



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309618-21

---

<b>Development</b>	Change of use to retail with off licence sales and signage.
<b>Location</b>	Unit 2, The View, Carrickmines Manor, Glenamuck Road, Dublin 18, D18EE79.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D20A/0833
<b>Applicant(s)</b>	XH Sunflower Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party V. Decision
<b>Appellant(s)</b>	1. David Doyle and Ken Roe 2. Carmanor Management Co. Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	21 <sup>st</sup> April 2021
<b>Inspector</b>	Susan McHugh

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	4
3.3. Prescribed Bodies .....	6
3.4. Third Party Observations .....	6
4.0 Planning History.....	7
5.0 Policy Context.....	10
5.1. Dun Laoghaire Rathdown County Development Plan 2016-2022 .....	10
5.2. Ballyogan & Environs Local Area Plan 2019-2025.....	11
5.3. Natural Heritage Designations .....	11
5.4. EIA Screening .....	11
6.0 The Appeals .....	11
6.1. Grounds of Appeal No. 1.....	11
6.2. Grounds of Appeal No. 2.....	13
6.3. Applicant Response .....	15
6.4. Planning Authority Response.....	17
6.5. Observation.....	17
7.0 Assessment.....	17
8.0 Recommendation.....	24
9.0 Reasons and Considerations.....	24
10.0 Conditions .....	24

## 1.0 Site Location and Description

- 1.1. The Carrickmines Manor development is accessed off the R842 Glenamuck Road South located to the northwest of the subject site. This road is a busy distributor road linking the M50 Southern Cross Route with Kilternan village and also serves Carrickmines Retail Park.
- 1.2. The subject site is located at the western side of the Carrickmines Manor development and comprises one of four ground floor level commercial units within a five storey residential apartment block. The block is situated near the entrance to Carrickmines Manor, Glenamuck Road, Dublin 18.
- 1.3. Unit 2 is bound to the northwest by Hegeroe Home/interior design, and to the east by Doyle Lifts/Office premises, Units 1 and 3 respectively. Further to the east Unit 4 comprises a crèche/childcare facility. Apartment units are located at upper floor levels.
- 1.4. The unit which is currently vacant has a stated floor area of 233m<sup>2</sup>.

## 2.0 Proposed Development

- 2.1. The application was lodged with the planning authority on the 11/11/2020 with further plans and details submitted on the 08/01/2021. The latter triggered revised public notices.
- 2.2. The proposal as amended comprises:
  - Permission for part change of use of an existing permitted retail unit 233m<sup>2</sup> (Registration reference D06A/0740), to retail use with ancillary off licence sales (19.89m<sup>2</sup>),
  - New signage on front (south western) and side (south eastern) elevations of the unit,
  - Internal alterations and
  - Minor ancillary works.
- 2.3. The application as accompanied by:
  - Cover letter from Architect/Agent

- Letter of consent from owner – to lodging the application

2.4. In response to the further information request the following were submitted:

- Revised signage proposals - Drawing No. OLF11 PL100 Rev A
- Clarification of floor area as per public notices
- Details in relation to hours of opening

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

The Planning Authority decision to **grant** permission is subject to 8. no. standard conditions including;

Condition No. 1 Revised plans and particulars submitted by way of further information.

Condition No. 2 Advertisement restrictions

Condition No. 3 Shutter requirements

Condition No. 4 Surface water requirements

Condition No. 5 Cycle parking requirements

Condition No. 6 & 7 Construction works requirements

Condition No. 8 Hours of opening restrictions

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

##### 3.2.1. **Planning Reports (dated 08/01/2021 and 15/02/2021)**

Basis for planning authority decision.

The 1<sup>st</sup> Report included

- *Principal of Development* - Under zoning objective 'A', 'Shop Neighbourhood' and 'Part Off-License' uses are open for consideration.

- Proposed change of use would provide for a convenience retail unit with ancillary off-licence sales, representing 8.5% of the overall floor area of the proposed shop unit and 9.92% of the retail floor area.
- Satisfied proposed development would constitute a neighbourhood shop.
- Proposed development would be compatible with the 'A' land use zoning objective and would be consistent with the provisions of the Ballyogan & Environs Local Area Plan 2018-2025 including Section 6 regarding Retail and Employment.
- Notes existing retail use in the south eastern portion of The Park development which includes a standalone off-licence and constitutes the only 'convenience' retail floor space at The Park. Extent of the 'part off-licence' element of the retail unit proposed would not result in a proliferation of off-licence premises in the area, and accord with section 8.2.6.6 of the DLR CDP 2016-2022 regarding Off-licences/Betting Shops.
- *Visual Impact* – Notes new signage would be located at fascia level and comprise 'Spar' retail lettering and logo, however no further details were submitted.
- *Residential Amenity* – Considers the principle of the proposed development would be acceptable with regard to the amenities of existing residential properties in the vicinity of the subject site.
- *Discrepancy in application* – Reference to gross floor area of 123.8sqm for demolition requires clarification.
- *Hours of Opening* – Require clarification.
- *Refuse Management* – Notes layout of permitted mixed use development under D06A/0740 which included for refuse storage areas to serve the subject building at ground and basement floor levels.
- *Permitted Retail* – Notes reference in submissions to previous use and that the unit is currently vacant.

The 2<sup>nd</sup> Report following further information included:

- *Fascia Signage* – Revised proposals as indicated on Drawing OLF11 PL100 Rev.A acceptable subject to no projecting signage.

- *Reference to Demolition* – Satisfied with response which refers to internal works only.
- *Hours of Opening* – Notes response and considered acceptable.
- *Bicycle Parking* – Notes 40 bicycle parking spaces were provided as part of the development within which the subject site is located (D06A/0740) and the provisions under Section 4.2 of the DLRCC’s Standards for Cycle Parking and associated Cycling Facilities for New Developments (January 2018) adopted since the grant of permission under D06A/0740. Refer to Transportation report and recommendation to provide bicycle parking spaces in the interest of supporting existing sustainable transport policies of the DLR CDP 2016-2022.

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

**Transportation:** Report dated 12/12/2020 recommends no objection. Further report dated 11/02/2021 recommends 4 no. bicycle parking spaces. Further report dated 09/04/2021 recommends no objection.

**Drainage:** Report dated 04/12/2020 recommends no objection.

**EHO:** Report dated 09/12/2020 recommends further information in relation to the siting of proposed extractor fans, measures to minimise noise nuisance, and details of waste facilities.

### 3.3. **Prescribed Bodies**

None.

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

3.4.1. Twelve no. third party submissions were lodged with the planning authority, from the following parties;

- Paul O’Brien Associates on behalf of:  
Carmanor Management Company Ltd, (Property Managers for the estate)
- Armstrong Planning on behalf of:  
David Doyle - Doyle Lift Services Ltd., Unit 3 Carrickmines Manor, and

Ken Roe – Hedgeroe Living Ltd.,

Unit 1 Carrickmines Manor

- Paul Lynch 1 The Avenue, Carrickmines Manor
- Carlin Doran 13, The Avenue, Carrickmines Manor
- Cairbre O'Shea 10, The Glen, Carrickmines Manor
- P Lucas 20, The Green, Carrickmines Manor
- Neeraj Malik 18, The Gardens, Carrickmines Manor
- John Crothers 20, The Gardens, Carrickmines Manor
- Kapil Kumar 3, The Court, Carrickmines Manor
- Jeanette Ryan 33, The Crescent, Carrickmines Manor
- David Dolan 9, The Rise, Carrickmines Manor
- Louise Duggan 9, The Rise, Carrickmines Manor

3.4.2. A further two no. submissions were lodged following the applicants response to further information, from the following parties;

- Paul O'Brien Associates on behalf of Carmanor Management Company Ltd.,
- Cllr. Oisin O'Connor Dun Laoghaire Rathdown County Council.

3.4.3. Objections to the proposed development received by the planning authority have been forwarded to the Board and are on file for its information. The issues raised are comparable to those raised in the third party observations to the appeal summarised in section 6 below.

## 4.0 Planning History

**PA Reg.Ref.D07A/1654 ABP PL06D.228131:** Permission **refused** September 2008 for internal modifications to previously permitted mixed use building granted permission under Reg.Ref. D06A/0740 for a crèche (floor area c.512 sq.m.) 2 no. retail units (total floor area c.398 sq.m.) 1 no. office unit (floor area 197 sq.m.) and 40 no. duplex units all within a 3-5 storey building (total gross floor area 4,004.3 sq.m.) over a single storey basement (floor area 2,082 sq.m.) comprising 69 no. car parking

spaces, 40 no. bicycle parking spaces and associated plant and storage areas; with 28 no. surface parking spaces. This building is currently under construction.

The proposed modifications comprise the change of use of c.273 sq.m. of basement parking area to retail use (extension to shop no. 1) with 2 no. stairs connecting from the ground floor unit. The proposed alterations will result in the reduction of 10 no. basement level car parking spaces. Total remaining car parking spaces at basement and surface level is 87 with 28 no. surface parking spaces. Total retail floor space in the building to increase to c.671 sq.m. Total gross floor area of the building (including extended retail area) is 4,277.3 sq.m.

The reason for refusal referred to insufficient parking on site to accommodate the needs of the additional floor space :

‘the removal of existing approved basement car parking spaces and their change of use to additional retail floor area would result in inadequate on-site car parking provisions and inappropriate car parking in the vicinity of the site. This would endanger public safety by reason of traffic hazard and obstruction of road users and would generate traffic congestion and parking problems on the adjoining roads and in residential areas in the site. The proposed development, would, therefore, be contrary to the proper planning and sustainable development of the area.’

*Amendment Permission that incorporated the retail unit subject of appeal*

**PA Reg.Ref.D06A/0740:** Permission **granted** August 2006 for revisions to permitted development Reg.Ref.D02A/1061 on a site of c.6.22 hectare in area. The development consists of : Revisions to permitted development Reg.Ref. D02A/1061 comprising of :- 1) The replacement of permitted 1 No. crèche building of approximately 480.0 sq.m. and 4 no. duplex units each comprising of a 2-bed , 2 storey unit over, ground floor 1-bed apartment (2) With a mixed retail commercial and residential development scheme in the form of a single block varying in height from 3 to 5 storeys and comprising approximately as follows: (a) Approximately 398 sq.m. of Gross Retail floor space comprising 2 no. units including stockrooms waste storage areas; 1 No. office unit of c.197 sq.m. in gross floor area and 1 no. crèche of approximately 512 sq.m. with associated outdoor play area. (b) 40 no. apartments comprising; 12 no. 1 bed, 21 no. 2 bed, 3 no. 2 bed duplex and 4 no. 3-bed units with associated balconies and terraces. (c) Associated car parking in the form of 67 no.



car spaces at basement level with approximately 40 no. bicycle parking spaces bin stores, lifts and stair cores and associated plant with vehicular access to basement level off internal access road within the scheme (d) Provision for 26 no. surface car parking spaces. (e) Hard and soft landscaping ; and all other associated site development works. All on a site of c.6.22 hectare in area of Penryn, Glenamuck Road. Conditions of relevance include the following;

**Condition No. 7** - Adequate storage shall be provided for Waste Disposal and Recycling facilities on site to the satisfaction of the Environmental Services Department.

Reason: In the interest of public health and the proper planning and sustainable development of the area.

**Condition No. 8** - That no advertising sign or structure be erected except those, which are exempted development, without prior grant of permission from the Planning Authority.

Reason: In the interest of the proper planning and sustainable development of the area.

**Condition No. 10** - The proposed retail units shall not be used for the sale of hot food for consumption off the premises.

Reason : In the interests of the proper planning and development of the area.

*Parent Permission*

**PAD02A/1061/E:** Permission **granted** June 2008 for Extension of Duration of Permission for development previously permitted under D02A/1061/PL06D.203058.

**PAD02A/1061 ABP-PL06D.203058:** Permission **granted** August 2006 for provision of a crèche of 464m<sup>2</sup> and a total of 332 residential units, consisting of 29 no. 3-storey, 3-bed houses; 10 no. 2-storey, 3-bed houses; 30 no. L-shaped 3-bed 2-storey courtyard houses; 7 no. 2-storey, 3-bedroom detached houses; 6 no. 3-storey 4-bed detached houses; 45 no. duplex units comprising 3-bed, 2 storey unit over ground floor 2-bed apartment; 10 no. duplex units comprising 2-bed, 2 storey unit over-ground floor 1-bed apartment; 140 no. apartments comprising 20 1-bed 100 no. 2 bed apartments and 20. 2-bed penthouse apartments in 5 no. 5-storey blocks over semi-basement parking areas; all site development and landscaping works, including

the upgrading of approx. 150m length of Springfield Lane and demolition of existing unoccupied dwelling house Penryn, Glenamuck Road. all on site of 6.228 hectares with access from Glenamuck Road and Springfield Lane in the townland of Carrickmines Great, Dublin 18.

## 5.0 Policy Context

### 5.1. Dun Laoghaire Rathdown County Development Plan 2016-2022

- 5.1.1. The site is zoned **Objective A**, which seeks ‘to protect and/or improve residential amenity’.

A proposed Quality Bus-Bus Priority Route is identified along the R842 Glenamuck Road South, located to the northwest of the subject site.

#### **Section 8.2.6.6** refers to Off-licences and Betting Shops

‘Off-Licences and Betting Shops provided in the County’s commercial and mixed-use areas provide a local commercial service. The Planning Authority will seek to protect residential and other communities by ensuring that the quantum of Off-licences/betting shops – particularly within smaller centres – is not disproportionate to the overall size and character of the area. However, the number and control of off-licences/betting shops will primarily be a licensing issue.

In any consideration of proposals for off-licences/betting shops, regard to the amenities of nearby residents – i.e. noise, general disturbance, hours of operation and litter – will be paramount.

New Off-Licences and Betting Shops will not be permitted in areas zoned Objective ‘A’ – ‘To protect and/or improve residential amenity’.

#### **Section 8.2.6.8** refers to Shopfront, Signage and Advertising

##### **Section 8.2.6.8(i)** refers to Shopfronts

##### **Section 8.2.6.8(ii)** refers to Signage

In any consideration of proposals for off-licences/betting shops, regard to the amenities of nearby residents – i.e. noise, general disturbance, hours of operation – will be paramount.

The Planning Authority will seek to protect residential and other communities by ensuring that the quantum of off-licences/betting shops – particularly within smaller centres – is not disproportionate to the overall size and character of the area. New Off-Licences and Betting Shops will not be permitted in areas zoned Objective ‘A’ – ‘To protect and /or improve residential amenity’.

## 5.2. **Ballyogan & Environs Local Area Plan 2019-2025**

**Section 6** refers to Retail and Employment.

## 5.3. **Natural Heritage Designations**

There are no designated areas in the vicinity.

## 5.4. **EIA Screening**

Having regard to the nature and scale of the proposed development, the separation of the site from European and other designated sites, the proposed connection of the development to public water and foul drainage connections, it is considered that 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 Appeals**

### 6.1. **Grounds of Appeal No. 1**

A Third Party appeal was lodged by Armstrong Planning on behalf of;

- David Doyle - Doyle Lift Services Ltd., Unit 3 Carrickmines Manor and
- Ken Roe – Hedgeroe Living Ltd., Unit 1 Carrickmines Manor

The grounds of appeal can be summarised as follows;

## Residential Amenity

- *Off-Licence element* – Harmful to public health, inappropriate at this location, incompatible with the residential character of the area, and contrary to the CDP objectives for the location, which is identified in the DLR CDP as falling within Zone A.
- *Section 8.2.6.6 of the CDP* – New Off-Licences and Betting Shops will not be permitted in areas zoned Objective A. Off-Licence use is not consistent with the land use zoning objective, however a ‘part off licence’ is ‘open for consideration’ and this proposal can be judged on its merits. Submit that there is no requirement for an additional off-licence in the neighbourhood as there is an existing off licence 500m to the north at the Carrickmines shopping centre, and an overprovision of off-licence facilities could be prejudicial to social cohesion and public health.
- *Opening Hours and Noise Levels* – Notes opening hours proposed from 7.30am to 10pm Monday to Saturday and 8.00am to 10pm on Sundays and Bank holidays. Anticipate increase in noise levels given nature of use, longer opening hours, and associated anti-social behaviour.
- *Take Away* – Note area indicated on plans for deli use, and that Spar shops offer sale of hot food for consumption off the premises. Concern that takeaway element has potential to negatively impact on residential amenity and character of the area. Risk of undesirable precedent.
- *Residential Amenity* – Front access to the proposed Spar is accessed from within a private estate and is not adequately overlooked. Concern that proposed development will result in littering, loitering, graffiti and anti-social behaviour.

## Air Extraction and Ducting

- Insufficient information provided with regard to plant selection relating to refrigeration units, air conditioning, air extraction and ventilation systems, which has the potential to significantly impact on residential amenity by way of noise generation and visual impact.

- Unclear how Unit 2, a mid-terraced unit with four floors of apartments above, intends to route the ductwork of air handling units, which has the potential to materially affect the character and visual appearance of the block.

### Waste Management

- *Insufficient* - Existing refuse storage area of approx. 9 sqm is shared by three units, giving each unit 3sqm. The proposed Spar is considered a Fast-Moving Consumer Goods (FMCG) retail outlet with Deli, will generate excessive waste on a daily basis that cannot be stored in the existing waste storage provided. Insufficient information regarding the management and storage of waste. without affecting other units in the parade.

### Deliveries

- *Negative Impact on Deliveries* – Existing servicing and accessibility arrangements are inadequate to cater for the proposed development. There is no loading bay provided and deliveries will have to come through the front door. This will cause disruption to existing operators in the vicinity. Proposal will negatively affect the visual amenity of the area and potentially pose a danger to public safety, and a threat to existing residential amenity.

### Development Description

- *Inaccurate* – Application is for part change-of-use of Unit 2 to retail use with ancillary off-licence sales. Unit was originally permitted as a retail unit in 2006, retail use was never implemented and has been in use as a physiotherapy clinic (Class 8 use) since 2015. Unit 2 was never in retail use or used as a shop since permission was granted, and after 9 years this permitted retail use should be considered to have been abandoned. There are no exempted development provisions for change of use from Class 8 use to Class 1 (shop) use and permission is therefore required.

## **6.2. Grounds of Appeal No. 2**

A Third-Party Appeal was lodged by Hughes Planning and Development Consultants on behalf of Carmanor Management Co. Ltd., Carrickmines Manor, Glenamuck Road, Dublin 18. The grounds of appeal can be summarised as follows;

- *Residential Amenity* – Hours of opening represents an intensification of use and give rise to noise and anti-social behaviour given nature of use with proposed off-licence and takeaway elements. Extract canopies over ovens and fryers, along with condenser units located externally will create noise and cooking odours, which would be injurious to residential amenity. Concern proposal will set a precedent allowing remaining units to be 'Takeaway' in the future. Assert that there is insufficient information submitted on refrigerator units, air extraction and ventilation systems which has the potential to materially affect the visual appearance of the block.
- *Traffic Impact* – Use would lead to an intensification of potential traffic movements at the entrance to the development leading to congestion and give rise to a traffic hazard. Increased car parking and parking movements in addition to the crèche operating in the vicinity could increase the potential for traffic hazard in the area. Existing servicing and accessibility arrangements are inadequate to cater for the proposed Fast Moving Consumer Goods (FMCG). Deliveries will cause disruption to existing operators in the vicinity, with early deliveries generating further noise for residents of the upper floors.
- *Waste Management* – In the absence of a designated area for commercial waste storage all waste will need to be brought to the front of the store for removal. This has the potential to be unsightly create disruption and odours to residents and existing businesses and create further traffic hazard with regular bin collections. The refuse storage area of 9sqm is shared by three units and the proposed use will generate excessive waste that cannot be stored in the area provided. Insufficient information provided regarding the management and storage of excessive waste without affecting adjacent units.
- *Off-Licence Use and Proliferation of Convenience Stores* – Proposal to include an off licence at this location is inappropriate and contrary to the zoning objective, policies and objectives for the area. No requirement for an additional off-licence as existing off-licence located 500m to the north and an overprovision of off-licence facilities could be prejudicial to social cohesion and public health. Concern proposed use would give rise to anti-social behaviour. Note location of existing convenience stores in the vicinity, and permission granted under PA Reg.Ref.D18A/0257 for 2 supermarkets opposite Carrickmines Manor.

- Request that planning permission be refused.

### 6.3. Applicant Response

6.3.1. A response to the two Third Party appeals was submitted by KPMG Future Analytics, on behalf of the applicant. The response can be summarised as follows:

- *Planning Policy* – Submit that the CDP specifically distinguishes ‘off licence’ use from ‘Part off-licence’, that ‘Part off-licence’ is Open for Consideration within areas zoned Objective A, and that Section 8.2.6.6 does not preclude development of a ‘part off-licence’ use in such areas. Submit that both appellants have sought to misconstrue the meaning of this policy to support their case, in error.
- *Planning History* – Planning permission for Unit 2 as a retail use was established under PA Reg.Ref.D06A/0740 and located in the ‘crèche block’ in earlier permissions. Current proposal does not propose to increase the area of permitted retail space or reduce the number of basement car parking spaces, as previously proposed under PA Reg.Ref.D07A/1654 ABP-PL06D.228131.
- *Nature of Appeals* – Note that appeals have been lodged by operators of the adjoining commercial units and the management company of the area. No appeal has been lodged by residents (individually or as a group) to the proposed development.
- *Impact on Residential Amenity*
  - *Principle of development* - Submit that the provision of a convenient neighbourhood shop within walking distance of residents is welcomed by the community. Retail use (including convenience) is established at this location. Both appellants have erroneously cited section 8.2.6.6 of the CDP in respect of ‘part off-licence’ use under the zoning objective A which is ancillary to the overall use of the convenience store. Notes O’Brien’s off licence unit in the Park is 550m away and is severed by the busy Glemamuck Road which presents an unattractive pedestrian environment.
  - *Anti-Social behaviour* – Appellants assertion that the part off-licence use would give rise to anti-social behaviour is unsubstantiated. Note area of off licence use as part off licence was accepted by the PA.

- *Display Area* - Refer to compliance with licencing and RRAI code of practice with beer and wine cabinets located at the rear of the store.
- *Opening Hours* – Refer to previous use as a physiotherapy clinic which held morning and evening classes without any disturbance to local residents.
- *Noise and Odour Emissions* – Convenience unit includes a preparation area for fresh food and a bakery and is not a 'Take Away'. Oven units proposed do not require ducting. Emissions from the unit will be served by a Low Noise Level (37dB(A)) condensing unit and will not impact on nearby residents by reason of noise or odour. Details of condensing units provided in appendix.
- *Traffic and Deliveries* – Unit was permitted as a retail unit and current proposal does not seek to change that in any material way. Parent permission provided for on street parking to the front of the unit, and 2 no. dedicated spaces will be provided. Location of convenience store will reduce traffic.
- *Waste Management* – Applicant acknowledges that waste management requirements associated with the proposed use are different to a physiotherapy practice, but this is addressed by more frequent refuse pick-ups and re-cycling practices.
- *Description of Development and Use* – Dispute case made that proposed development has been inaccurately described and that the retail use has lapsed. Note that the PA accept that the unit remains a shop. Assert that applying a number of tests previously applied by ABP in the determination of a Referral case under RL3145, and on several High Court judgements that the proposed use is in accordance with the permitted use.
- *Conclusion*
  - Invite the Board to concur with PA decision, principle of use established, application provides for minor alterations to that already permitted under PA D06A/0740. Retail use has not been abandoned and remains valid.
  - Appellants have misinterpreted the zoning objective and CDP policy in respect of 'part off-licences'.



- Proposed development is compliant with the zoning objective and provided for under section 8.2.6.6 'Off Licences/Betting Shops. It is minor in scale and ancillary to the convenience store retail use. Unit franchise to Spar maintain high standards.
- Submit that proposed development will bring a convenience facility to the residential area, providing an additional amenity to residents.

#### 6.4. **Planning Authority Response**

The Planning Authority confirmed its decision and considered the issues raised by the appellant have been considered in the Planners Report.

#### 6.5. **Observation**

None received.

### 7.0 **Assessment**

7.1.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings:

- Compliance with Development Plan Policy
- Impact on Residential Amenity
- Signage
- Traffic Safety and Parking
- Other Matters
- Appropriate Assessment

I draw the Boards attention to the fact that the subject unit was permitted as a retail use under P.A. Reg. Ref D06A/0740 and is currently vacant.

#### 7.2. **Compliance with Development Plan Policy**

7.2.1. The third party appellants submit that the proposed retail use with off licence is contrary to the zoning objective of the appeal site.

- 7.2.2. Under the DLR CDP 2016-2022, the site is zoned objective 'A' which seeks 'to protect and/or improve residential amenity'. Under this zoning objective 'Shop Neighbourhood' and 'Part Off-License' uses are open for consideration.
- 7.2.3. Section 8.3.12 of the Plan provides a definition of 'Part Off-License' as 'a building where the main use is the sale of convenience retail goods to members of the public and contains a subsidiary area of the premises which is licensed and used for the display and sale of intoxicating liquor, including wines, beers and spirits, for consumption off the premises.'
- 7.2.4. Land uses in the vicinity are mixed with commercial uses at ground floor and residential units at upper levels. Considering the proposal on its merits whilst clearly having due regard to its potential impact on residential amenity, I do not consider that the proposed development is incongruous in nature.
- 7.2.5. I noted from my site inspection the location of an off licence within the Carrickmines Retail Park approx. 500m to the northwest of the appeal site. Notwithstanding, I do not consider that the proposed change of use to retail with ancillary off-licence would give rise to a proliferation of such uses in the area.
- 7.2.6. I concur with the applicant that the proposed change of use would primarily serve existing residents in the vicinity.
- 7.2.7. The proposed development consists of a new convenience store with off-licence and deli area. The overall floor area of the proposed retail unit is 233m<sup>2</sup>, with the proposed off-licence having a floor area of 19.89m<sup>2</sup>. The area/scale of the proposed off-licence use is clearly ancillary to the main use as a shop. I am satisfied that the proposed development would not result in an intensification of use.
- 7.2.8. I note the appeal site is currently vacant. Clearly vacancy is entirely detrimental to the area. The proposal, to provide a use on the site, would in my view, contribute towards the ultimate goal of ensuring that the vibrancy and vitality of the immediate area is enhanced.
- 7.2.9. On this basis, I consider that the proposed development is consistent with the adopted policy of the Council and is in accordance with the proper planning and sustainable development of the area.

### 7.3. Impact on Residential Amenity

- 7.3.1. Concern is raised by the appellants in relation to the impact of the proposed development on the residential and visual amenity of the area and contend that it would detract from the character of the area.
- 7.3.2. I accept that the predominant land use in the area is residential, and that there are residential units located above the appeal site over three levels.
- 7.3.3. In this regard, I note that the appeal site and residential units located above, along the south western elevation address the main entrance road to the development, with parking on both sides and mature planting along the south western boundary to the overall site.
- 7.3.4. To the south east the appeal site addresses an area of public realm, which includes a hard surfaced area, with outdoor seating located above vents to basement car parking areas. Residential units located overhead at first second and third floor levels are set back from the ground floor units.
- 7.3.5. I consider the scale of the proposed development to be relatively modest given its context, and adjacent commercial uses.
- *Hours of Opening*
- 7.3.6. It is proposed to operate the proposed retail unit between the hours of 7:30am and 10.00pm Monday to Saturday, and 08.00am-10.00pm on Sunday and Bank Holidays. Condition No. 8 of the PA notification of decision to grant permission restricts hours of opening to those proposed by the applicant.
- 7.3.7. I consider that the opening hours are reasonable in its context. If the Board are minded to grant planning permission I would recommend a condition restricting the openings hours as proposed in the interest of protecting residential amenities.
- *Noise and Odours*
- 7.3.8. Concern is raised by the appellants in relation to noise and odours arising from the air/ventilation extractor units associated with the proposed deli/food preparation area.
- 7.3.9. I accept that this is a reasonable concern from a residential amenity perspective. However, I am also satisfied that the applicant has demonstrated in response to the

grounds of appeal, that oven units proposed will not require ducting and that with the use of condenser units will significantly reduce noise levels to within a very low range and also reduce odours. Specific details of the type and specification of condensing units proposed have been submitted by the applicant.

7.3.10. If the Board are minded to grant permission, a suitably worded condition in relation to the details of and proposed location of any external ventilation/extractor units can be subject to agreement with the planning authority.

- *Antisocial Behaviour*

7.3.11. Concern is raised by the appellants in relation to the potential for anti-social behaviour associated with the proposed change of use, and particularly in relation to the proposed off licence use.

7.3.12. I noted from my site inspection the location of existing overhead CCTV cameras in the vicinity of the entrance to the appeal site. I am also mindful of the location of the unit at the entrance to the development which benefits from passive surveillance both from vehicular traffic and pedestrians entering and exiting the development.

7.3.13. In my opinion the potential for anti-social behaviour arising from the proposed off licence use, which is ancillary to the principle use is limited, and ultimately is a matter for the management company of the development to oversee.

- *Waste/refuse facilities*

7.3.14. The appellants raise concern in relation to the generation and storage of waste from the proposed development and in particular from the deli area. It is submitted that the capacity of the existing shared waste storage facility is limited and that proposals submitted to adequately manage waste are insufficient.

7.3.15. I note the report of the EHO of the PA which recommended further information on the issue of waste/refuse facilities. This issue was also noted in the planning assessment of the PA which references that the permitted mixed use scheme within which the subject site is located included for refuse storage areas at ground and basement floor levels, with no alterations to this arrangement proposed.

7.3.16. I note from my site inspection, that while there are no litter bins located externally, there is ample space outside the subject unit for the location of same, subject to approval from the management company.

7.3.17. The applicant has also indicated in response to the appeals, that with more frequent refuse collection and recycling practices that waste management can be dealt with.

7.3.18. While I accept that given the nature of the proposed retail use that the management of waste generated can be a challenge, in my opinion given the scale of the overall development, a condition in relation to the management of waste, and in particular recyclable materials would be appropriate in this instance.

- *Signage*

7.3.19. In relation to external signage, I note the proposals for 2 no. fascia level signboards on the front and side elevations of the subject unit, as indicated on Drawing OLF11 PL100 Rev.A submitted by way of further information. Finishes comprise extruded powder coated aluminium profile, composite panels and applied graphics and LED illuminated letters.

7.3.20. I accept that existing signage to commercial ground floor units are generally discrete, however, I am satisfied that the extent and design of external signage proposed in revised proposals submitted is appropriate in its context and acceptable visually.

7.3.21. I would also note that proposals do not include any external projecting signage.

7.3.22. The PA have included a condition No. 2 which references the drawing submitted by way of further information and if the Board are minded to grant permission I consider it appropriate to attach. Condition No. 3 of the PA refers to requirements in relation to shutters, which in my opinion would detract from the visual amenity of the unit and should be omitted.

7.3.23. In summary, I am satisfied therefore, that the proposed development will not detract from the residential or visual amenity of the area.

#### **7.4. Traffic Safety and Parking**

7.4.1. Concern was raised by the appellants in relation to traffic safety particularly given the location of the unit close to the entrance/egress to the estate. It is asserted that the potential for increased traffic and parking generated by the proposed use, which combined with the existing crèche use in the vicinity would give rise to a traffic hazard.

- 7.4.2. I note from my site inspection the traffic ramp located on the approach to the estate, and the location of footpaths within the estate, and from the adjoining area which provide an acceptable pedestrian route to the proposed retail unit.
- 7.4.3. In my opinion the issue of a potential traffic hazard is overstated. I accept that the subject unit is located close to the entrance/exit to the development. However, it is within a suburban area, an existing parade of commercial units, and within easy walking distance of the adjoining residential development.
- 7.4.4. As previously noted I consider that the proposed development would not result in an intensification of use. I am also of the view that the proposed development would not give rise to a significant increase in traffic, currently generated by the overall development.

#### *Car Parking*

- 7.4.5. Concern is raised by the appellants in relation to insufficient parking which will result in overflow parking of cars and deliveries adjacent to the unit. Car parking associated with the permitted use was identified at basement level and at surface level. The applicant has confirmed that the unit benefits from two car parking spaces.
- 7.4.6. Car parking spaces serving the ground floor commercial units are located immediately outside, and opposite the entrance to the development. Otherwise, car parking is restricted on either side of the entrance to the development by way of bollards and double yellow lines.
- 7.4.7. Designated car parking associated with the adjoining commercial uses is also provided to the south east. On the day of my site inspection mid-afternoon on a weekday, these spaces were not all occupied.
- 7.4.8. I am satisfied that the car parking provision of 2 no. spaces meets the Development Plan requirement for retail use and is acceptable.
- 7.4.9. I note further to the request by the PA to the applicants proposal to provide cycle parking. I note the Report of the Transportation Section of the PA which had no objection and condition No. 5 of the Notification of Decision to grant permission requires provision of 4 no. cycle parking spaces (2 no. Sheffield cycle stands) at a

location to be agreed. I would concur with the PA that the provision of cycle parking is appropriate.

7.4.10. I am satisfied that the proposed car parking arrangements are acceptable in terms of quantum and layout and is in accordance with Development Plan standards for such uses.

7.4.11. If the Board are minded to grant permission, I consider that a similarly worded condition requiring cycle parking be attached.

7.4.12. I am satisfied that the proposed development would not give rise to a traffic hazard and is acceptable in terms of traffic safety and convenience.

## **7.5. Other Matters**

### *Description of Development*

7.5.1. Concern is raised by one of the appellants in relation to the description of the proposed development. I have had regard to the permitted use, more recent use and the issue of abandonment of use. It is my opinion, however, that in the context of the permitted use as retail, and the fact that the unit is currently vacant, that the proposed development as described in the public notices adequately describes the nature and extent of the proposed development.

7.5.2. I also note that the applicants response to the further information request triggered revised public notices and further third party submissions to the PA. I am satisfied that the development as described did not prevent concerned parties from making representations. The above assessment represents my de novo consideration of all planning issues material to the proposed development.

### *Discrepancy in Planning Application Form – Works Proposed*

7.5.3. The PA identified a discrepancy between details indicated on the Planning application form, and the development as described in the public notices, and sought further information seeking clarification. The applicant in response to the request for further information clarified that the area referred to originally relates to internal works/areas to be demolished, but that there are no material changes proposed to the external facades.

7.5.4. I am satisfied that the gross floor area of the proposed development is as described in the public notices, and accurately describes the nature and extent of the proposed development.

## 7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature and scale of the proposed development being a change of use in an established urban area and the 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**

8.1.1. I recommend that permission be **granted** subject to conditions for the following reasons and considerations.

## 9.0 **Reasons and Considerations**

Having regard 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 be in accordance with the provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022 and the Ballyogan and Environs Local Area Plan 2019-2021, would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would not be prejudicial to public health. 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, completed in accordance with the plans and particulars lodged with the application, and as amended by further information received on 27<sup>th</sup> January 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the 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.

**Reason:** In the interest of clarity.

2. Details of all external signage and finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenities.

3. Notwithstanding the provisions of the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, no advertisement signs (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 buildings or within the curtilage of the site unless authorised by a further grant of planning permission.

**Reason:** To protect the visual amenities of the area.

4. Opening hours of the hereby permitted development shall be confined to between 7:30am and 10.00pm Monday to Saturday and 08.00am-10.00pm Sunday and Bank Holidays.

**Reason:** In order to limit the hours of operation and in the interest of protecting the amenities of adjoining properties.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

6. Details of 4 no. cycle parking spaces, spacing and location shall be agreed in writing with the planning authority prior to the commencement of the development.

**Reason:** In the interest of promoting sustainable modes of transport.

7. Prior to commencement of development, the developer shall submit to and agree in writing with, the planning authority a plan containing details for the management of waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

**Reason:** To provide for the appropriate management of waste and, in particular, recyclable materials, in the interest of protecting the environment.

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

---

Susan McHugh  
Senior Planning Inspector

30<sup>th</sup> April 2021