



An  
Bord  
Pleanála

## Inspector's Report ABP-311870-21

<b>Development</b>	Change of use of the existing car service garage to shop and deli.
<b>Location</b>	Top Oil Service Station, McKee Avenue, Finglas, Dublin 11
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	WEB1272/21
<b>Applicant(s)</b>	TopOil Finglas
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	<ol style="list-style-type: none"><li>1. First Party v. Conditions</li><li>2. Third Party v. Grant</li></ol>
<b>Appellant(s)</b>	<ol style="list-style-type: none"><li>1. TopOil Finglas</li><li>2. Anne Martin &amp; Phillip Brogan</li></ol>
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	12 <sup>th</sup> April, 2022
<b>Inspector</b>	Stephen Ward

## **1.0 Site Location and Description**

- 1.1. The appeal site is located on the western side of McKee Avenue, at the northern end of Finglas village centre. This is a transitional location where commercial and retail uses to the south merge with residential properties to the north and east. The site is currently in use as a fuel filling station with a forecourt shop in operation on the southern side of the main building on site. The remainder of that building consists of a former car service garage (currently vacant). There is a small outbuilding located in a yard area at the rear of the site, which is used in connection with a car wash facility.
- 1.2. To the east (front) of the main building there is a fuel forecourt area with canopy. There is no existing roadside boundary but there are dished entry/exit points at the northern and southern ends of the site. The site is currently branded as a 'Top' filling station, while the occupied part of the building is a 'Gala' shop. Within the shop, the hot and cold delicatessen area includes a 'Sabburitos' Mexican style food franchise.
- 1.3. There is a laneway to the south of the site which accesses commercial premises to the rear (west) and south. Based on the Site Layout Plan submitted, the first party appears to have a right of way over this area. There are 4 dedicated parking spaces to the south side of the main building. Parking in the wider area is limited and on-street parking is not generally available due to existing entrances, double yellow lines and the fact that the site is located on a busy bend in the road.
- 1.4. The area of the appeal site is stated to be 1,032 sq. metres and the total stated area of the building on site is 151.70 sq. metres. The retail floor area of the existing shop is indicated on the submitted plans as 71.1 sq. metres, while the service garage bay is stated to be 35.38 sq. metres.

## **2.0 Proposed Development**

- 2.1. In summary, the proposed development comprises the following:
  - Internal alterations and change of use of the service garage area to shop and hot and cold deli use
  - The new area would be internally linked to the existing shop to provide an overall retail floor area of c. 106m<sup>2</sup>

- Additional storage and WC would be provided adjoining the new shop/deli area
- The relocated deli area would have a floor area of c. 5m<sup>2</sup> and an upgraded extraction/ventilation system. 5 no. high-level window seats are proposed.
- A new window is proposed to replace the existing service bay roller shutter door.
- The proposed opening hours are 7am to 12pm each day.
- 3-metre-high acoustic timber screen fencing is proposed along the northern site boundary.
- It is proposed to provide further delineation of car-parking spaces, separation of vehicular/pedestrian movement, and definition of the roadside boundary with access/egress arrangements.
- The applicant states that no signage, external seating, or takeaway element is included.

### 3.0 Planning Authority Decision

#### 3.1. Decision

By order dated 8<sup>th</sup> October 2021, the Planning Authority issued a decision to grant permission subject to 13 conditions. The following is a summary of the most notable conditions attached:

Condition No.2 specifies that the premises shall be used as a shop with an ancillary hot and cold deli counter and for no other purpose within Part 2 or Schedule 2 Part 4 of the Planning and Development Regulations, 2001. Customer access to the deli counter and the limited area of window seating shall be through the shop only, with no independent external access.

Condition No.3 specifies the hours of opening which shall be 07.00 hrs to 22.00 hrs Monday to Saturday and 08.00 hrs. to 22.00 hrs on Sundays.

Condition No. 5 outlines road and access requirements.

Condition No.6 specifies ventilation requirements.

Condition No.13 relates to waste management requirements.

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

#### **3.2.1. Further Information**

Following initial DCC reports a further information request was issued. The matters raised can be summarised as follows:

- Clarification of the location, extent, and operation of the deli, seating and cooking facilities.
- Details of any proposed signage.
- Details of litter control measures.
- Transport Planning issues, including vehicular/pedestrian conflict and servicing/delivery arrangements.

#### **3.2.2. Planning Reports**

The assessment of the planning officer can be summarised as follows:

- The proposed use is acceptable in accordance with the Z4 zoning objective, subject to the protection of neighbouring amenities.
- The existing shop commenced operation as an 'exempted development' change of use from the previous motor showroom. The development permitted under P.A. Ref. 4011/19 (ABP Ref. 306115-19) has not been implemented.
- The proposed visual impacts would be minimal. No additional signage is proposed, and the extent of existing signage is acceptable.
- It has been clarified that there is no takeaway element to the development and details of the deli, cooking and seating facilities have been submitted as further information. The deli/seating areas are limited in scale and the sale of hot food as an ancillary element is generally acceptable subject to appropriate conditions regarding access, noise, and ventilation.
- Upgraded air extraction is included for the food preparation area.

- Litter appears to be an ongoing problem which predates the establishment of this business.
- While boundary treatment proposals are noted, there are wider noise complaints and an extension to opening hours would not be appropriate given the surrounding residential uses.
- The further information response outlines parking, circulation and servicing arrangements. Proposals are acceptable subject to conditions.
- Third-party references to non-compliance relating to another premises at 4 Ashgrove Mall are a matter for the relevant enforcement procedures. A refusal on the grounds of breach of conditions (under s.35 of the Act) is only permissible on foot of a High Court order.
- Regarding third-party concerns about the operation of the existing petrol pumps and shop, it is stated that the use is long-established, and a number of the issues raised fall outside the remit of assessment in this case.
- It is recommended to grant permission, which forms the basis of the DCC decision.

### 3.2.3. **Other Technical Reports**

Transport Planning Division: Following the receipt of further information, there was no objection subject to conditions.

Drainage Division – No objection subject to conditions.

### 3.3. **Prescribed Bodies**

Irish Water – No report received by the Planning Authority.

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

A number of observations were submitted to the Planning Authority and the most significant issues raised in these submissions can be summarised as follows:

- Removal of boundary wall has created a traffic hazard

- Late night opening hours would be inappropriate adjacent to residential areas due to antisocial behaviour, nuisance, noise, odour, and light pollution
- Concerns about clarity over deli use and indoor seating
- Non-compliance with the terms of the previous permission
- The cumulative anti-social impacts of the development and other premises
- Inadequate detail of layout and signage
- Car wash operation to the rear was not included in the original application
- Installation of a hatch beside the cash till
- Site Notice was not clearly erected
- Traffic congestion will be exacerbated
- Inadequate litter and waste storage proposals
- Noise pollution from ventilation system
- Inadequate servicing and delivery arrangements.

## 4.0 Planning History

The following planning history is referenced in the report of the Planning Officer and in previous cases:

**P.A. Reg. Ref 4011/19 (ABP Ref. 306115-19):** Permission for (1) Internal alterations and change of use from a car showroom to a Gala retail shop with a hot and cold deli counter together with a new shop front and external signage. Proposed twenty four hour opening times Monday to Sunday. (2) Internal alterations and change of use from a car service bay to a Four Star Pizza restaurant (incorporating internal and external seating areas), take-away and delivery use together with a new shop front and external signage. Proposed opening hours: Monday to Friday and Sunday - 12 noon to 12 am, Saturday - 12 noon to 1 am. (3) All structural, drainage and associated site works to be implemented.

The Board issued a split decision (March 2020) which granted permission for the proposed retail shop. Notable conditions include the following:

Condition 2 – Excludes the proposed pizza restaurant and associated activities and limits the permitted shop to 80.7m<sup>2</sup>.

Condition 3 – Limits use to that as a shop with ancillary hot and cold deli counter and for no other use within Part 4 of Schedule 2 to the Planning and Development Regulations 2001.

Condition 4 – Requires the development to remain closed outside the hours 0700 to 2200 Monday to Saturday and 0800 to 2200 on Sundays.

Condition 5 – Requires signage and lighting to be agreed.

Condition 6 – Requires litter management measures to be agreed.

Condition 7 – Requires parking, circulation, roadside boundary, and delivery arrangements to be agreed.

The Board refused permission for the pizza restaurant for the following reason:

*Having regard to the location of the site in what is considered to be a transitional zone between the centre of Finglas Village and predominantly residential areas to the north, to the scale and nature of the proposed fast food outlet proposed including outdoor seating and opening hours, to the lack of details with regard to air extraction and refuse storage and to the proximity of the site to existing residential properties to the north and east, it is considered that the proposed development would have a significant negative impact on the residential amenities of surrounding properties by reason of noise, litter and general disturbance. The proposed development would, therefore, seriously injure the amenities and depreciate the value of properties in the vicinity, would be contrary to the policy of the planning authority, as set out in section 16.25 of the Dublin City Development Plan 2016-2022, to strictly control such uses having regard to, inter alia, their impacts on residential amenity and litter, and would be contrary to the proper planning and sustainable development of the area.*

**P.A. Reg. Ref. 2117/09:** Permission granted (expired June 2019) for the removal of the existing motor service station buildings and the construction of a three storey building consisting of 4 no. shops, 2 no. surgeries and office accommodation plus

the provision of basement car parking for 15 no. cars. Permission was extended until June 2019 and was not implemented.

**Enforcement Ref. E0945/19:** Enforcement case opened in 2019 relating to the commencement of works on the site prior to the granting of planning permission.

**Enforcement Ref. E1184/19:** Enforcement case opened in 2019 relating to non-compliance with conditions 3, 4, 6 and 12 of P.A. Reg. Ref. 4011/19.

**Enforcement Ref. E0152/21:** Enforcement case opened in 2021 relating to non-compliance with condition 7 of P.A. Reg. Ref. 4011/19.

**Enforcement Ref. E0668/18:** Enforcement case opened in 2018 relating to breach of conditions at the existing Four Star Pizza outlet on McKee Avenue and specifically Condition No.2 relating to hours of opening.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant plan is the Dublin City Development Plan, 2016-2022.

The appeal site is located on lands that are zoned **Objective Z4** (District Centre) with the stated objective '*to provide for and improve mixed service facilities*'.

The plan states that district centres are expected to provide a higher range of services and that new development should enhance their attractiveness and safety for pedestrians and a diversity of uses should be promoted.

The appeal site is located within the Finglas Key District Centre (KDC4) which means that the site is one of the top tier of centres outside of the city centre zoned areas. General development principles are for an increased population and density in such locations and the provision of a comprehensive range of community and commercial services to the area.

**Paragraph 14.7** of the Plan relates to transitional zone areas and notes that it is necessary to have regard to the impact of development on the amenities of the more sensitive zone when considering development proposals.

**Paragraph 16.25** of the plan relates specifically to Take Away uses and states that it is the objective of the council to prevent an excessive concentration of such uses and to strictly control the provision of such uses having regard to a number of criteria, including

- The effect of noise, general disturbance, hours of operation and litter,
- Traffic considerations,
- The number / frequency of such facilities in an area,
- Issues relating to litter.

**Paragraph 16.37** promotes quality design for Petrol Stations and outlines that they will only be permitted in residential areas where residential amenity is protected. Hours of operation will be limited to between 0600 hours and 2300 hours and traffic safety standards should be complied with (as per Appendix 5). Lighting, landscaping and signage should be limited. Retailing proposals in petrol stations shall be guided by the statutory retail planning guidelines (DECLG 2012) and particularly Section 4.11.9, which refers, inter alia, to the retail floor-space cap of 100 sq.m (net) for petrol stations. Retail impact may be considered in some cases taking into account proximity to other retail outlets in the context of the retail strategy/hierarchy. Where permission is sought for floor-space in excess of 100 sq.m, the sequential approach to retail development shall apply.

**Policy RD15** relates to design and finishes for new and replacement shopfronts and compliance with the Council's Shopfront Design Guide.

**Policy RD19** seeks to promote retail provision in the Key District Centres (KDCs), District Centres and Neighbourhood Centres.

## 5.2. **Environmental Impact Assessment (Screening)**

Having regard to the nature and scale of the proposed development and the location and nature of the subject site, together with the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a

determination in relation to the requirement for an EIAR was not necessary in this case (See Preliminary Examination EIAR Screening Form).

### 5.3. **Natural Heritage Designations**

The site is not located in or close to any European site.

## 6.0 **The Appeal**

### 6.1. **First Party Appeal**

- 6.1.1. The applicant's appeal relates to condition no.'s 2 & 3 of the decision to grant. The grounds of appeal for each condition, as well as other appeal comments, are outlined in the following sections.

#### Condition 2

- 6.1.2. The applicant appeals the noise mitigation and independent access elements of the condition on the following grounds:
- There is an existing door in this glazed section which the applicant wants to reuse so as not to be restricted to the main shop entrance.
  - The access is also required for fire access and exit purposes, as requested in a current Fire Safety Certificate application. Otherwise, there will be a 'dead end' situation.
  - The appeal includes revised drawings showing the retention of a separate door access in the glazed front of the newly extended area. The seats have been relocated from the window front to the side of the area and the number of seats has been increased from 5 to 7.
  - Noise mitigation measures have been proposed, including a low noise ventilation system and an acoustic boundary screen, and it is now proposed to include soundproof glazing to the front of the premises.
  - The front of houses across the road are 35m<sup>2</sup> (*sic*) away from the shop front and McKee Avenue is a busy road with regular traffic all night. The effect of

the additional entrance would be negligible, and the Board is requested to remove or adjust the condition.

### Condition 3

6.1.3. The applicant appeals the limitations on trading/opening hours on the following grounds:

- The condition affects trading in an economically restrictive way in relation to competition with neighbouring garages.
- The original grants of permission (Reg. Ref No.'s 1931/72 & 30/73) have no restrictions of conditions relating to time.
- Time conditions have only come forth recently under P.A. Reg. Ref 4011/19 and ABP Ref. 306115-19, a permission which has not and will not be implemented.
- The appeal states that the previous leaseholder operated a shop from 6.30am to 12pm without issue and refers to several other similar garages in similar locations which operate 24 hours, through a hatch after 11pm generally. They sell fuel and shop items, and some have delis and sandwich bars with takeaway service.
- The appeal requests to have at least a similar level of such standard service.

### Other comments

6.1.4. Responding to various other concerns raised by the planning authority, the appeal states as follows:

- There are no major visual changes to the external building elevations.
- There will be no changes to the existing traffic patterns in the area.
- The proposed air and ventilation system has been carefully considered to minimise impacts on dwellings to the north. It has been moved to the rear of the building and is designed to reduce noise and smell impacts by 90%.
- There is no intention to provide outdoor seating.
- The application does not include a 'takeaway' element.

- The nature and extent of the deli offer and associated seating has been demonstrated.
- It is not proposed to change the existing signage on site.
- Litter collection measures have been detailed and the site is well managed.
- Details and proposals relating to traffic management, access, parking and servicing have been detailed in submissions to the planning authority.

## **6.2. Third Party Appeal**

6.2.1. The DCC decision to grant has been appealed by Anne Martin (13 McKee Avenue) and Phillip Brogan (44 McKee Avenue). The grounds of appeal can be summarised as follows:

- The existing 'deli' includes a burrito franchise and a delivery service, which does not seem to be in line with Condition 2 of P.A. Reg. Ref 4011/19.
- The proposal includes indoor seating.
- The proprietors currently run the Four Strat Pizza premises on McKee Avenue and have continued to operate outside the permitted trading hours. There is little faith that the proprietors would operate within the terms and conditions of any permission in this case.
- The seats will be used by young people and will lead to further anti-social behaviour, which has been reported in the Finglas Safety Forum. The applicant has no regard for local residents who are dealing with noise, litter, traffic and anti-social behaviour.
- The proposal will extend the retail space to 151.7m<sup>2</sup>, which greatly exceeds the 100m<sup>2</sup> cap for petrol station retail space as per section 16.37.3 of the Development Plan.
- The applicant has understated the frequency of oil deliveries, which happens twice daily due to the limited storage capacity. This causes a conflict with car access and additional deliveries associated with the proposed development have not been properly facilitated.
- Access to the car wash has not been adequately addressed and this access interacts with waste collection and oil deliveries.

- The bins should be stored to the rear of the building and should be adequately secured from foxes, cats etc.
- The car wash has no record of planning permission, and the noise affects adjoining dwellings.
- Parking on the footpath and inadequate access/exit arrangements causes traffic hazard and congestion.
- When the garage re-opened in 2019 the opening hours were not in line with planning permission.

### 6.3. **Planning Authority Response**

None.

### 6.4. **Observations**

While there were no observers in relation to the appeal, I note that Roisin Shortall TD made a submission as a public representative. The statement objects to the appeal and urges the Board to uphold the decision of DCC.

## 7.0 **Assessment**

### 7.1. **Introduction**

- 7.1.1. This case involves First Party and Third Party appeals of the DCC decision to grant permission. And while the First Party appeal relates to conditions 2 & 3 only, I propose to carry out a *de novo* assessment given that the Third Party appeal relates to the decision to grant in the first instance. Accordingly, I consider that determination of the application as if it had been made to the Board in the first instance is warranted and the provisions of section 139 of the Planning and Development Act 2000 (as amended) do not apply.
- 7.1.2. Having inspected the site and examined the application details and all other documentation on file, and having regard to relevant local/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Nature and scope of the development
- Principle of development
- Visual Amenity
- Residential amenity
- Traffic and access

## **7.2. Nature and scope of the development**

- 7.2.1. The Third Party appeal raises a range of issues relating to the history and ongoing operation of the overall site, including the fuel-filling station, the car wash, and unauthorised developments relating to the subject site and other premises. Therefore, it is important to clarify the nature and scope of the appeal case.
- 7.2.2. The planning authority states that the existing shop was established as a change of use (exempted development) from a motor showroom to a shop. I note that this is exempted development under Class 14 (a), Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended). And from available online imagery (source: Google maps), it would appear that a motor showroom operated in the years 2009-2010; that a 'Daybreak' shop operated in 2014; that the premises was closed between 2017-2019; and that the current 'Gala' shop was in operation in 2021. On the basis of the evidence available and consistent with the approach of the planning authority, I am satisfied that the existing shop operates under the basis of an exempted development change of use.
- 7.2.3. The appeal includes references to the recent planning history of the site and non-compliance with conditions. Firstly, I would highlight that any references to the conditions of the DCC decision (P.A. Reg. Ref. 4011/19) are irrelevant as these would be superseded by the conditions of the Board's decision under ABP Ref. 306115-19. However, having reviewed the existing and proposed plans permitted under the previous application, I am satisfied that the permission has not been implemented. Therefore, the conditions of ABP Ref. 306115-19 are also unenforceable.
- 7.2.4. Concerns have been raised about the car wash facility to the rear of the site. This service was in operation at the time of my site inspection. And while I am not clear in

relation to the planning history of same, I am satisfied that it does not form part of this appeal case. Similarly, the references to the applicant's other reputed premises in the vicinity (Four Star Pizza) and associated non-compliance matters are a matter for DCC enforcement investigation. And while the matter was acknowledged by the Board's Inspector in the previous case, I would highlight that the previous case effectively involved a relocation of that Four Star Pizza business. The current case involves an extension and reorganisation of the existing shop/deli, which is significantly different to the previous proposal.

- 7.2.5. Various other issues were raised in the consideration of the application and the appeal. These include matters of signage, lighting, outdoor seating and 'takeaway' use. However, the applicant has confirmed that none of these elements are included in the current proposal. Any previous or future occurrences of such elements would be a matter for enforcement investigation by the planning authority.
- 7.2.6. Having regard to the above, I conclude that the nature and scope of the assessment should be limited to that outlined in section 2.0 of this report. In summary, this involves the change of use of the existing building through the extension and reorganisation of the existing shop/deli; internal and external alterations to the building; upgraded extraction/ventilation measures; noise mitigation measures; and alterations to traffic access and circulation arrangements. The revised proposals submitted with the First Party appeal shall also be considered.

### **7.3. Principle of Development**

- 7.3.1. The appeal site is located on lands that are zoned Objective Z4 under the provisions of the *Dublin City Development Plan, 2016-2022*, where the stated zoning objective is '*to provide for and improve mixed service facilities*'. Under this land use zoning objective, the main uses that are existing and proposed for the site are identified as permissible on lands zoned Objective Z4. Specifically, petrol station, shop, and delicatessen uses are all identified as being permissible and are therefore considered to be acceptable in principle subject to other relevant plan policies and objectives being met.
- 7.3.2. I note that a delicatessen is defined in the Development Plan as 'selling mainly gourmet cold food (no fried foods)'. However, I consider that some flexibility is warranted given that the sale of a significant proportion of hot food is common in the

normal understanding of a 'deli'. I would also accept that some element of off-site and on-site food consumption is a common element, but I do not consider that the proposal constitutes a 'take-away' premises. For information purposes, the Board should note that a 'take-away' is also considered a 'permissible use' in Z4 zones.

- 7.3.3. In my opinion, the key consideration is the scale and layout of the proposed deli. In this case, the deli area would extend to just 5m<sup>2</sup>, along with a small element of associated seating. Therefore, I am satisfied that it would be a small and ancillary element of the main shop use. I note that the floor plans have been amended through the application and appeal process. The original plans were clarified to show the deli area in the northwest corner, 5 no. seats along the window, and it was stated that the intervening area would be used for the extended shop floor area. The revised proposals submitted with the appeal have amended the layout by showing a separate deli access to the front and 7 no. seats along the side of the new space. Consistent with the DCC decision, I consider that the deli should remain subsidiary to the main shop in terms of size and access arrangements. Therefore, in accordance with the further information proposals, access to the deli should be through the shop, and seating should be limited to 5 no. window seats. The remainder of the new area should be dedicated to shop use, and I am satisfied that these arrangements can be clarified by condition. On this basis, I am satisfied that the proposed deli would be ancillary to the main shop and that the proposed uses would be acceptable in accordance with the Z4 zoning.
- 7.3.4. I note the First Party appeal points regarding the need for fire safety provisions in the newly extended area. However, I do not consider that the revised access arrangements are appropriate, and I am satisfied that alternative fire safety arrangements are achievable for the proposed development.
- 7.3.5. I acknowledge that the site is located in what is clearly a transition zone between the commercial and retail area centred around the village to the south and the predominately residential areas to the north. In this regard, the appeal site is directly bounded to the north by residential properties and there are also residential properties and developments located opposite the site on the eastern side of McKee Avenue. Paragraph 14.7 of the Plan relates to transitional zone areas and notes that it is necessary to have regard to the impact of development on the amenities of the more sensitive zone when considering development proposals. In the case of the

appeal site, I therefore consider that it is appropriate that the protection of the amenities of the adjoining residential properties would be considered in the assessment and that the compatibility of the proposed development with the Objective Z1 zoning of these adjoining lands, '*to protect provide for and improve residential amenities*' would be given particular consideration. This is addressed further in section 7.5 below.

- 7.3.6. It is also noted that the site is also located in an area that is within the Finglas Key District Centre (KDC4) which means that the site is located within one of the top tier of centres outside of the city centre zoned areas. General development principles within such areas are for an increased population and density and the provision of a comprehensive range of community and commercial services to the area. While the proposed development is essentially making use of what was already on site in the form of a filling station building and forecourt, it could be argued that the zoning of the site and the designation as a key district centre is such that a more intensive form of development should be the long-term goal for the site and that a wider range of uses including residential and commercial could also be accommodated.
- 7.3.7. I acknowledge the provisions of the Development Plan and the Retail Planning Guidelines regarding the 100m<sup>2</sup> retail floor space cap for filling stations. It should be noted that this relates to net retail floorspace, which is defined in the Retail Planning Guidelines as excluding storage, toilets, cafes, and other non-public spaces. On this basis, I calculate that the shop and deli area would be a maximum of c. 106m<sup>2</sup>, and when the deli and seating areas are excluded the actual net retail area would not exceed the 100m<sup>2</sup> cap. In any case, the gross shop/deli area would only marginally exceed the cap and I am satisfied that its location with the Finglas Key District Centre would satisfactorily comply with the sequential test.
- 7.3.8. Having regard to the above, I am satisfied that the proposed development involves an extension to the established shop use and ancillary deli use, and I consider that this would be consistent with the zoning and retail policies that apply to the subject site. Accordingly, I have no objection to the principle of the development.

#### **7.4. Visual Amenity**

- 7.4.1. As previously outlined, the proposed development does not involve any additional signage or lighting. The main works would relate to internal alterations to the building. Minor works are proposed to the external elevations and associated external works are proposed within the site. I consider that the proposed alterations are minimal and would not adversely impact on the visual amenity or character of the area.

#### **7.5. Residential Amenity**

- 7.5.1. The impact of the proposed development on residential amenity is a key element of both appeals, with the concerns raised including matters of waste management, ventilation, anti-social behaviour, noise & light pollution, and general disturbance. The question of opening hours is closely associated with these factors.
- 7.5.2. On the day of my site inspection, I observed that there was a bin placed outside the shop entrance and the larger waste storage bins were placed to the northwest and rear of the main building. There was no evidence of any significant waste or litter problems. Details and evidence of regular waste collection has also been submitted by the applicant. The Site Layout Plan submitted shows a 'new refuse area' to the north (side) of the building but I acknowledge that the proposals are limited in detail. I would also acknowledge that later opening hours can lead to additional litter problems. However, given the existing satisfactory arrangements and the absence of a significant intensification of use, I am satisfied that, consistent with condition no. 13 of the DCC decision and subject to appropriate opening hours, waste management proposals can be agreed with the planning authority.
- 7.5.3. In order to address odour and noise associated with ventilation, the applicant has proposed an upgraded air extraction system. It will discharge from the single storey flat roof at the northern end of the building, approximately 7 metres from the boundary with the nearest dwellings to the north (along George's Road). It includes a high-pressure jet cowl to ensure that emissions are ejected upwards (not laterally), as well as steel baffle filters to reduce the levels of grease and associated odours. There is a well-established boundary to the north and it is proposed to supplement this with a 3m high acoustic fence as a noise mitigation measure. It is inevitable that there will be some degree of impact between commercial and residential uses in

transitional areas such as this. However, having regard to the limited scale of the development, the separation distances involved, and the design and mitigation measures incorporated, I am satisfied that, subject to appropriate opening hours, there will be no unacceptable noise or odour impacts as a result of the proposed extraction system.

- 7.5.4. I note the general concerns raised in the appeal regarding anti-social behaviour and disturbance. Again however, it must be acknowledged that this is an application which mainly concerns the extension and improvement of convenience retail space. And while an element of hot food sale is included, I am satisfied that it is a small and ancillary part of the overall development. I acknowledge the third-party claims regarding anti-social behaviour in the area and the existence of a late-opening premises in the vicinity (Four Star Pizza). The other food premises in the vicinity is a premises called 'Foodfare', which appears to offer a 'take-away' service but only in conjunction with the main restaurant use and not late at night. And while I acknowledge that a proliferation of late-opening food premises can lead to anti-social problems, I am satisfied that, subject to appropriate opening hours, the proposed development could not be seen to result in any significant individual or cumulative impacts relating to anti-social behaviour or nuisance.
- 7.5.5. On the issue of opening hours, the application proposed opening hours of 7am to 12pm daily. The first party appeal now refers to other premises which are reputedly open 24hrs (from window hatch after 11pm) and requests a similar level of service. As well as the current DCC decision, I note that this conflicts with the previous decision of the Board (ABP Ref. 306115-19), which restricted opening hours to 7am to 10pm (Monday to Saturday) and 8am to 10pm (Sunday).
- 7.5.6. I have reviewed the precedent cases cited by the applicant. However, it has not been demonstrated that these contain any recent Board decisions or circumstances that would accurately reflect the context of the appeal site, and I consider that the subject case should be dealt with on its merits. In this regard, I am conscious of the transitional location of the site and the policies of the Development Plan to protect adjoining sensitive uses. The site adjoins dwellings to the north and is separated from other dwellings to the east by the adjoining road.

- 7.5.7. I note that section 16.37.1 of the Development Plan states that the hours of operation of petrol stations in residential areas will be limited to between 0600 hours and 2300 hours. However, this relates to petrol stations in general and I would feel that further consideration is required where a substantial shop and hot food offer is included. It is reasonable to conclude that the additional activity associated with a late-night shop and hot food offer could lead to genuine noise, litter, and light pollution problems, as well as general disturbance in close proximity to a substantial number of dwellings. Accordingly, consistent with the DCC decision and the previous Board decision, I do not consider that the proposed development should be permitted to trade after 10pm.
- 7.5.8. In conclusion, I am satisfied that, subject to appropriate conditions including a closing time of 10pm, the proposed development can be accommodated at this location and would not seriously detract from the residential amenity of surrounding properties.

## **7.6. Traffic and Access**

- 7.6.1. The original application did not propose any alterations to the access, parking and circulation arrangements. In response to the DCC further information request, the applicant included proposals for steel bollards to delineate the roadside boundary and entry/exit points. Details of autotrack analysis and entry/exit lining have also been submitted for car and service vehicle movements. There are 4 dedicated parking spaces to the south of the site and a dedicated delivery area to the north.
- 7.6.2. At the time of my site inspection, I did not observe any significant traffic problems. There were parking spaces available and there was no evidence of unauthorised parking or traffic congestion associated with the premises. Ultimately, I consider that the proposed development involves a quite limited addition to the existing shop/deli floorspace, and it would be reasonable to conclude that this would largely serve the surrounding neighbourhood where access is more likely by foot.
- 7.6.3. I acknowledge the Third Party appeal concerns regarding traffic issues and it is obviously possible that there are difficulties at peak periods. However, I would consider that the majority of vehicular traffic is generated by the filling station service, which is not affected by proposed development. Otherwise, I do consider that the proposed development includes appropriate proposals to improve the existing

access, circulation, pedestrian, and delivery arrangements. Accordingly, subject to conditions, I am satisfied that the proposed development would not result in any unacceptable traffic impacts in terms of congestion or safety.

## **8.0 Appropriate Assessment**

- 8.1. The nearest Natura 2000 site is South Dublin Bay and River Tolka Estuary SPA, approximately 6km to the southeast. The proposed development involves mainly internal alterations and minor external works and siteworks. The site is already developed in a serviced urban area and there are no pathways linking the appeal site to any European Sites. Having regard to the limited scale of the proposed development, the separation distance from Natura 2000 sites, and the absence of identifiable pathways, I do not consider that there is any potential for impacts on Natura 2000 sites.
- 8.2. Having regard to the above preliminary examination, I am satisfied that no Appropriate Assessment issues arise, and I do not consider that the proposed development, either individually or in combination with other plans or projects, would be likely to have a significant effect on a European site. Accordingly, a Stage 2 Appropriate Assessment is not required.

## **9.0 Recommendation**

I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations outlined below.

## **10.0 Reasons and Considerations**

Having regard to the pattern and character of existing development in the area and the provisions of the Dublin City Development Plan 2016-2022, it is considered that the proposed development would be consistent with the Z4 zoning objective for the site and, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the

vicinity, would not be prejudicial to public health, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further information submitted on the 13<sup>th</sup> day of September 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. (a) The premises shall be used as a shop with ancillary hot and cold deli counter and for no other use within Part 4 of Schedule 2 to the Planning and Development Regulations 2001 (as amended) without a prior grant of planning permission.

(b) The total net retail sales space of the shop shall not exceed 100 square metres.

(c) Customer access to the deli counter and associated window seating shall be provided through the existing shop entrance only and no independent external access shall be provided.

Details of the floor plan layout showing compliance with (b) and (c) above shall be submitted to, and agreed with, the Planning Authority prior to the commencement of development.

**Reason:** To clarify the scope of the permission, to protect the amenities of the area, and to comply with national policy, as set down in the Guidelines for

Planning Authorities Retail Planning issued by the Department of the Environment, Community and Local Government in April, 2012.

3. The permitted development shall remain closed and shall not trade outside of the following hours:

(a) 0700 hours to 2200 hours Monday to Saturday, and

(b) 0800 hours to 2200 hours on Sundays,

unless otherwise agreed in writing with the Planning Authority.

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

4. A waste bin shall be provided outside of the premises during the hours of business. Details of cleaning, litter management, and general waste storage and management measures shall be submitted to, and agreed with, the Planning Authority prior to the commencement of development.

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

5. The parking, access, and circulation arrangements shall be upgraded in accordance with the plans and particulars submitted to the planning authority on the 13<sup>th</sup> day of September 2021. All works shall be completed prior to the opening of the permitted development to the public.

**Reason:** In the interests of traffic and pedestrian safety.

6. 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.

7. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

8. No signage, advertising structures/advertisements, security shutters or other projecting elements, including flagpoles, shall be erected on the building or within the site unless authorised by a further grant of planning permission.

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

9. Ventilation and extraction measures shall be upgraded and maintained in accordance with the proposals submitted to the planning authority on the 18<sup>th</sup> day of March 2021.

**Reason:** In the interest of public health and to protect the residential amenities of property in the vicinity.

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Stephen Ward  
Senior Planning Inspector

27<sup>th</sup> April, 2022