ownership of the lands to the east.

7.3.2 The unit in question has its main access door on its eastern elevation. This is the only public access to the unit. The other door on the eastern elevation appears to be a fire door. To the rear of the site is roller shutter door, which appear to be a service entrance. The other door on the rear was locked and appears to be into a part of the unit not subject to this application and in use as a gym. When inside the unit there was no accessibility to the western side of the unit in question. All public access is from the east. One of the main issues raised in the appeal appears to relate to customers of the unit using the existing vehicular access and car parking on the east of the site to access the unit, with this area under separate ownership and no rights of access to use such for the unit in question. This appellants also raises concerns about delivery vehicles using the access and area on the eastern side. The unit in

question does have access on the western side through the LMBP including vehicular access and use of the existing car parking on the western side. The applicants have also identified an area for turning movements on the western side. In response to further information the proposal was revised to provide a public access through an existing door on the western elevation.

7.3.3 Based on the information on file including submission from both the appellants and the applicants, the units in the LMBP do not have a right of access for vehicular traffic and to car parking on the lands to the east of the unit. The rights of access along the eastern side are for the purposes of fire escape/emergency access and maintenance of the wall. There appears to be a dispute regarding the width of such a right of way/easement with the appellants noting it is 1.2m wide and the applicants noting it is 3.5m wide. I would consider that the dispute regarding such is not a planning consideration. I do however consider that the unit in question does not have the benefit of vehicular access or car parking to the east of the unit. As noted above the current public/main access is from the east despite vehicular access to the business park it is located in being from the west and any parking provision serving such being to the west. The unit in question has been subject to two previous appeals (outlined above) concerning the proposed use of the unit as a retail warehouse with the refusal reasons relating to the fact that the proposed development is reliant on access and car parking on the western side of the subject site, which is an area restricted in size and serving a multiplicity of industrial/warehouse units, without appropriate provision for safe pedestrian movement and for safe vehicular turning movements and as proposed the primary access for pedestrians to the development is on the eastern elevation. The current arrangement has never addressed this issue. I would note that in this case the applicant has revised the proposal to provide public access from the west through an existing doorway.

7.3.4 The revised proposal may provide a public access to the west, however the unit still retains its main access on the eastern elevation. In addition I would note as with the previous assessments of the area to the west, such is still restricted in size restricted in size and serving a multiplicity of industrial/warehouse units, without appropriate

provision for safe pedestrian movement and for safe vehicular turning movements and as proposed the primary access for pedestrians to the development is on the eastern elevation. The proposed development would, therefore, give rise to a disorderly and haphazard form of development and would endanger public safety by reason of traffic hazard, arising from the generation of conflicting pedestrian and traffic movements on this cul-de-sac devoid of defined pedestrian circulation routes and which also includes conflict with vehicular access, parking movements and loading/unloading for the existing industrial/warehouse units. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

#### 7.4 Appropriate Assessment:

7.4.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest 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.

### 8.0 Recommendation

8.1. I recommend refusal based on the follow reason.

### 9.0 Reasons and Considerations

1. The proposed development is reliant on access and car parking on the western side of the subject site, which is an area restricted in size and serving a multiplicity of industrial/warehouse units, without appropriate provision for safe pedestrian movement and for safe vehicular turning movements and as proposed the primary access for pedestrians to the development is on the eastern elevation. The proposed development would, therefore, give rise to a disorderly and haphazard form of development and would endanger public safety by reason of traffic hazard, arising from the generation of conflicting pedestrian and traffic movements on this cul-de-sac devoid of defined pedestrian circulation routes and which also includes

conflict with vehicular access, parking movements and loading/unloading for the existing industrial/warehouse units. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Colin McBride  
Planning Inspector

13<sup>th</sup> November 2019