



An  
Bord  
Pleanála

## Inspector's Report ABP-305730-19

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<b>Development</b>	Change of Use from Coffee Shop to Multidisciplinary GP Practice.
<b>Location</b>	Unit 1B, Northside Retail Park, Coolock Drive, Kilmore, Dublin 17.
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3671/19
<b>Applicant</b>	Dames JV Pharmacy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	1 <sup>st</sup> Party vs Refusal
<b>Appellant</b>	Dames JV Pharmacy
<b>Observer</b>	None
<b>Date of Site Inspection</b>	16 <sup>th</sup> January 2020
<b>Inspector</b>	L. W. Howard

## 1.0 Site Location and Description

- 1.1. The stated 66.0m<sup>2</sup> application site, is located along the eastern frontage of Coolock Drive, c.225m north of its junction with Oscar Traynor Road, within the residential suburb of Kilmore, north Dublin City (see location mapping attached).
- 1.2. Contextually, Coolock Drive enables connectivity between the Kilmore residential area and the rest of the greater Dublin area. Locally, Coolock Drive structures the separation between the well-established residential neighbourhoods to the west, and the 'Northside Retail Park' to the east. The 'Cadbury's Chocolate' complex borders the 'Northside Retail Park' further to the east.
- 1.3. Located within the 'Northside Retail Park', the application site comprises a 2-storey retail unit at the northern end of the Retail Park, comprised of 4no. large retail units – a convenience foods store, a baby equipment retailer, a home interiors retailer and a discount goods retailer.  

The retail unit, of which the application site forms part, is smaller than any of the other units, and was added to the 'parade' c.10 years after the other buildings comprising the 'Retail Park' were built.

At the time of inspection, the ground floor of this northernmost unit was in use as a pharmacy. The 1<sup>st</sup> floor unit above the pharmacy, currently vacant, is the subject of this application for planning permission – a 'Multidisciplinary GP Practice'.
- 1.4. Direct vehicular access off Coolock Drive is enabled via an entrance in the west facing site frontage. Good sightline visibility is available to both the northern and southern approach, along Coolock Drive. A substantial surface car-park exists to the south, west and north of the retail units, with service delivery access to the rear, eastern side. Coolock Drive is also a well serviced 'Dublin Bus-Route', with two (2no.) Dublin Bus-Stops alongside the 'Northside Retail Park'. This route and bus-stops are currently served with the No.27 and No.27x buses.
- 1.5. 2-storey terraced housing exists to the west and across Coolock Drive from the 'Northside Retail Park' / application site.  

(see photographs attached, taken at the time of physical inspection).

## 2.0 Proposed Development

2.1. Proposed development is to consist of –

- ‘change of use’ from Coffee Shop, to a Multidisciplinary GP Practice at 1<sup>st</sup> floor level, and including ...
- construction of a new platform lift to the rear of the unit from ground to 1<sup>st</sup> floor level, all associated site and ancillary works at this address, in accordance with the Plans as submitted.

2.2. Detailed clarification regarding the substance, composition and spatial arrangement of the proposed development on the application site, is provided by –

- the applicant as part of the planning application documentation and mapping / drawings (received by the Planning Authority date stamped – 01/08/2019), and subsequently in the 1<sup>st</sup> Party Appeal submission, received by the Board date stamped 22/10/2019, and
- the Planning Authority in the Deputy Planning Officers ‘planning report’ dated 26/09/2019.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Decision to ‘Refuse’ planning permission, for 1 no. ‘refusal reason’ as follows –

*“The Zoning Objective for this site is “Z6” – Enterprise and Employment”. A General Medical Practice is considered as being in the use class ‘Buildings for Health, Welfare and Safety of the Public. Such a use is neither permissible nor open for consideration, under the Zoning Objective. The proposed development would therefore contravene materially the Zoning Objective as set out in the current Dublin City Development Plan and would be contrary to the proper planning and sustainable development of the area”.*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The key planning issues considered as follows -

#### Clarification of Background

- Planning permission was granted for use of the 2-floors of the extension to the retail parade, as café.
- Subsequently, the ground floor was laid out, and trades as a 'pharmacy'. The change of use re. 'pharmacy' is exempt development under Class 14(a) of the Planning and Development Regulations.
- Now proposed to change the use of the 1<sup>st</sup> floor to a 'medical general practitioners'.
- The 'floor plan' indicates 4no. medical consulting rooms to be laid out, with reception desk, and a new 2-floor lift structure to the rear.

#### Proposed Development

Proposed development to comprise –

- change of use from 'coffee-shop' to 'multi-disciplinary GP Practice' at 1<sup>st</sup> floor level, and including ...
- construction of a new platform lift to the rear of the unit, from ground to 1<sup>st</sup> floor, and
- all associated site and ancillary works, in accordance with plans as submitted.

#### Principle of Development

- On lands zoned with the '**Z6**' Zoning Objective, "chiefly intended for enterprise and employment, albeit that the uses in this particular parade are retail in nature"
- Clarify that buildings for use re. "the health, safety and welfare of the public" are "not permissible", or "open for consideration" within 'Z6' zoned areas.
- Emphasise that these types of uses are considered to be better suited to designated neighbourhood and district centres, zoned 'Z3' and 'Z4'.

- Distinguish that while the existing commercial retail uses are open for consideration, and the pharmacy at ground floor could be considered “shop (neighbourhood)”, and therefore permissible, a General Medical Practice is not.
- Proposed development is not considered to be in accordance with the Dublin City Development Plan 2016-2022, and with the proper planning and sustainable development of the area.
- Recommend that planning permission be refused

#### Recommendation

- Recommend that planning permission be refused, for 1no. stated refusal reason..

### 3.2.2. **Other Technical Reports**

Eng. Dept. – Drainage Division    No Objection, subject to Conditions (Report – 06/09/2019)

### 3.3. **Prescribed Bodies**

Irish Water    No Report

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

None.

## 4.0 **Planning History**

- 4.1. The evolution of the ‘Northside Retail Park’, within which the application site is located has occurred over the past c.22years, commencing 1997 with the original permission for development including – ‘Retail Warehouse Use’ (4no. units) and ‘Retail Use’ (1no. unit), being granted planning permission by An Bord Pleanala on foot of a 1<sup>st</sup> Party Appeal lodged under **PL29N.103957**. This consequent of the Planning Authority’s decision to ‘refuse’ planning permission under **Ref.0530/97**.

4.2. Each of the –

- City ‘Deputy Planning Officer’s’ report (see Section – ‘Site Planning History’, pp.1-3), and
- The Applicant in the 1<sup>st</sup> Party Appeal submission documentation (see Section 5.0 – ‘Planning History’, pp.4-6),

comprehensively set out the detailed chronology of planning applications and associated planning appeals, relevant to the ‘Northside Retail Park’ and contextualising the current application site therein.

## 5.0 Policy Context

### 5.1. Dublin City Development Plan (2016-2022):

Relevant provisions incl. –

#### **Ch. 14 Land Use Zoning Objectives**

*(see copy of Sections 14.1 – 14.8 attached)*

#### **14.6 Non-Conforming Uses**

*(see attached copies of Ch.14 ‘Land use Zoning Objectives’).*

#### **14.8 Primary Land Use Zoning Categories**

##### **Zoning Objective “Z6” – Employment Enterprise**

Objective: “to provide for the creation and protection of enterprise and facilitate opportunities for employment creation”.

Vision: The ‘Vision’ is one which constitutes an important land bank for employment use in the City, which is strategically important to protect. The primary objective is to facilitate long-term economic development in the City region. Land uses within these areas are therefore envisaged as creating dynamic and sustainable employment.

### **Use Classes related to 'Z6' Zoning Objective**

'Permissible' Uses – (see attached copy Section 14.8.6 'Employment / Enterprise – Zone Z6' Land Use Matrix).

'Open for Consideration' Uses – (see attached copy Section 14.8.6 'Employment / Enterprise – Zone Z6' Land Use Matrix).

**Notably, 'Buildings for the Health, Safety or Welfare of the Public'** as currently proposed (ie. proposed 'Multi-Disciplinary GP Practice', are **neither 'permissible' or 'open for consideration'** land use classes.

## **Appendix 21**

### **Land Use Definitions**

*(see copy of Appendix 21 attached)*

#### **Buildings for the Health, Safety or Welfare of the Public**

Use of a building as a Health Centre or Clinic or for the provision of any medical or health services (but not the use of a house of a Consultant or Practitioner, or any building attached to the house or within the curtilage thereof, for that purpose), hospital, hostel (where care is provided), retirement home, nursing home, day centre and any other building for :

- the provision of residential accommodation and care to the people in need of care (but not the use of a dwelling house for that purpose);
- the use as a residential school, college or training centre.

#### **Medical and Related Consultants**

This applies to the use of part of a dwelling by a medical doctor or related consultant or those engaged in paramedical consultancy. In either case, the practitioner must also be the occupier of the dwelling.

## 5.2. Natural Heritage Designations

None.

## 6.0 The Appeal

### 6.1. 1<sup>st</sup> Party Appeal – Dames JV Pharmacy Ltd. (Unit 1B Northside Retail Park, Coolock Drive, Kilmore, Dublin 17)

In a detailed and comprehensive submission dated 22<sup>nd</sup> October 2019, the applicants (c/o Hughes Planning and Development Consultants), substantiate the grounds of appeal, summarised as follows –

#### 6.1.1. Summary Grounds of Appeal

- Northside Retail Park functions as a mixed-use area and a multidisciplinary GP Practice at the appeal site would greatly benefit local residents in this area.
- The proposed use is not for health / welfare, but instead for a Multidisciplinary Practice.
- The application site is zoned 'Z6' – Employment Enterprise, however, there is a possibility of this site being re-zoned as part of the Council's plans to free up more land for residential and mixed-use development in the coming years.
- The appeal site is served by good public transport and is situated beside supermarkets which will allow visitors to the GP Practice to undertake dual trips, saving patients time and money.
- The ground floor of the unit is currently in use as a pharmacy, which would complement a GP Practice.
- Patients in the surrounding area do not have appropriate access to a GP or other medical practitioners easily and therefore, there is a need for these services in this area.
- The proposed development provides a new platform lift to the rear of the unit which will provide wheelchair access for less able-bodied patients. Doctor surgery's in the surrounding area are not all wheelchair accessible.



- The Unit will have a multi-disciplinary team of different Practitioners which will suit the needs of all residents in the local community.
- The proposed development will not have any undue impacts on the amenities of the surrounding area.

#### 6.1.2. Northside Retail Park / Zoning Objective

- Notwithstanding the existing restrictive provisions of the ‘**Z6** -Enterprise and Employment’ Zoning Objective, against the proposed development, the applicant weights reference to the argues possibility of the application site being rezoned as part of Dublin city Councils plans to free up more land for residential and mixed-use development in the coming years
- In this regard reference City Development Plan 2016-2022 ‘Objective **CEE04**’ which enabled –
  - the targeted survey of those industrial estates with likely redevelopment potential and to make recommendations on how that redevelopment potential might be best achieved, and
  - study on the potential of lands zoned for ‘enterprise and employment’ space, the adequacy of such potential supply, and the issue of under-utilised / vacant lands
- Understood that consequent of Objective **CEE04**, a ‘Study’ was completed and published in February 2019. The applicant references the purpose of the Study as being – “to examine the most appropriate policy and zoning response following a detailed examination of the lands, having regard to the future needs of the City, which include the allocation of more land for residential and mixed-use developments”.
- Emphasise further the Councils reference to both of the ‘National Planning Framework (NPF)’ and the ‘Draft Regional Spatial and Economic Strategy (RSES)’ Objectives on ‘Urban Consolidation’ and ‘Compact Growth’.  
These Objectives “have significant policy and zoning implications in the context of the City Development Plans ‘**Z6** / **Z7**’ Land Use Objectives.
- Having referenced the Councils “**Z6** / **Z7** Study” in some detail, the applicant derives the conclusion that “as it is not considered that the site is within an

economically strategic site, it is considered that there is potential for this site to be re-zoned by the Dublin City Council in their next Development Plan”.

#### **6.1.3. Retired Doctors in the Surrounding Area**

- Whilst several medical Doctors practice in the area, serving the needs of the local population, many of these Doctors are known to have recently retired.
- There are also Doctors practising in the surrounding area, from “surgeries that are not fit for purpose”. Particularly with respect to physical accessibility.
- The proposed GP Practice at Northside Retail Park will provide a ‘platform lift’ to the rear of the unit, allowing patients to easily access the GP Practice.
- Reference increase in demand locally for GP Services consequent of –
  - Local surgeries not taking on new patients,
  - GP retirements in the local area
  - Closure of GP Practices in the area, and
  - Natural population growth in the area.

#### **6.1.4. Visual Impact**

- Proposed development compliant with the ‘Standards’ set out by the Council / Planning Authority
- These encourage the provision of suitably scaled developments subject to the protection of adjacent amenity and other ‘normal planning criteria’.

#### **6.1.5. Access**

- Application site within ‘Northside Retail Park’ is well located, with access to public transport.
- Adjacent to Coolock Drive where there are 2no. ‘Dublin Bus’ Stops (the No’s. 27 and 27x bus routes).
- The Northside Retail Park also has generous surface car parking spaces, enabling off-street car parking and easy access to the proposed GP Practice.

### 6.1.6. **Conclusion**

- Reference the Planning Authority decision under **Ref.3671/19**, refusing planning permission for the proposed development.
- The application site is zoned '**Z6**'. However, assert the possibility of the site being re-zoned as part of Councils plans to free up more land for residential and mixed use development in the coming years.
- Specifically, there is potential for the application site to be rezoned by Council in the next Development Plan.
- The proposed development is acceptable and compliant with the relevant policies and objectives set out in the Dublin City Development Plan 2016-2022 (including – making efficient use of land)
- The proposed development will provide an important addition to 'Northside Retail Park', without negatively impacting the contextual amenity of the surrounding area.
- The proposed development is in accordance with the proper planning and sustainable development of the area.
- "Request that planning permission be granted in this instance".

### 6.2. **Planning Authority Response**

6.2.1. None Apparent

### 6.3. **Observations**

6.3.1. None.

### 6.4. **Further Responses**

6.4.1. None.

## 7.0 **Assessment**

7.1. I have examined the file and available planning history, considered the prevailing local and national policies, inspected the site and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal

submissions, and also encapsulates my de novo consideration of the application. The relevant planning issues relate to :

- Principle and Location of the proposed 'Multi-disciplinary GP Practice' development
- Appropriate Assessment.

## **7.2. Principle and Location of the proposed 'Multi-disciplinary GP Practice' development**

7.2.1. The site is zoned “**Z6** – Employment / Enterprise”, with the objective to “provide for the creation and protection of enterprise and facilitate opportunities for employment creation”. The ‘Vision’ prescribed for these “**Z6**” zoned lands at Northside is one which constitutes an important land bank for employment use in the City, which is strategically important to protect. The primary objective is to facilitate long-term economic development in the City region. Land uses within these areas are therefore envisaged as creating dynamic and sustainable employment.

7.2.2. Having regard to the applicants wording in the application documentation and necessary statutory public notices, I note that the application is for a 'Multi-Disciplinary GP Practice' (to replace 'coffee shop') at the 1<sup>st</sup> floor level on the application site.

7.2.3. Appendix 21 – 'Land use Definitions' of the City Development Plan 2016-2022, enables for the proposed 'Multi-Disciplinary GP Practice' to be considered as within the scope of the “Buildings for the Health, Safety or Welfare of the Public”, defined land use class. Specifically, “Buildings for the Health, Safety or Welfare of the Public” is defined at Section 21.1 – 'Land Use Definitions', as the “use of a building as a health centre or clinic or for the provision of any medical or health services (but not the use of a house of a Consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose), hospital, hostel (where care is provided), retirement home, nursing home, day centre and any other building for :

- the provision of residential accommodation and care to people in need of care (but not the use of a dwelling house for that purpose;
- the use as a residential school, collage or training centre.

- 7.2.4. Noting the application sites location on lands designated with the 'Z6 – Employment / Enterprise' zoning objective, I note that the applicable 'Z6' zoning matrix does not designate a "Building for the Health, safety or Welfare of the Public" as being either a 'Permissible Use' or an 'Open for Consideration' Use' (see copy of Section 14.8.6 – "Employment / Enterprise – Zone 'Z6' attached).
- 7.2.5. Consequently, it must be concluded that the proposed 'Multi-Disciplinary GP Practice' is not permissible within the existing 'Z6' Zoning Objective covering the 'Northside Retail Park', including the application site.
- 7.2.6. Notwithstanding, I have had further reference to the 'planning history' of the 'Northside Retail Park' generally, and the application site particularly. Clearly, no 'pre-existing', 'non-conforming' use exists with respect to the application site, which would enable consideration of the proposed development. Rather, on the information available, this is the first time that a 'Multi-Disciplinary GP Practice', or even a 'GP Practice' is proposed for the application site.
- 7.2.7. I understand in this regard that Section 14.6 – 'Non-Conforming Uses', enables the albeit limited discretion or flexibility by the Planning Authority in considering proposed uses which are 'not permissible' under the 'Z6' zoning objective.
- 7.2.8. Accordingly, Section 14.6 – 'Non-Conforming Uses' is of no assistance to the applicant regarding the proposed change of land use to 'Multi-Disciplinary GP Practice' on the application site.
- 7.2.9. Notwithstanding the above discussion, which affirm the Planning Authority's decision to refuse planning permission, for the single (1no.) 'refusal reason', I note and have had regard to the applicants detailed motivation regarding that whilst the application site is zoned 'Z6' – 'Employment / Enterprise', there is a possibility of this site being rezoned as part of the Council's plans to free up more land for residential and mixed-use development in the coming years.
- 7.2.10. Unfortunately for the applicant however, the current Dublin City Development Plan 2016-2022 is the relevant statutory planning reference against which the proposed

development is to be assessed. Consideration is therefore restricted to the provisions of the 'Z6 – Employment / Enterprise' Zoning Objective (see copy of the relevant 'zoning' provisions attached). As discussed above, under the existing 'Z6 – Employment / Enterprise' Zoning Objective, the proposed 'Multi-Disciplinary GP Practice', defined at Appendix 21 – 'Land Use Definitions' (see copy attached) as a "Building for the Health, Safety or Welfare of the Public", is clearly a 'Non-Permissible, or prohibited land use within the 'Z6 – Employment / Enterprise' Zone. Under these provisions no scope for flexibility, or discretion was available to the Planning Authority at all.

7.2.11. Accordingly, I am left to share the conviction of the Planning Authority in its decision to refuse planning permission for the proposed development, for the 'refusal reason' that the proposed 'Multi-Disciplinary GP Practice' is a land use which is neither 'permissible' nor 'open for consideration' within the 'Z6' zone. Consequently, I am left to consider the proposed 'Multi-Disciplinary GP Practice' as a 'prohibited' land use within the 'Z6' zone.

7.2.12. The proposed development would therefore contravene materially the 'Z6' Zoning Objective as set out in the current Dublin City Development Plan 2016-2022, and accordingly would be contrary to the proper planning and sustainable development of the area.

7.2.13. I note that the applicant, in the 1<sup>st</sup> party appeal submission, makes no reference to the provisions of Section 37 of the Planning and Development Act 2000 generally, and Section 37(2)(a), (b)(i)-(iv) and (c) specifically, in response to the inclusion by the Planning Authority in their stated 'Refusal reason', that the proposed 'Multi-Disciplinary GP Practice' development would be in "material contravention" of the relevant 'Z6 – Employment / Enterprise' Zoning Objective.

Notwithstanding, I do not believe that the provisions of particularly Section 37(2)(b)(i)-(iv) of the Planning and Development Act 2000, are of assistance to the applicant in enabling the limited discretion of An Bord Pleanála towards deciding to grant planning permission in this instance.

7.2.14. Having concluded of the proposed development as a ‘non-permissible’ or ‘prohibited’ land use within the ‘Z6 – Employment / Enterprise’ Zone, and that neither of Section 14.6 – ‘Non-Conforming Uses’ of the Dublin City Development Plan 2016-2022, or Section 37(2)(b)(i)-(iv) of the Planning and Development Act 2000 (as amended) are relevant in my view to consideration of the proposed development, and therefore of assistance to the applicant in progressing and enabling consideration of the proposed ‘Multi-Disciplinary GP Practice’, I am of the view that consideration and assessment of the planning merits, would not in this instance be necessary.

7.2.15. Having regard to all of the above, I conclude that the Planning Authority’s decision to ‘Refuse’ planning permission for the proposed development be sustained, for the single ‘refusal reason’ as set out at 9.0 – ‘Reasons and Considerations’ below. I recommend to the Board accordingly.

### 7.3. **Appropriate Assessment**

7.3.1. Having regard to the nature and modest scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway to any 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 that planning permission be Refused for the Reasons and Considerations set out below.

## 9.0 **Reasons and Considerations**

1. Having regard to the provisions of the ‘Z6 – Employment / Enterprise’ Zoning Objective for the area, the proposed ‘Multi-Disciplinary GP Practice’ development is neither a ‘permissible’ use, or an ‘open for consideration’ use under the ‘Z6’ Zoning Objective. Rather, the proposed new ‘Multi-Disciplinary GP Practice’ development is considered as a ‘prohibited’ use within the ‘Z6’

Zone. Accordingly, the proposed new 'Multi-Disciplinary GP Practice' development is considered to be in 'material contravention' of the provisions of the 'Z6 – Employment / Enterprise' Zoning Objective for the sustainable long term economic development of the area, by providing for the creation and protection of enterprise and facilitating opportunities for employment creation, and would therefore be contrary to the proper planning and sustainable development of the area.

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**L. W. Howard**

**Planning Inspector**

**25<sup>th</sup> February 2020**