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Bord  
Pleanála

## Inspector's Report ABP 313906-22

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<b>Development</b>	Demolition of existing shop and change of use of part of existing showroom to shop.
<b>Location</b>	Lee Garage, Model Farm Road, Cork
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	21/40518
<b>Applicant</b>	Lee Garage Cork Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	1 <sup>st</sup> Party v. Condition
<b>Appellant</b>	Lee Garage Cork Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	01/11/22
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

The site, which has a stated area of c.0.28 hectares, is to the south of Model Farm Road (R608) in the south-western Cork City suburb of Bishopstown. It comprises a filling station with small ancillary shop, with the forecourt covered by a canopy. There is a car sales showroom and service garage to the rear of the forecourt. The site is served by two accesses.

The immediate vicinity is characterised by residential uses.

## 2.0 Proposed Development

The application was lodged with the planning authority on the **23/09/21** with further plans and details submitted **13/12/21** and **04/05/22** following requests for further information and clarification of further information dated 17/11/21 and 25/01/22 respectively.

As amended the proposal entails:

1. Demolition of existing shop ancillary to filling station,
2. Change of use of part of existing car showroom to new shop with off licence.  
The net retail floor space is 99.9 sq.m. with a 55 sq.m. seating area,
3. Alterations to elevations,
4. New parking layout,
5. Bin storage building,
6. Ancillary works including alterations to existing forecourt canopy.

## 3.0 Planning Authority Decision

### 3.1. Decision

Grant permission for the above described development subject to 15 conditions. Of note:

Condition 2 (a): Net retail sales space including any retail, delicatessen, seating area and off licence shall not exceed 100 sq.m.. Revised plans to be submitted.

(b) use of overall premises to be in accordance with revised plans. Any change of use even within the same use class for exempted development, to be subject to prior grant of permission.

(c) café/deli/food offer counter and food prep area to be ancillary to retail use and shall not operate independently of same.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The **1<sup>st</sup> Planner's** report dated **17/11/21** notes that the area delineated as retail does not include all areas that would fall within the scope of net retail floor area as outlined in the Retail Planning Guidelines such as the tea/coffee station and serving counter. Revised plans required with the net retail floor area not to exceed 100 sq.m. There are concerns about the scale of the deli café/food offer. Combined with the general retail element it provides for a significant retail offer. There are concerns that it could impact on the vitality and viability of the local centre at Dennehy's Cross. The deli/café offer as proposed is not ancillary to the forecourt shop whilst the proposed seating area is considered excessive. A reduction is required. The proposed off licence is contrary to development plan guidance in terms of location and should be omitted. Details on hours of operation required. The report from Urban Roads and Street Design (Planning) noted. A request for further information recommended.

The **2<sup>nd</sup> Planner's** report dated **24/01/22** following further information considers that the tea/coffee station forms part of the retail offer and should be included in the net floorspace calculation. The size of the food offer remains a concern and is not considered ancillary to the fuel filling station. The sizing of the seating area is also excessive. The potential impacts on the viability and vitality of the local centre at Dennehy's Cross have not been addressed. Omission of the off-licence recommended. Clarification of further information recommended. The recommendation is endorsed by the Acting Senior Executive Planner.

The **3<sup>rd</sup> Planner's** report dated **26/05/21** following clarification of further information notes that the deli/food offer has not been included in the calculation of the net retail area as requested. A condition restricting the net retail area to 100 sq.m. recommended. In this instance an off-licence is acceptable as the proposal is not

for a standalone unit. The reduction in the seating area is acceptable. A grant of permission subject to conditions recommended. The report from the **Acting Senior Executive Planner** endorsing the recommendation notes that a site at Melbourne Business Park to the west is to be zoned ZO 09 Neighbourhood and Local Centre. This is where proposed retail and other uses are envisaged in the area of the site. The deli/food counters does not constitute a separate or distinct entity as suggested. Precedent noted in the area (ABP 301333-18). Having regard to the nature and location of the development with the extensive parking on site and nearby employment and residential uses, there is concern that the development would become a destination in its own right and would be in competition with the nearby local centres and neighbourhood centres. The scale of the unit and type of uses are not ancillary to the selling of fuel. The level of retail provision will have a significant impact on the vitality and viability of the local and neighbourhood centres.

### 3.2.2. Other Technical Reports

1<sup>st</sup> report from Urban Roads and Street Design (Planning) dated 19/10/21 recommends further information on carparking layout and relocation of loading bay. The 2<sup>nd</sup> report dated 21/01/22 considers the issues have been satisfactorily addressed. No objection subject to conditions.

Traffic: Regulation and Safety has no objection subject to conditions.

Environment Section has no objection subject to conditions.

Infrastructure Development report recommends further information on set back of permanent structures 8 metres from the site boundary to preserve the opportunity for proposed public transport infrastructure.

Drainage report has no objection subject to conditions.

Contributions reports set out the applicable contribution.

### 3.3. Prescribed Bodies

Transport Infrastructure Ireland has no observations.

Irish Water has no objection subject to conditions.

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

None.

## 4.0 **Planning History**

I am not aware of any previous planning applications on the site.

ABP 314952-22 – current referral asking whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at the site is or is not development or is or is not exempted development.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

Since the planning authority's decision, the Cork City Development Plan, 2022, came into effect.

The site is within an area zoned ZO 01 – Sustainable Residential Neighbourhoods, the objective for which is to protect and provide for residential uses and amenities, local services and community, institutional, educational, and civic uses.

Uses that contribute to sustainable residential neighbourhoods are acceptable in principle in this zone provided they do not detract from the primary objective of protecting residential amenity and do not conflict with other objectives of this Development Plan. Such uses include but are not limited to small-scale local services including local convenience shops..... service stations (petrol filling stations).

Chapter 11 sets out the development management requirements for development.

Section 11.184 addresses fuel filling stations

Applications for petrol stations including refurbishments to existing premises will be required to have a high standard of design and layout. To take account of same, standard corporate designing may need to be modified as required. Consideration will be given to the following:

5. Any shop being provided shall be ancillary to the principal use of the premises as a filling station and shall generally be a maximum size of 100m<sup>2</sup> net retail floorspace (see Retail Planning Guidelines for Planning Authorities (DoECLG, 2012). Where permission is sought for floor-space in excess of 100m<sup>2</sup>, the sequential approach to retail development shall apply.

13. Late night opening will only be permitted if it does not impact adversely on nearby residences.

#### Section 11.185 – Cafes/restaurant

The positive contribution of cafés and restaurants and the clusters of such uses to the vitality of the city is recognised. The following shall be considered in assessing applications for cafés/ restaurants:

1. The need to retain, protect and strengthen the vitality and multi-use function of designated centres;
2. The number/frequency of cafés / restaurants in the area;
3. The effect of noise, fumes, hours of operation, and general disturbance on nearby amenities and residents. Full details of any external extractor fans/vents and hours of operation of the development shall form part of a planning application;
4. Traffic implications including adequate and safe delivery areas;
5. Waste storage facilities;
6. Any proposed signage/advertising/lighting shall be suitable and unobtrusive.

Dennehy's Cross which is c.300 metres to the east is zoned ZO 08 Neighbourhood and Local Centres.

## 5.2. Natural Heritage Designations

None in the vicinity.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The submission by John Spain Associates on behalf of the applicant against condition 2(a) can be summarised as follows:

#### 6.1.1. General

- The condition is neither necessary nor relevant. The wording should be amended accordingly so that the delicatessen and seating area is not included in the calculation of the net retail sales space of the forecourt shop.
- Revised floorplan provided shows a 99.9 sq.m. retail unit (including off licence use) and a separate 148 sq.m. for café/deli unit including ancillary customer seating area.

#### 6.1.2. Policy

- The condition is not justified in the context of the definition of a 'shop' in the Planning and Development Regulations 2001 (as amended) and the definition of net retail floorspace and the retail floorspace cap for motor fuel stations as set out in the Retail Planning Guidelines.
- The public notices were clear in the nature and extent of development proposed. The retail area of marginally less than 100 sq.m. is ancillary to the filling station with a separate café deli food offer and food prep area with customer seating area which is also ancillary to the filling station.
- The café/deli is separated from the shop by a common circulation area and served by separate till points and seating area.
- The cafe/deli unit including seating area is distinct from the shop use. It is similar to restaurant use. As it is separate from the retail unit and falls outside the definition of 'shop' and having regard to the definition of net retail floorspace which excludes 'cafes' it should not be subject to the 100 sq.m. floorspace cap.
- The floorspace cap in the guidelines for motor fuel stations clearly relates to 'shop' only.

- The Development Plan reiterates the provisions of the guidelines with respect to motor fuel stations in terms of retail floorspace cap. No floor cap is set out with respect to cafes/restaurants.

#### 6.1.3. **Project Viability**

- The floor area restriction would render the proposed café element unworkable to such an extent the permission could not be implemented.
- From the floorplans submitted the normal operational elements of the café/deli require a minimum level of floorspace and could not be accommodated along with the retail area within an area of 100 sq.m.

#### 6.1.4. **Local Function**

- The development plan acknowledges the positive contribution of cafes. It would add to be vibrancy, vitality and choice of food offer within the local area and would serve the needs of the motorist.
- The National Roads Authority Service Area Policy (2014) acknowledges the need for sufficient rest areas for drivers.

#### 6.1.5. **Precedent**

- TP 19/38514 – South Link Road. The net retail floorspace did not include the café/deli area.
- ABP 304535-19 – Amber Service Station, Clonmel, Co. Tipperary. The net retail floorspace did not include the café/deli area.

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

None.

### 6.3. **Observations**

None.



## 7.0 Assessment

- 7.1. This is a 1<sup>st</sup> party appeal against condition 2(a) attached to the planning authority's decision to grant permission for alterations and extension to the existing petrol filling station. In view of the long established use on the site, the zoning provisions in the current Cork City Development Plan and the documentation accompanying the application, as amended by way of further information and clarification of further information, I am satisfied that the determination of the application by the Board, as if it has been made to it in the first instance, would not be warranted. Accordingly, I consider that it is appropriate to use the provisions of Section 139 of the Planning and Development Act, 2000, as amended, and to consider the issues arising out of the disputed condition only. The said provisions do not allow for an appeal against a subsection only. Therefore, due regard is had to the condition in its totality.
- 7.2. The substantive issue pertains to the inclusion of the delicatessen and seating area within the calculation of the net retail floorspace which, in terms of its connection to a petrol filling station, is capped at 100 sq.m.
- 7.3. Any reasonable interpretation of the nature and extent of the development as given in the public notices and the proposed layout as delineated on the plans and drawings accompanying the application (amended by way of further information and clarification of further information), would have concluded that the ancillary café/deli/food counter and customer seating area were included within the 'new forecourt convenience shop' and formed an integral part of and were inextricably linked to the retail offer. They were to be served by one set of tills. The introduction of the circulation area by way of clarification of further information to signal a separation between the deli area and the 'retail' area would not disabuse a reader of this conclusion. The planning authority in its decision would appear to have reached the same conclusion, hence the requirements of condition 2(a) which the applicant is appealing, namely that the forecourt shop, delicatessen area, seating area and off licence are all included in the calculation of the retail floorspace which is not to exceed 100 sq.m. net.
- 7.4. The applicant in its appeal is seeking the omission of the delicatessen and seating area from the net retail floor area and relies on the use of the word 'café' in the development description given in the public notices. The basis of the case, which is

accompanied by amended floor plans, is that the café/deli and seating area is separated from the shop by a common circulation area, is served by a separate till point and is distinct from the shop use. It is contended that it is similar to a restaurant use. It is argued that as it is separate from the retail unit and falls outside the definition of 'shop' and, having regard to the definition of net retail floorspace which excludes 'cafes', it should not be subject to the 100 sq.m. floorspace cap.

- 7.5. From a comparison of the plans accompanying the application (as amended) and those submitted with the appeal I note the following:
- The 'retail floor area' such as considered by the applicant remains the same at 99.9 sq.m.
  - The deli and seating area equates to 127 sq.m. in the clarification of further information, increasing to 148 sq.m. in the appeal submission.
- 7.6. I submit that the proposal has been amended to such a degree as to no longer reflect the nature and extent of the development as described in the public notices. That now proposed before the Board provides for a dedicated café area which is effectively 1 ½ times the size of what the applicant considers to be the retail floor area. In my opinion such an arrangement would result in the café/deli providing a function which is not ancillary to the fuel filling station and could become a primary use. I submit the more appropriate location for such type uses would be within areas zoned for neighbourhood and local centres (ZO 08) such as Dennehy's Cross which is c.300 metres to the east.
- 7.7. I note reference to precedent and planning permissions granted under refs. TP 19/38514 at the South Link Service Station on the N27 and ABP 304535-19 at Amber Services Station on the N24 at Clonmel Co. Tipperary. The site location on Model Farm Road is located on the R608 which goes from Cork City to Ballincollig via Wilton and Bishopstown, a distance of in the region of 13 km. Whilst certainly it would provide for a level of passing motorist traffic I would submit that the site could become a destination in its own right serving the commercial and residential areas in the vicinity.
- 7.8. I fully accept that facilities to support the primary function of the filling station including rest facilities for motorists are necessary. However this cannot be seen as sufficient justification for a café of the size sought. Such facilities can be provided

whereby the primary function of the site namely filling station is maintained. Should the applicant wish to pursue a café of the extent presented then the public notices accompanying any future application would need to be unambiguous. Any future proposal would then be appropriately assessed against the provisions of the development plan.

- 7.9. I therefore consider that the strictures of the planning authority's condition in its entirety, to be reasonable and in accordance with the proper planning and sustainable development of the area. I therefore recommend that the planning authority be directed to attach the condition.

*Appropriate Assessment*

- 7.10. Having regard to the location of the site and the existing uses thereon, and the nature and scale of the proposed development no appropriate assessment issues arise, and it 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

I recommend that the planning authority be directed to **ATTACH** condition 2 for the following reasons and considerations.

## 9.0 Reasons and Considerations

Having regard to the ZO-01 zoning provisions for the site in the current Cork City Development Plan, 2022, the objective for which is to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses and to the existing fuel filling station, motor sales and garage on the site it is considered that a restriction on the net retail floor area inclusive of the delicatessen and seating area to a maximum of 100 square metres net in accordance with the requirements of Section 11.184 of the City Development Plan and the Retail Planning Guidelines for Planning Authorities, 2012, is appropriate to ensure that the primary function of the site as a fuel filling station, motor sales and garage is maintained.

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**Pauline Fitzpatrick**

**Senior Planning Inspector**

**February, 2023**