



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315961-23

<b>Development</b>	RETENTION & PERMISSION: (a) To retain unit for retail-convenience use and (b) To provide part off-licence use.
<b>Location</b>	Moldova Shop, Porters Avenue, Coolmine Industrial Estate, Dublin 15
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	FW22A/0307
<b>Applicant(s)</b>	The Moldoven Retail Store Limited
<b>Type of Application</b>	Permission and Retention Permission
<b>Planning Authority Decision</b>	Refuse Retention Permission and Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	The Moldoven Retail Store Limited.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	9 <sup>th</sup> June 2023
<b>Inspector</b>	Elaine Power

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## **1.0 Site Location and Description**

- 1.1. The subject site is located within the Coolmine Industrial Estate, Dublin 15, at the junction of Porters Avenue and Porters Road. The Industrial Estate comprises a wide range of uses, which are generally characterised by a mix of showrooms, workshops, services and industrial uses. The industrial estate also accommodates office use, a children's play centre, a gym, the Blanchardstown Fire Station, a Fingal County Council depot, an An Post office, a petrol service station and limited cafés / restaurants and food trucks.
- 1.2. The subject site has a stated area of 448sqm. The structure to which the application relates is currently operating as a convenience shop 'Moldova' with surface car parking to the front.

## **2.0 Proposed Development**

- 2.1. The development comprises the retention of permission for an existing convenience retail use (448sqm) and permission for the provision of a part off-licence use (20.6sqm) in the existing retail unit.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission was refused for the following reasons:

1. The subject site is located within an area zoned 'GE' General Employment which seeks to provide opportunities for general enterprise and employment in the Fingal Development Plan 2017-2023. Having regard to the nature of the retail use to be retained and the zoning objective and vision, the proposed development represents an incompatible land use which would compromise the existing adjoining industrial uses and future expansion or changes to same, would contravene the 'GE' land use zoning objective, set an undesirable precedent for similar type development and as such would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of this type of retail facility in a 'GE' zoning, it is considered that development for retention and permission would militate against the policies and objectives of land zoned in the Fingal County Development Plan 2013-2019 for this type of development such as Local Centres, Major Town Centres and Town Centres and would undermine their function. The proposal would therefore be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The area planners report dated 9<sup>th</sup> February 2023 raised concerns regarding the development and recommended that permission be refused for the 2 no. reasons outlined above.

#### 3.2.2. Other Technical Reports

*Transportation Planning Section:* Recommended that further information be requested regarding vehicular turning movements, cycle parking, delivery arrangements and EV charging points.

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

None

## 4.0 Relevant Planning History

**Reg. Ref. 13A/0123:** Retention permission was refused in 2013 for the change of use of an industrial unit to a retail use. The 3 no. reasons for refusal related to (1) the sites General Employment zoning objective; (2) the use would undermine lands zoned for retail development such as local centres, major town centres and town and district centres; and (3) incompatible use with adjoining uses.

**ABP PL06F.243532, Reg. Ref. 14A/0045:** Permission was refused in 2014 for the retention of change of use of a unit from industrial to retail for a period of 2 years and associated works at ground floor. The reason for refusal related to non-compliance with the sites 'General Employment' zoning objective.

**ABP304284-19, Reg. Ref. 19A/0020:** Permission was refused in 2019 for an off licence within the existing retail unit. The reason for refusal related to non-compliance with the sites 'General Employment' zoning objective.

## 5.0 Policy Context

### 5.1. Fingal County Development Plan 2023 - 2029

The subject site is zoned 'GE' General Employment with the associated land use objective to provide opportunities for general enterprise and employment. The vision for these lands is to facilitate opportunities for compatible industry and general employment uses including appropriate sustainable employment and enterprise uses, logistics and warehousing activity in a good quality physical environment. General Employment areas should be highly accessible, well designed, permeable and legible.

Permissible uses include Retail - Local < 150 sqm net floor area to serve the local working population only. Retail – Supermarket < 2,500sqm are not permitted.

Table 2.19 lists proposed framework plans which includes Coolmine Industrial Estate (FP13.E). These non-statutory plans will provide more detailed design guidance in order to unlock the potential of the applicable lands.

### 5.2. Natural Heritage Designations

None of relevance

### 5.3. EIA Screening

Having regard to the limited nature and scale of the development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for

environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

This is a first party appeal against the planning authority's decision to refuse permission. The main grounds of the appeal are summarised below:

- The applicant has been trading as a convenience retail store since 2012. There are no enforcement proceedings against this use.
- The existing use on site is non-conforming. Non-conforming uses are permissible in the development plan, which allows for expansion or intensification of non-conforming uses.
- The site is in a peripheral location with respect to the GE zoning objective. The adjacent lands are zoned LC – Local centre. The site is contiguous to these lands and their associated uses.
- The lands zoned LC were previously zoned for GE. The change of zoning was in recognition of the transitional nature and importance of this area as a local centre due to its proximity to a significant surrounding residential catchment.
- The entire GE lands are developed. There is no longer any potential for additional development at this location. The development does not compromise the existing uses, future expansion or changes to the adjacent uses and can not be considered to be contrary to the proper planning and sustainable development of the area in respect of potential expanding GE uses.
- The site is in a transitional zonal area and should be considered in accordance with development plan objectives.
- The subject site was previously in use as a warehouse and showroom and not an industrial unit. The location, description and context of this application were not properly considered.

- The reason for refusal is based on previous reasons for refusal and not considered in the context of the current development plan.
- Concerns regarding transportation were not fully addressed.

## 6.2. **Planning Authority Response**

The submission from the planning authority states that the application was assessed against the policies of the Fingal County Development Plan 2023 – 2029 and requests that the reason for refusal be upheld.

If permission is being granted it is recommended that a financial contribution condition be attached.

## 6.3. **Observations**

None

## 6.4. **Further Responses**

None

## 7.0 **Assessment**

7.1. The main issue of this appeal relates to the reasons for refusal and transportation issues. Appropriate Assessment requirements are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Principle of Development
- Impact on Existing Uses
- Impact on Retail Hierarchy
- Transportation
- Appropriate Assessment

## 7.2. ***Principle of Development -Zoning Objective***

- 7.2.1. The development comprises the retention of an existing convenience retail store with a stated gross floor area of 448sqm and the provision of a part off licence (20.6sqm) within the existing retail store. It was noted during my site visit that the existing retail use already contains an off licence.
- 7.2.2. The planning authority's first reason for refusal considers that the proposed development would materially contravene the land use objective for the site.
- 7.2.3. The subject site is located on lands zoned 'GE' General Employment with the associated land use objective *to provide opportunities for general enterprise and employment*. The vision for these lands is to facilitate opportunities for compatible industry and general employment uses including appropriate sustainable employment and enterprise uses, logistics and warehousing activity in a good quality physical environment. Permissible uses include Retail - Local < 150 sqm net floor area to serve the local working population only. Retail – Supermarket < 2,500sqm are not permitted.
- 7.2.4. It is noted that the zoning objective allows for a local retail (< 150 sqm net floor area) to serve the local working population only. The plan does not define the local working population. However, it is my interpretation that this relates to the employees of the Industrial Estate only. The applicant states that the existing retail use provides an essential service to the extensive residential hinterland. It is my view that this catchment is not in accordance with the provisions of the development plan.
- 7.2.5. The applicant acknowledged that the existing use is not permissible in principle. However, the appeal states that this non-conforming use has it has been operating since 2012 and should be considered in accordance with development plan objectives for non-conforming uses. Section 13.3 of the development plan notes that there are uses which do not conform to the zoning objective of the area and Objective ZO3 allows for intensification of extensions and improvement of non-conforming uses, subject to normal planning criteria. The criteria includes, pre-1964 uses; developments with valid planning permissions; and unauthorised uses that have exceeded the time limit for enforcement proceedings. Having regard to the planning history of the site, as outlined in Section 4 above, it is my opinion that the retail use on the site does not



comply with the criteria of a non-conforming outlined in Section 13.3 of the development plan.

7.2.6. Having regard to the above, it is my opinion that the 448sqm retail use to be retained is not permissible under this zoning objective. Section 37(2)(b) of the Planning and Development Act, 2000 (as amended) states that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that: -

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

7.2.7. Taking each of these in turn I conclude:

- (i) The proposed development is not of strategic or national importance.
- (ii) There are no conflicting objectives and all objectives are quite clear in the development plan relating to retail hierarchy.
- (iii) There are no specific requirements set out in policy directives, relevant policies of the government nor regional planning guidelines which would support such a proposal.
- (iv) The pattern of development and permissions granted in the area since the making of the development plan do not suggest a predisposition to such type development.

7.2.8. Having regard to the provisions of Section 37 (2) (b) of the Planning and Development Act, 2000 (as amended), I consider that the Board are not open to a grant of permission that may be considered to materially contravene the zoning objective of the Fingal County Development Plan 2023-2029, as in my view the proposed scheme is not justified.

#### *Off Licence Use*

7.2.9. The proposed off licence (20.6sqm) is within the existing retail store and as outlined above and below, it is my recommendation that the decision of the planning authority be upheld and that retention permission be refused. Notwithstanding this, it is considered appropriate that the provision of an off licence be assessed. It was noted during my site visit that the existing retail use already contains an off licence.

7.2.10. An off licence is not listed in the zoning matrix for lands zoned for General Employment. The development plan notes that uses which are neither 'Permitted in Principle' nor 'Not Permitted' will be assessed in terms of their contribution towards the achievement of the Zoning Objective and Vision and their compliance and consistency with the policies and objectives of the Development Plan. Having regard to the vision for lands zoned General Employment it is my view that the proposed off licence would not be a compatible use.

7.2.11. In addition, Objective EEO104 aims to prevent an over-supply or dominance off licences, and other non-retail uses and Section 7.5.5 of the development plan states that the occurrence of off-licences and other non-retail uses needs to be monitored. It is noted that no information regarding existing off licences within the vicinity of the subject site were submitted with the application or with the appeal. Therefore, it is unclear if the provision of an off licence at this location would result in an over proliferation of such uses.

### **7.3. *Impact on Adjacent Land Uses***

7.3.1. The planning authority's first reason for refusal also considered that the development represents an incompatible land use which would compromise the existing adjoining industrial uses and future expansion or changes to same and would set an undesirable precedent for similar types of development.

- 7.3.2. It is acknowledged that there is an objective to prepare a non-statutory Framework Plan for the Coolmine Industrial Estate (FP13.E) to guide its future development. However, Section 2.4.3 of the plan states that pending the preparation of a Framework Plan, development will be guided by the policies and objectives of the County Development Plan and National and Regional Planning Policy and planning applications will be assessed on their merits having regard to the proper planning and sustainable development of the area.
- 7.3.3. The applicant considers the Industrial Estate to be fully developed and, therefore, there is no requirement for units to expand or change. During my site visit on the 9<sup>th</sup> June 2023 it was noted that all plots within the Industrial Estate are developed and there appeared to be little vacancy. Therefore, it is my view that there is a demand for uses compatible with the general employment zoning objective within the Industrial Estate. It is also my opinion that the proposed use has the potential to displace industrial / commercial uses, that are permissible and considered appropriate under the land use zoning objective and that the use to be retained would be counter to an appropriate plan led approach to development.. I agree with the planning authority that the proposed use would set an undesirable precedent for similar types of development and that permission should be refused on this basis.

#### 7.4. ***Retail Hierarchy***

- 7.4.1. The planning authority's second reason for refusal considered that having regard to the sites location on lands zoned 'GE', the development would militate against the policies and objectives of land zoned for retail use such as Local Centres, Major Town Centres and Town Centres and would undermine their function.
- 7.4.2. Section 7.5.5 of the development plan sets out the retail hierarchy for the county which prioritises retail development in the designated centres on lands zoned for Major Town Centre, Town Centre, Local Centre and Rural Village. Policy EEP32 of the development plan supports and reinforces the retail strategy. As outlined above the subject site is zoned for general enterprise and local retail uses over 150sqm and supermarkets less than 2,500sqm are not permissible.
- 7.4.3. The applicant notes the sites location on the opposite side of Porters Avenue to lands zoned Local Centre (LC) and considers that the proposed use should be considered

with regard to transitional zonal areas and the expanding retail uses in close proximity to the subject site.

- 7.4.4. Section 13.2 of the development plan addresses transitional zones and recommends that abrupt transitions in scale and use should be avoided in the boundary areas of adjoining land uses. I am satisfied that in this instance the transition between local centre and general enterprise land use zonings does not result in an abrupt change of use and that the proposed retail use is not justified in this regard.
- 7.4.5. With regard to expanding retail uses in the area it is noted that the current Fingal County Development Plan was adopted in 2023 and the GE land use zoning objective was considered appropriate for the subject site. Therefore, I am satisfied that there are sufficient lands zoned for local centre and associated retail uses within close proximity to the subject site.
- 7.4.6. It is acknowledged that the subject site is in close proximity to lands zoned for local centre, however, it is not located on lands identified in the retail hierarchy for retail uses. Having regard to the above, I agree with the assessment of the planning authority that the retail use to be retained on lands zoned for general enterprise would undermine the function of the adjacent local centre and of the town centre and major town centre lands within the wider environs of the site. I recommend that the planning authority's reason for refusal be upheld in this regard.

## 7.5. ***Transportation***

- 7.5.1. The applicant considers that the planning authority did not assess concerns raised in relation to transportation. The report of the planning authority's Transportation Planning Section recommended that further information be requested regarding vehicular turning movements, cycle parking, delivery arrangements and EV charging points. The area planners report notes the concerns raised and considers that due to recommendation to refuse permission it would not be appropriate to requested additional information to address these concerns. I agree with the assessment of the planning authority. It is also noted that the use to be retained, with associated customer parking and deliveries / servicing, has been operating at this site for a number of years. It is also considered that car parking and EV charging points could be agreed by way

of condition. I am satisfied that the development to be retained does not result in a traffic hazard.

## **8.0 Recommendation**

It is recommended that retention permission and permission be refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

1. The site is located within an area zoned GE 'General Employment' in the current Fingal County Development Plan, the objective for which is to provide opportunities for general enterprise and employment. This objective is considered reasonable. The retail use to be retained would materially contravene the zoning objective of the current Fingal County Development Plan and would militate against the consolidation of existing industrial areas as advocated in the Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the sites 'GE' General Employment zoning objective it is considered that the development to be retained and permitted would not comply with the retail hierarchy of the current Fingal Development Plan which prioritises retail development in the designated centres on lands zoned for Major Town Centre, Town Centre, Local Centre and Rural Village and would, therefore, undermine their retail function. The development would not comply with Policy EEP32 to support and reinforce the retail strategy and would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Elaine Power  
Senior Planning Inspector

12<sup>th</sup> June 2023