



An  
Bord  
Pleanála

## Inspector's Report ABP-308953-20

<b>Development</b>	Removal of the first floor, and construction of 22 guest rooms & 2 meeting rooms.
<b>Location</b>	Dolly Heffernan's, Ratoath Road, Mooretown, Blanchardstown, Dublin 15
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	FW20A/0157
<b>Applicant(s)</b>	Driveglade Limited.
<b>Type of Application</b>	Planning Permission.
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Driveglade Limited.
<b>Observer(s)</b>	Dublin Airport Authority.
<b>Date of Site Inspection</b>	6 <sup>th</sup> April 2021.
<b>Inspector</b>	Elaine Sullivan

## **1.0 Site Location and Description**

- 1.1. The appeal site has a stated area of 0.431 Ha, and is located at Rathoath Road, Mooretown, Blanchardstown. The site is occupied by the former licensed premises Dolly Heffernan's which has been closed since 2008. The building is a one and two storey structure which was constructed to reflect an old-style cottage to the front. It has a stated floor area of 854.4 sq. m and is positioned towards the centre of the site. There is an extensive area of surface car parking to the south of the building and a large area of hard standing to the north.
- 1.2. The site is located on the western side of the Rathoath Road close to the roundabout with the Mitchelstown Road. It is rectangular in shape with a road frontage of about 120 metres and width of approx. 33 metres. To the north and west the site is bounded by grassed fields. A Hyundai Motor car dealership and Northwest Business Park is located to the east, directly across the Rathoath Road. High voltage ESB power lines traverse the site.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for the removal of the existing first floor level and its replacement with an extension of 735sq. m, which would comprise 22 no. guest rooms and 2 no. meeting rooms.
- 2.2. The footprint of the building would remain the same, but the elevations would be altered to provide a flat roof building of contemporary style. Car parking would be provided to the north and south of the building. Minor alterations to the ground floor layout would be required to accommodate the first floor extension.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

A decision to refuse permission was issued by the PA on the 23<sup>rd</sup> November 2020. Three reasons were given for the decision and are listed as follows;

1. Having regard to the nature of the proposed use of the extended building as a hotel and the site location on lands subject to the General Employment zoning in the Fingal County Development Plan 2017-2023 where hotel development is not a permitted use, it is considered that the proposed development would materially contravene the zoning objective for the site set out within the Fingal Development Plan 2017-2023. The proposed development would be out of character with the pattern of development in the area, would set an undesirable precedent for further such development within the General Employment zoning objective and would be contrary to the proper planning and sustainable development of the area.
2. The proposed development is located on lands included within the Cherryhound Local Area Plan 2012 and would be contrary to the Local Area Plan, which seeks to promote land for development for general enterprise opportunities and employment generation. It is considered therefore that the proposed development would be contrary to the proper planning and sustainable development of the area.
3. The proposed development, by virtue of the substandard level of car parking and absence of bicycle parking, would not comply with Tables 12.8 and 12.9 and would consequently contravene Objectives DMS113, DMS117 and DMS118 of the Fingal County Development Plan 2017-2023, would provide an unacceptable level of pedestrian and cycle connectivity from the site to the surrounding areas, set a poor precedent for other similar development 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 report of the Planning Officer dated 18<sup>th</sup> November 2020, informed the decision of the PA and contains the following;

- Previous planning permissions were not constructed and have now lapsed.  
The only use on the site is that of a public house with restaurant.

- The proposed development is essentially a small hotel along with the existing public house. The subject site is zoned GE – General Employment and a hotel use is not listed as permitted in principle in the current zoning.
- Objective Z05 does not apply in this instance as the proposed development cannot be described as an intensification of the existing use on the site.
- The proposed hotel use does not contribute towards the vision of the GE zoning and would not contribute to the delivery of the Cherryhound LAP 2012.
- Having regard to the location of the site, surrounded by industrial type uses, the proposed 22 room hotel is not considered to be an appropriate use.
- The applicant has failed to provide car parking or cycle parking as required by the CDP and set out in Table 12.8 & 12.9.
- The subject proposal is not connected to the surrounding pedestrian and cycle network. This connectivity should be provided if a reduced quantum of parking is being sought.
- The site is situated within Noise Zone C of Dublin Airport and the CDP requires that the impact of noise levels on noise sensitive developments is managed.

### 3.2.2. Other Technical Reports

Transportation Planning – The proposed development would generate a car parking demand for 71 spaces as required by the CDP. The car park as shown could accommodate circa 36 car spaces, but this is not made clear on the drawings. The issue of car parking and cycle parking should be addressed by the applicant. Connectivity to the existing pedestrian and cycle network should be provided by the applicant if a reduced quantum of parking is being sought. Additional information is requested to address these matters.

Water Services Department – No objection to the proposed development.

### 3.3. Prescribed Bodies

DAA – The proposed development is within Noise Zone C. Objective DA07 of the CDP is relevant in this instance and seeks to control provision of new residential development and other noise sensitive uses within this zone. The DAA requests that the future noise environment of the site be fully assessed with consideration of future airport growth, that internal noise levels appropriate for individual rooms can be achieved and maintained and that noise mitigation measures should be implemented as required by the PA.

Irish Aviation Authority – No observations.

Irish Water – No objection.

### 3.4. Third Party Observations

None received.

## 4.0 Planning History

**PL06F.243197 / FW13A/0146** – Permission refused by ABP on the 29<sup>th</sup> July 2014 for the change of use and extension to the use of the medical research and development use from 13 no. bedroom hotel to 17 no. short term units. The reasons for refusal are as follows;

1. The site of the proposed development is located in an area zoned 'GE' in the Fingal County Development Plan 2011- 2017 where it is a stated objective 'to provide opportunities for general enterprise and employment' In such a zone residential care facilities are not permitted. It is considered that that the proposed development for step down short term stay / transition facility residential care units would, therefore, contravene materially the development objective for the area and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the location of the site in a developing industrial area, lacking in amenities and services including public transport, and remote from any town or village centre it is considered that the proposed development

would result in an unsatisfactory standard of residential amenity for future occupants of the facility. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to the nature and extent of the permitted development and the nature of the proposed development, it is considered that the proposed development would represent piecemeal, haphazard and poorly integrated development on the application site which would militate against the comprehensive development of the subject site. Furthermore, the proposed development would be out of character with the pattern of development in the area and conflict with existing land uses and would compromise the future development of adjoining lands for industrial and general enterprise purposes. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**PL06F.237641/ FW10A/0118** - Permission refused by ABP on 26<sup>th</sup> January 2011 for alterations to a permitted 6 storey hotel and apart-hotel, (permitted under PA Ref. F06A/0368) for use as an integrated care facility. Alterations included; the change of use of ground floor from hotel entrance and restaurant to reception area, recreational area, dining hall, kitchen and pharmacy/retail unit and the change of use of 2nd, 3rd and 4th floors from hotel bedrooms and aparthotel bedrooms to 48 residential care bedrooms. Reasons for Refusal by the Board state:

1. Having regard to the location of the proposed integrated care facility in a developing industrial area, lacking in amenities and services including public transport, and remote from any town or village centre, it is considered that the proposed development would conflict with policy SIP40 of the current Fingal County Development Plan which seeks to locate residential care homes and nursing homes in towns and villages for reasons of sustainability, accessibility and social inclusion. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the location, aspect and design of the proposed open space to serve the residents of the integrated care facility, it is considered that the proposed development would provide for an inadequate standard of

residential amenity for the prospective residents and would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The site is in an area zoned ST1 in the current Fingal County Development Plan, the objective for which is to facilitate opportunities for science and technology based employment and associated and complementary uses in a high quality environment in accordance with an approved local area plan. In such a zone residential care facilities are not permitted. It is considered that the proposed development for an integrated care facility would, therefore, contravene materially the development objective for the area and would be contrary to the proper planning and sustainable development of the area.

**FW09A/0180** - Permission granted by the PA in January 2010 for a change of use of the smaller building from Medical Centre to Health Centre / gym / training centre and the change of use of the first floor of the main building from approved hotel bedrooms to medical consultancy suites and science and technology office suites.

**PL06F.223292 Reg. Ref. F07A/0161** - Permission granted by ABP in October 2007 for a change of use from the development authorised by the planning permission granted under reg. no. F06A/0368 in May 2006. To change the use of the 26 bedrooms on the third and fourth floors of the hotel to 20 'apart-hotel' suites.

**F06A/0368** - Permission was granted in July 2006 for a six- storey, 64 bedroom hotel, including receded penthouse to the north of the site and a 2 storey medical centre to the south of this site.

## 5.0 Policy Context

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

- The subject site is zoned GE – General Employment, which has the objective to *'Provide opportunities for general employment and enterprise'*.
- The vision for the GE zoning is to *'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'*.

- Land uses specifically listed as 'Not Permitted' under the GE zoning include, Public House, Hotel, Guest House and Residential use.
- Uses which are neither 'Permitted in Principle' nor 'Not Permitted' will be assessed in terms of their contribution towards the achievement of the Zoning Objective and Vision and their compliance and consistency with the policies and objectives of the Development Plan.
- **Objective Z05** - Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria.
- **Objective DA07** - Strictly control inappropriate development and require noise insulation where appropriate in accordance with table 7.2 above within Noise Zone B and Noise Zone C and where necessary in Assessment Zone D, and actively resist new provision for residential development and other noise sensitive uses within Noise Zone A, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone. To accept that time based operational restrictions on usage of a second runway are not unreasonable to minimize the adverse impact of noise on existing housing within the inner and outer noise zone.

### **Cherryhound LAP (2012-2018)**

- The site is also located within the Cherryhound Local Area Plan, which was extended to the 8<sup>th</sup> December 2022.
- All the lands within the Cherryhound LAP are zoned objective GE, and the Plan supports the development of these lands in accordance with this zoning.
- The LAP land use map identifies the site as an 'Existing Commercial Development' and it is located within Development Framework Area 3.
- LAP Objective CA1 - Seek to develop as wide a range of uses as is possible within the permitted land uses
- LAP Objective CA2 - Provide for a services centre to facilitate local working population needs.



## **5.2. Natural Heritage Designations**

No designations apply to the site.

## **5.3. EIA Screening**

Having regard to the existing development on site, the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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**

The main grounds of appeal are set out as follows;

- It is submitted that the proposed use is an extension to the existing residential apartment element of the building to contain 22 no. guest rooms. Therefore, it is an intensification of the existing use and can be considered under Objective Z05 of the Development Plan.
- The proposed development will improve the amenity and recreation support for the working population in accordance with the vision of the Cherryhound LAP.
- A proposed car parking layout drawing has been submitted with the appeal in response to the PA comments regarding the provision of cycle and car parking. This drawing shows that the maximum requirements for car and cycle parking, as set out in the CDP, can be provided.
- The car parking requirements of the CDP can be accommodated on the site. Given the nature, scale and location of the site, it is not anticipated that customers and guests will arrive by foot or on bicycle.

- There is available space outside the red line boundary to the east for pedestrian and cycling infrastructure. However, this land is outside the ownership of the applicant. Should permission be granted the applicant will work with the PA to deliver cycling and pedestrian infrastructure along the eastern boundary.
- With regard to noise mitigation for airport noise, the development will incorporate sufficient standards of glazing and insulation to mitigate against the noise impact from the airport.

## 6.2. Planning Authority Response

A response was received from the PA on the 22<sup>nd</sup> January 2021 and contains the following;

- The application was assessed against the policies and objectives of the Fingal Development Plan 2017-2023, the Cherryhound LAP and existing government policy and guidelines.
- Having reviewed the grounds of the first party appeal, the PA remains of the opinion that the proposal would not be in keeping with the character and pattern of development in the area and is considered to materially contravene the General Employment zoning for the site. The proposed hotel use does not contribute to towards the vision of the GE zoning for the site, which seeks to provide land for industrial uses, general employment and logistics.
- The applicant has failed to provide adequate car parking and cycle parking for the development in accordance with the standards as set out in the Fingal Development Plan 2017-2023 and as such should be considered a traffic hazard.

## 6.3. Observations

- DAA – The proposed development is within Noise Zone C. Objective DA07 of the CDP is relevant in this instance and seeks to control provision of new residential development and other noise sensitive uses within this zone. The

DAA requests that the future noise environment of the site be fully assessed with consideration of future airport growth, that internal noise levels appropriate for individual rooms can be achieved and maintained and that noise mitigation measures should be implemented as required by the Fingal CDP 2017-2023.

## 7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal in detail, the main planning issues in the assessment of the appeal are as follows:

- Land Use Zoning
- Cherryhound LAP
- Impact on Amenity
- Access
- Other Issues
- Appropriate Assessment

### 7.2. Land Use Zoning

The subject site is zoned GE - General Employment, which has the objective to *'Provide opportunities for general employment and enterprise'*. The site is also located within the Cherryhound LAP area, which seeks to *'Promote the lands for the development of general enterprise opportunities and employment generation'*.

Under the GE zoning for the site, the existing development is a non-conforming use and the proposed development is listed as 'Not Permitted'. The decision of the PA to refuse permission was primarily based on the fact that the proposal would materially contravene the zoning objective for the site.

Objective Z05 of the Fingal Development Plan 2017-2023, (CDP), makes an allowance for extensions to non-conforming uses and states that the CDP will,

*‘Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria’.*

The CDP further states that land uses which are not specifically listed as ‘Permitted in Principle’ or ‘Not Permitted’ will be assessed in terms of their contribution towards the achievement of the Zoning Objective and Vision and their compliance and consistency with the policies and objectives of the Development Plan. Land uses specifically listed as ‘Not Permitted’ under the GE zoning include Public House, Residential, Hotel and Guest House. As the proposed land use is specifically listed as ‘Not Permitted’ under the GE zoning, it would materially contravene the zoning objective. As such the suitability of assessing the proposed development under Objective Z05, as an extension to a long-standing, non-conforming use, shall be considered.

In the grounds of appeal, the argument is put forward that Objective Z05 can be applied as the proposed development of 22 guest rooms at first floor level is an extension and intensification of the existing residential use on site. It is the opinion of the applicant that the development was incorrectly referenced as a hotel in the report of the Planning Officer which informed the decision of the PA.

Under Section 2(1) of the Planning and Development Act, an apartment is included in the definition of a ‘house’, which *‘means a building or part of a building which is being or has been occupied as a dwelling’*. While the Act or the accompanying Regulations do not proceed to define “dwelling”, it is defined under the Residential Tenancies Act 2004 (as amended) as *‘a property let for rent or valuable consideration as a self-contained residential unit and includes any building or part of a building used as a dwelling’*. As per the definitions outlined, the proposed guest rooms are not self-contained residential units and as such do not qualify as dwellings. Therefore they are not directly comparable to the existing apartment.

In consideration of the foregoing, I draw the Board’s attention to a previous decision on a Section 5 Referral, (ABP Ref. 29S.RL.3490). In relation to a specific circumstance, this referral examined the difference between the use of an apartment for long-term residential use and short-term stays. Whilst the referral is not a direct comparison to the proposed development, it is useful in outlining the difference

between the definition of a long-term residential use and a short-term letting or residential use.

In the Inspector's report and assessment, it was determined that the *'needs and amenity expectations of visitors using short-term holiday lettings accommodation differ from the needs and amenity expectations of residents of apartments'*, and also, that *'the differing needs and amenity expectations of visitors, as distinct from residents, lead to matters that differ from those that would arise under an assessment of the subject apartment for residential use'*. Under the specific referral query, it was ultimately decided that when assessing each use in planning terms, the differences between matters considered in each case, constituted a change of use and was ultimately a material change of use.

In my opinion, and further to Board decision outlined above, it is not reasonable to argue that the development proposal of 22 guest rooms is an extension to the existing residential use, as, it would represent a change of use by virtue of its scale and intensity. Therefore, it is my view that the assessment of the development under Objective Z05 is not appropriate in this instance and the proposed development cannot be considered to be an extension of a non-conforming use.

A secondary element to the applicant's argument refers to whether or not the proposed development is or is not a hotel use. I note that neither the Planning and Development Act 2000 (as amended), or the supporting Planning and Development Regulations 2001 (as amended), contain a definition of a 'hotel' or 'guest house'. However, under the Hotel Proprietors Act 1963, a hotel is defined as *'an establishment which provides or holds itself out as providing sleeping accommodation, food and drink for reward for all comers without special contract...'*. Furthermore, under the categorisation of guest house as per Fáilte Ireland, *'the premises must have a minimum of seven guest bedrooms with private en-suite bathrooms and no more than 30 guest bedrooms also with private bathrooms'*.

In my opinion, the proposed development could come under the category of either 'hotel' or 'guest house' as outlined above and can be assessed as such. However, I note that both uses are listed as 'Not Permitted' under the GE zoning for the site and as such would materially contravene the zoning objective for the site. This alone is a reason for refusal.

However, it is at the discretion of the Board to determine whether the application can be considered under Section 37(2)(b) of the Planning and Development Act, 2000 (as amended). The particular conditions which allow for the Board to consider a grant of permission as set out in the Act are as follows;

- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”

Having reviewed the proposal, I am satisfied that, by virtue of its nature and scale, the proposed development would not be of strategic or national importance. I am also satisfied that the CDP contains no objectives or policies that would significantly conflict with the zoning objective, and that are relevant to the proposed development. The CDP clearly sets out what land uses are permitted and not permitted within the ‘GE’ zoning objective. As outlined above, it is my view that no ambiguity exists as to the proposed use, which could be categorised as either ‘guest house’ or ‘hotel’.

Recent Ministerial guidelines and policy directives issued under Section 28 & 29 respectively, have no direct reference or bearing on the nature or location of the proposed development and as such are not relevant to the subject application. Since the adoption of the CDP, only a few applications have been lodged in the immediate vicinity of the site and, those that have been granted are in accordance with the overall zoning and land-uses in the area. As such, they are not comparable to the subject proposal.

### 7.3. Cherryhound LAP

In the Cherryhound LAP the appeal site is identified as 'Existing Commercial Development', located within Development Framework Area 3.

In the grounds of appeal, it is argued, that the proposed development will help to provide services for persons employed in the area. I note that Objectives CA1 and CA2 of the Cherryhound LAP seek to develop as wide a range of uses within the permitted land uses and to provide a services centre to facilitate local working needs. A location for these services, including a possible hotel use, has been identified within the LAP and would be located at the 'Gateway' directly adjacent to the M2 interchange, which is to the north-east of the site.

The subject proposal for a commercial service use, which could be accommodated in a town or local service centre, would make it more difficult to develop that lands around it for the industrial and logistical type uses that the area is zoned for. It is my view that the incremental provision of non-conforming services would serve to undermine the delivery of the LAP objective to provide a 'Gateway' to the lands and would make it less likely that that objective would be achieved. Therefore the proposed development is not in accordance with the policies and objectives of the LAP.

### 7.4. Impact on Amenity

Drawings submitted with the application include just one contiguous elevation of the proposed development, which is shown from the front of the site. No other elevations are included. The traditional thatched cottage features to the front of the building would be removed and replaced with a contemporary-style, flat roof building. The scale and form of the building is not out of character with the surrounding pattern of development. However, details of the materials and finishes are not included, which in my opinion fails to give an accurate representation of the proposed development. I do not agree with the opinion of the applicant that further elevational drawings can be submitted to the PA prior to commencement should planning permission be granted. In my opinion, these drawings should have formed part of the overall application.

In terms of accommodation for future guests, all rooms would have en-suite bathrooms and would provide an adequate standard of accommodation for short stays. However, I would question the amenity of the development for future guests, given the surrounding context of logistic and industrial uses and the lack of additional facilities and connections to surrounding areas.

#### 7.5. Access

Concerns were raised by the PA that the drawings did not show sufficient car or bicycle parking for the proposed development. This has been addressed in the appeal and the applicant has submitted a drawing which show car parking for 71 cars and bicycle parking for 8 bicycles. I am satisfied that parking for cars and bicycles can be provided to meet the standards of the Development Plan as set out in Table 12.8.

The site itself is not physically connected to the existing network of public footpaths in the area. The applicant has stated that it is anticipated that the majority of trips generated by the development would be by car. However, if the development was to cater for the employees in the area, it is reasonable to assume that it would also generate pedestrian movement, which could result in a hazard due to the lack of facilities. There is sufficient space along the eastern side of the site to provide pedestrian facilities, but this land is outside the red line boundary of the site.

The issue of poor pedestrian and cycle connectivity was raised by the PA and formed part of a reason for refusal in their decision. In response to this issue, the applicant has stated that they are willing to co-operate with the PA to deliver pedestrian and cycle facilities to the east of the site, whilst also noting that these lands are outside of their control. In my opinion this issue could be resolved through engagement with the PA.

#### 7.6. Other Issues

A submission from the DAA noted the location of the site within Dublin Airport Noise Zone C. Objective DA07 of the Development Plan seeks to control inappropriate development and require noise insulation where appropriate within Noise Zone B



and Noise Zone C. In the grounds of appeal, the applicant states that, should planning permission be granted, the proposed development will incorporate sufficient standards of glazing to mitigate against the noise impact from the airport. I am satisfied that, given the nature of the proposed development, that this issue can be adequately addressed.

#### 7.7. Appropriate Assessment

Having regard to the nature and scale of the proposed development within a serviced urban area and separation distance 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 that planning permission be refused.

### 9.0 Reasons and Considerations

1. The site of the proposed development is located in an area zoned 'GE' in the Fingal County Development Plan 2017-2023, where it is a stated objective 'to provide opportunities for general enterprise and employment' and hotel and guest-house use are not permitted. It is considered that that the proposed development for short-stay, guest rooms would, therefore, materially contravene the development objective indicated in the current development plan for the area and would be contrary to the proper planning and sustainable development of the area.
2. The proposed development is also located within the Cherryhound LAP, which seeks to develop the designated lands in accordance with the 'GE' zoning objective. It is considered that the proposed development, by virtue of its use, would be contrary to the objectives of the LAP and would not contribute to the long-term development vision for the lands. Therefore, the

proposal would be contrary to the proper planning and sustainable development of the area.

---

Elaine Sullivan  
Planning Inspector

7<sup>th</sup> May 2021