



An  
Bord  
Pleanála

## Inspector's Report

### ABP 320841-24

<b>Development</b>	1/ Change of use of existing office / taxi rank to shop / retail unit and associated site works; 2/ retention for as-constructed works to facilitate change of use of existing office / taxi rank to shop / retail unit
<b>Location</b>	Unit 1c The Diamond, Main Street, Malahide, Co. Dublin, K36 VA03
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F24A/0174
<b>Applicants</b>	Alrera Limited
<b>Type of Application</b>	Permission and retention permission
<b>Planning Authority Decision</b>	To grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	David Greene on behalf of Malahide Community Forum
<b>Observers</b>	None
<b>Date of Site Inspection</b>	31 <sup>st</sup> January 2025
<b>Inspector</b>	Trevor Rue

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## 1.0 Site Location and Description

- 1.1. The application site, which has a stated area of 0.0022 hectares, is located at a principal intersection in the town centre of Malahide. It comprises a single-storey hipped-roofed building, triangular in plan, with a floor area of 21.6 square metres, on the western side of the junction of Main Street with New Street. The building is in use as a vape shop. There is a non-illuminated fascia sign on the building. Notices are displayed inside the window and door stating “Hale NEW STORE NOW OPEN”.
- 1.2. The area surrounding the application site is predominantly commercial. The site is adjoined on its south-western side by a jewellery shop. To the north of the site there is a gateway entrance into a restaurant.

## 2.0 Proposed Development

- 2.1. **Permission** is sought for change of use of the existing office / taxi rank to a shop / retail unit and associated site works, including signage on the front (eastern) elevation. The unit would be operated by Hale Vaping for the sale of vapes. Wastewater and surface water would be disposed of via existing public sewerage.
- 2.2. **Retention permission** is sought for works carried out to facilitate the change of use:
  - Re-skimming and painting of internal walls
  - Laying of new floor finishes
  - Repair of suspended ceiling
  - Installation of counters and display units
- 2.3. **Additional information** provided at the request of the planning authority indicated that the existing timber shop front would remain. The existing fascia sign would be replaced by a new timber name board of equal size and proportion. The name board, together with the existing pilasters, stall riser and plinth would be painted Cream Tea, while the external lettering would be painted Grey Door. The smaller panel signs on the front elevation would be removed. External lighting would be omitted and window display units would be removed from the site.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. On 20<sup>th</sup> August 2024, Fingal County Council decided to grant permission and retention permission, subject to five conditions. Condition 1 confirmed the parameters of the permission being granted. Condition 2 required any future change of use to be subject to a prior grant of planning permission. Condition 3 prohibited external lighting. Conditions 4 and 5 were to do with the construction process.

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

##### Planning Report

- 3.2.1. A planning officer's report updated on 19<sup>th</sup> August 2024 provided the reasoning for the authority's decision. The main points were as follows:
- The proposed retail use is in principle consistent with the town centre zoning objective. Some of the objections raised are not planning matters.
  - Subject to compliance with conditions, the development would not give rise to negative impacts on visual or residential amenity.

##### Other Technical Reports

- 3.2.2. The Council's Water Services Planning Section noted that no new foul drainage or water supply connection would be required and had no objection in regard to surface water drainage and flood risk.
- 3.2.3. The Council's Transportation Section had no objection.
- 3.2.4. The Council's architectural conservation officer noted that the works for which retention permission is sought appear to relate solely to internal alterations and she had no specific comments or objection to these. The additional information submitted by the applicant was satisfactory and the shop front design is acceptable.

#### **3.3. Third Party Submissions**

- 3.3.1. The present appellant made submissions to the planning authority, the substance of which was repeated in his appeal to the Board.

3.3.2. Four other third parties made submissions to the authority, which included the following points of objection:

- A local resident considered that a vaping shop would be inappropriate in an ACA. The site is in walking distance of three schools. A recent survey found that a third of Irish 13 to 16 year olds are vaping, never having smoked cigarettes. The development would add toxic litter to the area.
- Another local resident stated that the Health Minister, the Health Service Executive (HSE), the education authorities and the medical profession all oppose vaping given the increasing evidence of health and multiple other risks and the number of young people who vape due to its perceived attractiveness, colouring and flavouring. This is not a pathway from smoking, it is a gateway to smoking and at the least an equally harmful alternative. The objector supported his submission with background material, including correspondence with the Royal College of Surgeons in Ireland; a note to parents from Malahide Community School; links to newspaper articles; and an HSE information booklet for parents, guardians and young people.
- A member of the Board of Management of Mahahide-Portmarnock Educate Together Secondary School said he was well aware of the dangers of vaping and the problems it is causing secondary schools. School children would walk by this premises on their way to and home from Scoil Íosa. There is a newsagent less than 50 metres away selling vapes already.
- The director of a company which is running a retail shop in close proximity viewed this proposal as an encroachment on his business.

## 4.0 Planning History

- 4.1. **F02A/1370:** On 30<sup>th</sup> January 2003, Fingal County Council granted retention permission for a temporary period to Dublin Dial A Cab Limited for change of use from shop to cab/taxi business premises at the present application site.
- 4.2. **F03A/1396:** On 27<sup>th</sup> January 2004, the Council granted retention permission for use of the property as cab/taxi business premises.

- 4.3. **F23A/0741:** On 15<sup>th</sup> January 2024, the present applicants having applied for planning permission for change of use of the existing office / taxi rank to shop/retail unit and associated site works, the Council informed them that the application was invalid because the description of development on the site notice was incorrect as the works had been commenced.
- 4.4. **ENF24/016B:** An enforcement notice was issued in relation to signage erected on the application site.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. On Sheet No. 9 of the Fingal County Development Plan 2023-2029, the application site is shown within an area zoned **TC – Town and District Centre**. The zoning objective is to protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities.
- 5.1.2. Sheet No. 9 of the Plan also shows the site within an **Architectural Conservation Area (ACA)**. Malahide Historic Core ACA centres on the planned space of The Diamond and the streets radiating from it, including New Street and Main Street. According to Appendix 5 to the Plan, its layout is characteristic of a planned estate town with its geometrically designed centre and hierarchy of streets and mews lanes.
- 5.1.3. **Objective EEO93** of the Plan is to ensure the development of Balbriggan, Malahide, Skerries and Charlestown, as sustainable, vibrant and prosperous town centres performing at a high retail level within the Fingal retail hierarchy to meet the retailing needs of and offer sufficient retail choice to their local populations and catchment populations.
- 5.1.4. **Objective EEO94** is to facilitate appropriately scaled improvements to the quantum and quality of retail offer and function in Balbriggan, Malahide, Skerries and Charlestown and ensure their sustainable development by consolidating, intensifying and enhancing their existing core retail areas, and by directing new retail opportunities into the core retail areas identified for each.
- 5.1.5. **Objective EEO104** is to control the provision of non-retail uses, especially at ground floor level, in the main streets of towns and villages, shopping centres and local centres

to ensure that injury is not caused to the amenities of these streets and centres through the loss of retail opportunities.

- 5.1.6. **Objective EEO105** is to prevent an over-supply or dominance of fast food outlets, takeaways, off licences, adult shops, gaming arcades and betting offices in the main streets of towns and villages, shopping centres and local centres to ensure that injury is not caused to the amenities of these streets and centres through the loss of retail opportunities.
- 5.1.7. **Policy HCAP14** of the Plan is to protect the special interest and character of all areas which have been designated as an ACA. Development within or affecting an ACA must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting wherever possible.
- 5.1.8. **Objective HCAP24** is to require proposals for any development, modification, alteration, extension or energy retrofitting affecting a Protected Structure and/or its setting or a building that contributes to the character of an ACA are sensitively sited and designed, are compatible with the special character, and are appropriate in terms of the proposed scale, mass, height, density, architectural treatment, layout, materials, impact on architectural or historic features.
- 5.1.9. **Objective DMSO7** is to produce guidance for quality shop front designs for designated locations throughout the County. Paragraph 14.4.5 refers to the “Malahide Public Realm Strategy – Design Guide for Shopfronts” and also to Table 14.25 of the Plan.
- 5.1.10. **Objective DMSO12** of the Plan is to evaluate signage proposals in relation to the surroundings and features of the buildings and structures on which signs are to be displayed, the number and size of signs in the area (both existing and proposed) and the potential for the creation of undesirable visual clutter.
- 5.1.11. **Table 14.25** of the Plan provides guidance for signage within ACAs:
- Proposals for signage need to take into account the amount of existing signage and other external elements such as lighting, canopies, awnings, display boards, opening times, name plaques, etc. that may already exist on the structure. In some cases it may be necessary to rationalise or remove existing signage or external elements in order to accommodate any new features.

- Traditionally signage was hand-painted directly on to the building or on to a fascia board and this is still the most appropriate method of signage, particularly in historic areas.
- Fascias should not be visually dominant or overly deep. The lettering or text should generally be limited to just the name of the shop and the street number. Script style and scale should complement the period of the building and the scale of space available.
- The need for specific lighting of commercial signage should be carefully assessed as sufficient street lighting may exist already to light the premises and so the illumination of signage should be omitted where possible.
- Standard corporate signage, branding and logos must be compatible with the individual building.
- Care needs to be taken regarding the proliferation of signage on a premises and so signage on to windows should be avoided and should not be placed on security shutters.

## 5.2. Design Guidance

5.2.1. The Malahide Public Realm Strategy – Design Guide for Shopfronts includes the following statements:

- In general colours should respect the palette of the street and should not be garish or discordant with adjacent fascias. Malahide traditionally comprises buildings of muted colours. A study of the colours utilised in Malahide has been undertaken, resulting in the Malahide Colour Scheme. The Council encourages retailers to utilise this colour palette or equivalent when undertaking any shop front improvements. Recommended colours are illustrated; these include Cream Tea (off-white) and Grey Door (mainly grey with a tint of blue).
- The shop name should be hand painted on to the fascia or comprise individually mounted lettering. Letter design should be simple and legible and in proportion to the fascia. Lettering should generally be no more than 40 centimetres high.
- Illumination should be discrete and restricted, where allowed, to backlighting of the individual letters or by concealed neon tubing. Spotlights will only be



considered where they are discreet, the arm length short and hoods treated to match the background colour.

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

- 5.3.1. The application site is not within any Natura 2000 European site of nature conservation importance but it is about 200 metres from the Malahide Estuary Special Area of Conservation and the Malahide Estuary Special Protection Area.

## **6.0 Environmental Impact Assessment Screening**

- 6.1. Please see Appendix 1, pre-screening. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations 2001 applies and therefore the submission of an EIA report and the carrying out of an EIA are not required.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

- The application site is in an ACA and subject to the guidelines agreed in the Malahide Public Realm Strategy. Any permission granted should accord with planning law and the objectives of the County Development Plan.
- The proposed development of a vaping shop is in direct conflict with the intent of the town centre zoning and Objectives EEO93, EEO94, EEO104 and EEO105. There is already a sufficient supply (or oversupply) of vaping outlets in Malahide, with at least six in the town. The proposed store would not provide an attractive and long-term benefit to Malahide residents, encouraging them to shop locally.
- The application site is in a place where school children and families congregate daily. It is less than 25 metres from Malahide Health Centre.
- There are environmental waste and litter problems associated with vaping. This is seen around the town daily, in hedges and in the grounds of Malahide Castle.

- The Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 prohibits the sale of nicotine inhaling products to under 18s and introduces other restrictions on the sale and advertising of such products. If the application is allowed, strict conditions would be required to ensure applicability of this Act, to prevent littering and to address the environmental hazards of the batteries.

## 7.2. Applicant Response

- The proposed development would bring the property into active retail use, reduce vacancy along Main Street and generate additional footfall. It would offer a viable commercial service within the retail core without detracting from the character of the town. It would add to the diverse retail offering in Malahide and would not undermine the retail hierarchy.
- Unlike fast food outlets, off licenses and betting offices, a vape shop is a retail use. While at present there are other vape retailers in Malahide, none are dedicated vape shops and they do not offer the level of regulatory compliance and safety that the proposed business would offer. Hale Vaping is a specialised shop, dedicated to supporting adult smokers in their journey to quit by providing guidance on less harmful alternatives while also restricting youth access.
- Careful consideration has been given to the Malahide Public Realm Strategy and the Fingal Development Plan. It is proposed to remove all inappropriate elements like window display units, wall signs and illuminated signage. The shop front design has been revised to ensure that signage and colours are in line with the Public Realm Strategy. Traditional hand-painted timber signage is proposed. The internal modifications are minimal and primarily involve redecoration and repairs, without any structural impact.
- Hale Vaping is fully committed to environmental responsibility. It has a comprehensive recycling programme involving the proper disposal of vape-related waste, such as batteries and devices. It is the only vape brand that pays for a monthly recycling service. The Department of Health is currently drafting laws to ban the sale of disposable vapes.

### **7.3. Planning Authority Response**

- 7.3.1. The proposed development was considered to be consistent with the proper planning and sustainable development of the area. The planning authority requests the Board to uphold its decision to grant permission, in which case provision should be made for a financial contribution and/or provision for any shortfall in open space and/or any special development contributions required in accordance with the Council's Development Contributions Scheme. Conditions should also be included where a tree bond or a contribution in respect of a shortfall of play provision facilities is required.

## **8.0 Assessment**

### **8.1. Issues**

- 8.1.1. Having inspected the site and considered in detail the documentation on file for this Third Party appeal, it seems to me that the main planning issues are:
- the acceptability in principle of the proposed use at this location;
  - the acceptability of the proposed shop front and signage; and
  - the need for development contributions and/or a tree bond.

### **8.2. Acceptability in Principle of a Vape Shop**

- 8.2.1. Article 5 of the Planning and Development Regulations 2001, as amended, defines a "shop" as a structure used for certain specified purposes, where the sale, display or service is principally to visiting members of the public. One of the specified purposes is the retail sale of goods. A shop that sells vapes falls within that definition. Unless otherwise stipulated, a grant of planning permission for a retail shop entails a grant of planning permission for a vape shop.
- 8.2.2. In my opinion, the applicant company's development is not in conflict with the town centre zoning, nor with Objectives EEO93 and EEO94 of the Development Plan. It confers the benefit of bringing a vacant property into active retail use. The development does not engage Objectives EEO103 and EEO104 which are to do with non-retail uses. Fast food outlets, takeaways, off licences, gaming arcades and betting offices are not shops for the purposes of the Planning and Development

Regulations. There is no provision in the Development Plan that would mandate or justify treating a vape shop differently to other retail outlets.

8.2.3. The Development Plan does not restrict the number of retail units that sell particular types of goods in Malahide. It is a well-established principle that the planning system should not be used to inhibit competition or preserve existing commercial interests. Accordingly, I do not consider the presence of other outlets in the town that sell vapes or the potential encroachment of the proposed shop on a nearby business to be compelling planning objections.

8.2.4. Vape shops will be subject to licensing by the HSE under the Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 when it comes fully into operation. That is the mechanism by which the Oireachtas has decided that vape shops should be regulated. Control of waste and litter is a Council responsibility and the Council is content for the proposed change of use to proceed. I am satisfied that, in land-use planning terms, the development is acceptable in principle at this location.

### **8.3. Acceptability of the Shop Front and Signage**

8.3.1. The shop front as constructed and signage being displayed are generally consistent with the plans and particulars lodged with the application, as subsequently amended. It seems to me that they are also generally consistent with the ACA designation, the related provisions of the Development Plan and the Malahide Public Realm Strategy Design Guide. The development contributes positively to, and enhances, the character and appearance of the ACA.

8.3.2. I find the proposed shop front and signage acceptable subject to appropriate conditions. The Council's Condition 2 is unnecessary as it is a legal requirement to obtain planning permission for a material change of use. Conditions 4 and 5 are unnecessary as construction works have been completed. In regard to Condition 3, the Design Guide does not rule out external lighting provided it is discreet and there are good examples in the area. In my opinion some leeway should be allowed to give the developers, should they so wish, an opportunity to bring forward a suitable scheme. Subject to a condition requiring prior approval for external lighting,.

### **8.4. Development Contributions and/or a Tree Bond**

8.4.1. It seems to me that every element of the proposed development is exempted from the requirement to pay development contributions under the Council's Development

Contribution Scheme 2021-2025. The planning authority has not explained why a special development contribution to meet a shortfall in open space or play provision facilities or a tree bond is required in connection with this proposed development.

## **9.0 Appropriate Assessment Screening**

9.1. Having considered the nature, scale and location of the proposed development, the nature of the foreseeable emissions therefrom, the nature of the receiving environment as a built-up urban area, the availability of public piped services to accommodate the foul effluent arising and the absence of a pathway between the application site and any European site, I am content on the basis of objective information that the development is not likely to have a significant effect on any European site, either alone or in combination with other plans or projects. I therefore conclude that the carrying out of an AA under Section 177V of the Planning and Development Act 2000 is not required.

## **10.0 Recommendation**

10.1. I recommend to the Board that planning permission be granted subject to the conditions set out below.

## **11.0 Reasons and Considerations**

Having regard to the definition of “shop” set out in the Planning and Development Regulations 2001, and to relevant provisions of the Fingal County Development Plan 2023-2029 and of the Malahide Public Realm Strategy – Design Guide for Shopfronts, it is considered that the retail shop benefits the town centre by bringing a vacant property into active retail use and that the shop front and signage contribute positively to and enhance the character and appearance of the Architectural Conservation Area. The development is therefore consistent with the proper planning and sustainable development of the area.

## 12.0 Conditions

1.	<p>The development shall be retained in accordance with the plans and particulars submitted with the planning application, as amended by the further plans and particulars submitted on 25<sup>th</sup> July 2024.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>No external lighting shall be provided to the shop unit save in accordance with a scheme submitted to and approved by the planning authority.</p> <p><b>Reason:</b> To preserve and enhance the character and appearance of the Malahide Historic Core Architectural Conservation Area.</p>

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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**TREVOR A RUE**

Planning Inspector

10<sup>th</sup> February 2025

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	320841-24		
<b>Proposed Development Summary</b>	<i>Change of use of existing office / taxi rank to shop / retail unit and retention for associated works</i>		
<b>Development Address</b>	<i>Unit 1c The Diamond, Main Street, Malahide, Co. Dublin</i>		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<i>Partially</i> <i>Change of use: No</i> <i>Works: Yes</i>	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<i>No</i>	<input checked="" type="checkbox"/>		No further action required



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**TREVOR A RUE**

Planning Inspector

10<sup>th</sup> February 2025