

The Secretary  
An Bord Pleanála  
64 Marlborough Street,  
Dublin 1

**AN BORD PLEANÁLA**  
LDG-010524 - 18  
ABP- \_\_\_\_\_  
04 DEC 2018 CC.  
Fee: € 110 Type: Cheque  
Time: 16:15 By: Courier

Date: 4-12-2018

Dear Sir/Madam,

Register Reference: ED18/0035

**Development:** Change of use of part of a shop for use as a Coffee Shop.  
**Location:** Dunnes Stores, Liffey Valley Shopping Centre, Fonthill Road, Clondalkin Dublin 22  
**Applicant:** Patrick O'Neill, Dunnes Stores, 46-50 South Great Georges Street, Dublin 2  
**App. Type:** Declaration of Exemption Section 5  
**Date Rec'd:** 13-11-2018

With reference to the appeal on the above mentioned application I enclose herewith: -

1. A copy of the application which indicated the applicant's interest in the land or structure.
2. A copy of the plans submitted with the application.
3. A certified copy of the Manager's Order No. 1222.
4. Copies of all technical reports in connection with the application.

If an obligation under Part V of the Planning and Development Act, 2000 applies to the application under appeal please ensure that the condition stating the nature of the obligation is included in the decision of the Bord.

In the event of a decision to grant permission cognisance should be had as to whether the South Dublin County Council Development Contributions Scheme applies and whether a condition should accordingly be attached. Furthermore the development maybe within the area for which supplementary development contributions are applicable in relation to the Kildare Route Project Supplementary Development Contributions Scheme. Details of the schemes are available from South Dublin County Council's website at the Planning Homepage in the Planning Applications area. Contributions should be included in relevant cases. Finally conditions relating to security under Section 34 (4) (g) of the Planning and Development Act 2000, as amended, should be applied where appropriate, particularly in the case of residential developments of 2 or more residential units.

*Cheque €110 Enclosed.*

Yours faithfully

*Bonnie Kenny*  
for **Senior Planner**



SOUTH DUBLIN COUNTY COUNCIL  
COMHAIRLE CONTAE ÁTHA CLIATH THEAS

Halla an Chontae, Lár an Bhaile,  
Tambhlacht, Baile Átha Cliath 24.

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Mahahan Planners  
38, Dawson Street  
Dublin 2

**NOTIFICATION TO GRANT PERMISSION  
PLANNING & DEVELOPMENT ACT, 2000 AND PLANNING REGULATIONS  
THEREUNDER**

Final Grant Order No.:	1315	Date of Final Grant:	22-Jun-2006
Decision Order No.:	0943	Date of Decision:	10-May-2006
Register Reference:	SD06A/0189	Date:	16-Mar-2006

**Applicant:**

Dunnes Stores,

**Development:**

Extend existing retail outlet into part of the storage yard at rear together with an additional floor. The development consists of (a) demolition of existing loading dock (92.36sq.m.) and revised entrance to service yard; (b) extension of 1192.57sq.m. at ground floor level rear to be used for retail use and new loading dock; (c) change of use of stockrooms, administrative area and mezzanine void at first floor level to retail use, and provide rear extension of 1083.40sq.m. so as to create a new retail floor of 2771sq.m. at first floor level; (d) a new floor of 2380.00sq.m. at second floor level for use as stockroom (1658.45sq.m.) and administrative area (557.40sq.m.); (e) provision of plant at roof level (f) associated re-location of internal lifts and staircases and new internal staircases and escalators; (g) relocate service yard gates; (h) revised elevations are proposed to match existing and (i) 1 no. illuminated 'Dunnes Stores' sign (7.60m x 0.70m) will be re-located on south elevation as a consequence. The development will increase the total gross floor area at this unit by 4,655.97sq.m. The development will also include boundary treatment and all associated site excavation and site development works above and below ground.

**Location:**

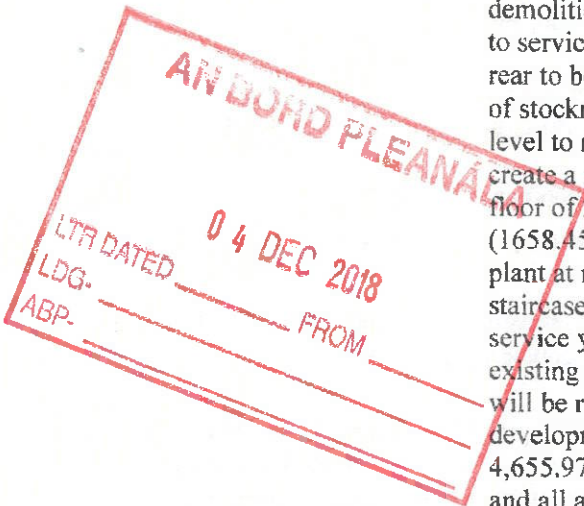
Dunnes Stores, Liffey Valley Shopping Centre, Fonthill Road,  
Clondalkin, Dublin 22.

**Time extension(s) up to and including**

**Additional Information Requested/Received** / 27-Apr-2006

A Permission has been granted for the development described above, subject to the following (12) conditions.

**Conditions and Reasons:**



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1. The development shall be carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the other conditions attached hereto.  
REASON: To ensure that the development shall be in accordance with the permission and that effective control be maintained.
2. The water supply and drainage infrastructure, including the disposal of surface water, shall comply with the technical requirements of the Planning Authority. There shall be complete separation of the foul and surface water drainage systems.  
REASON: In the interests of public health and in order to ensure adequate drainage provision.
3. Prior to the commencement of development, full surface water drainage details shall be submitted for the written approval of the Planning Authority. These should show the exact locations of all drains, manholes, AJs etc. up to the point of connection to the public sewer.  
REASON: In the interests of public health and in order to ensure adequate drainage provision.
4. All public services to the proposed development, including electrical, telephone cables and equipment shall be located underground throughout the entire site.  
REASON: In the interest of amenity.
5. No additional advertising sign(s) or structure(s) shall be erected except those, which are exempted development, without the prior approval of the Planning Authority or An Bord Pleanála on appeal.  
REASON: In the interest of the proper planning and development of the area.
6. All external finishes harmonise in colour and texture with the existing premises.  
REASON: In the interest of visual amenity.
7. All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.  
REASON: To protect the amenities of the area.
8. During the construction/demolition phase of the development, Best Practicable Means shall be employed to minimise air blown dust being emitted from the site. This shall include covering skips and slack-heaps, netting of scaffolding, daily washing down of pavements or other public areas, and any other precautions necessary to prevent dust nuisances.  
REASON: To contain dust arising from construction/demolition in the interests of public health and to prevent nuisance being caused to occupiers of buildings in the vicinity.
9. A suitable location for the storage of refuse shall be provided during the demolition, construction and operational phases of the proposed development so as to prevent a public health nuisance.  
REASON: In the interest of public health.
10. Full consultation shall take place with the Environmental Health Department with regard to layout and proposed finishes in relation to any food premises, prior to commencement of the development  
REASON: In the interest of public health.
11. The developer shall pay the sum of €391,520.52 (three hundred and ninety one thousand five

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hundred and twenty euro and fifty two cent) (updated at the time of payment in accordance with changes in the Tender Price Index) to South Dublin County Council as a contribution towards expenditure in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of the County Council as provided for in the Contribution Scheme for the County made by the Council. This contribution to be paid before the commencement of development on the site.

REASON: The provision of such facilities will facilitate the proposed development. It is considered reasonable that the payment of a contribution be required, in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

12. Before the development is commenced, the developer shall lodge with the South Dublin County Council a cash deposit of €23,095.36 (twenty three thousand and ninety five euro and thirty six cent (updated at the time of payment in accordance with changes in the Tender Price Index) , a bond of an Insurance Company of €38,492.65 (thirty eight thousand four hundred and ninety two euro and sixty five cent) (updated at the time of payment in accordance with changes in the Tender Price Index) , or other security to secure the provision and satisfactory completion and maintenance to taking-in-charge standard of roads, footpaths, sewers, watermains, drains, public lighting and other services required in connection with the development.

REASON: To ensure the satisfactory completion of the development.

Note 1: The applicant is advised that under the provisions of Section 34(13) of the Planning and Development Act 2000 a person shall not be entitled solely by reason of a permission to carry out any development.

- (1) All buildings must be designed and constructed in accordance with the Building Regulations 1997.
- (2) Building Control Regulations require a Commencement Notice. A copy of the Commencement Notice is attached.
- (3) A Fire Safety Certificate must be obtained from the Building Control Authority, where applicable.
- (4) Free Standing Walls must be designed and constructed in accordance with IS 325: Code of Practice for use of Masonry Part 1 : Structural use of reinforced Masonry. The Owner must also ensure that the construction of all walls is supervised by a competent person.

Signed on behalf of South Dublin County Council.

..... *G. Lauck* ..... 26-Jun-2006

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for SENIOR EXECUTIVE OFFICER.

# Comhairle Chontae Atha Cliath Theas

PR/1222/18

## Record of Executive Business and Chief Executive's Order

<b>Register Reference:</b>	ED18/0035
<b>Correspondence Name &amp; Address:</b>	Patrick O'Neill Dunnes Stores, 46-50, South Great Georges Street, Dublin 2
<b>Development:</b>	Change of use of part of a shop for use as a coffee shop.
<b>Location:</b>	Dunnes Stores, Liffey Valley Shopping Centre, Fonthill Road, Clondalkin, Dublin 22.
<b>Applicant:</b>	Dunnes Stores Unlimited Company

### Description of Site and Surroundings:

The subject site is located at Dunnes Stores, Liffey Valley Shopping Centre, Clondalkin, Co. Dublin. The M4 motorway is located north of subject site.

### Zoning:

The site is zoned 'MRC' as per the South Dublin County Council Development Plan 2016-2022, the objective for which is 'To protect, improve and provide for the future development of a Major Retail Centre'

### Proposal:

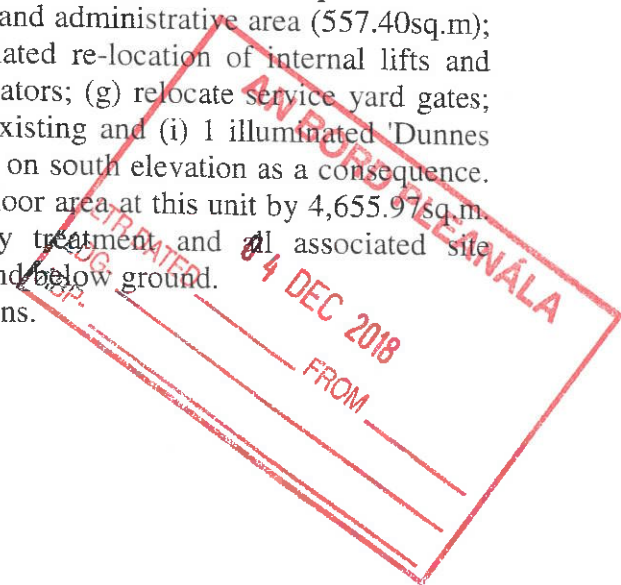
This is an application requesting a Section 5 Declaration on *whether the change of use of part of a shop to use as a coffee shop at Dunnes Stores, Liffey Valley Shopping Centre* is, or is not, development or is, or is not, exempted development.

### Planning History:

SD06A/0189; Dunnes Stores, Liffey Valley Shopping Centre, Fonthill Road, Clondalkin, Dublin 22.

Proposal; Extend existing retail outlet into part of the storage yard at rear together with an additional floor. The development consists of: (a) demolition of existing loading dock (92.36sq.m) and revised entrance to service yard; (b) extension of 1192.57sq.m at ground floor level rear to be used for retail use and new loading dock; (c) change of use of stockrooms, administrative area and mezzanine void at first floor level to retail use, and provide rear extension of 1083.40sq.m so as to create a new retail floor of 2771sq.m at first floor level; (d) a new floor of 2380.00sq.m at second floor level for use as stockroom (1658.45sq.m) and administrative area (557.40sq.m); (e) provision of plant at roof level; (f) associated re-location of internal lifts and staircases and new internal staircases and escalators; (g) relocate service yard gates; (h) revised elevations are proposed to match existing and (i) 1 illuminated 'Dunnes Stores' sign (7.60m x 0.70m) will be re-located on south elevation as a consequence. The development will increase the total gross floor area at this unit by 4,655.97sq.m. The development will also include boundary treatment and all associated site excavation and site development works above and below ground.

Decision: permission granted subject to conditions.







# Comhairle Chontae Atha Cliath Theas

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## Record of Executive Business and Chief Executive's Order

### Pre Planning

None

### Relevant Enforcement History

S7920

### Assessment:

Consideration as to whether a development constitutes exempted development or not is governed by Sections 3, 4 and 5 of the Planning and Development Act 2000 (as amended) and Part 2 of the Planning and Development Regulations 2001 (as amended).

### **Planning and Development Act 2000 as amended:**

*Section 2(1)* in this Act, except where otherwise requires –

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The proposed development on site therefore constitutes 'works'

'structure' as any building, structure, excavation or other thing constructed or made on, in or under any land, or part of a structure so defined, and –

- (a) Where the context so admits, includes the land on, in or under which the structure is situate

'use' in relation to land, does include the use of the land by the carrying out of works thereon

*Section 3(1)* defines 'development' as 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'. The term 'works' is defined in Section 2(1) of the 2000 Act as 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'.

### ***Is the proposal exempted development?***

The coffee shop area 'Café Sol' with tables and chairs is stated as having a floor area of 79sq.m. In a letter submitted by *Patrick O'Neill, Dunnes Stores Property Department* dated 17<sup>th</sup> October 2018 it is requested that the matter be referred to An Bord Pleanala as a matter of fairness and impartiality (having regard to the enforcement history on the site). The Planning Authority has no objection to this request.

### Conclusion

The Planning Authority has no objection to refer the application to An Bord Pleanala for determination as requested by the applicant.

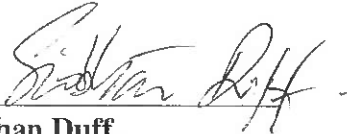


# Comhairle Chontae Atha Cliath Theas


## Record of Executive Business and Chief Executive's Order

### Recommendation

I recommended that the application be referred to An Bord Pleanála for determination as requested by the applicant.



**Siobhan Duff,  
Senior Executive Planner**

Endorsed:   
**Susan Sinclair,  
Administrative Officer**

**ORDER:** That the application be referred to An Bord Pleanála for determination as requested by the applicant.

Date: 17/01/18

  
**Jason Frehill, A/Senior Planner**

I hereby certify that this is a true copy of  
Manager's Order 11  
SIGNED Bernie Kenny **Administrative Officer**

AN BORD PLEANÁLA

LTR DATED

04 DEC 2018

LDG.

FROM

ABP.

Patrick O'Neill  
Dunnes Stores,  
46-50 South Great Georges Street  
Dublin 2

14-Nov-2018

**Our Ref:** ED18/0035  
**Re:** Dunnes Stores, Liffey Valley Shopping Centre, Fonthill Road,  
Clondalkin, Dublin 22.  
**Proposal:** Change of use of part of a shop for use as a coffee shop.

Dear Sir/ Madam,

I wish to inform you that, by Chief Executive's Order PR/1222 dated 13-Nov-2018, this application has been referred to An Bord Pleanála for determination.

Yours faithfully,

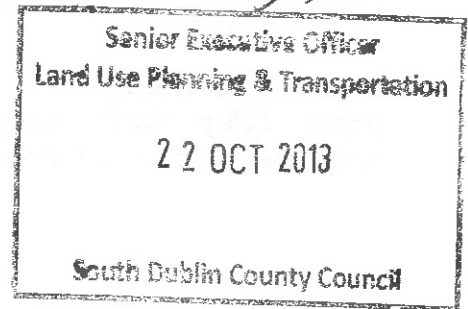
  
for Senior Planner





# DUNNES STORES

South Dublin County Council  
Land Use, Planning & Transportation Department  
County Hall  
Tallaght  
Dublin 24  
D24YNN5



17 October 2018

Delivered By Registered Post

**RE: REQUEST FOR SECTION 5 DECLARATION IN RELATION TO DUNNES STORES, LIFFEY VALLEY SHOPPING CENTRE, FONTHILL ROAD, DUBLIN 22.**

Dear Sir/Madam

We, Dunnes Stores Unlimited Company, submit this section 5 application in response to an enforcement notice we received from South Dublin County Council dated 13<sup>th</sup> September 2018 (Enforcement Notice attached at **Appendix 1**). In separate correspondence, we have disputed the validity of the purported Enforcement Notice and required its withdrawal.

The notice claims that development has been carried out without a grant of permission:

***“The material change of use of the portion of the retail store at Dunnes Stores, 2 Liffey Valley Shopping Centre, Fonthill Road, Clondalkin, Dublin 2 which is being used as a café/restaurant (Café Sol)”.***

We refute this claim. It is our position that the coffee shop located within Dunnes Stores at Liffey Valley SC is ancillary/incidental to the units primary retail use and that no material change of use occurs. The area being used as a coffee shop comprises only 1% of the shops gross sales floor area. Any works required for installing the ancillary coffee shop are exempt under Section 4 (1)(h) of the Planning and Development Act (as amended).

We also consider that there is sufficient planning precedent established by An Bord Pleanála (APB) to confirm our position that the part use of a coffee shop within Dunnes Stores Liffey Valley Shopping Centre is not a material change of use constituting development. In particular we make reference within our application to the ABP’s decision which confirmed that the part use of Penneys shop in Waterford City as an Insomnia coffee shop, was not a material change of use and therefore not development (RL3444).



As a matter of fairness and impartially we request that the Planning Authority refer this section 5 application to An Bord Pleanála to determine:

**Whether the change of use of part of a shop to use as a coffee shop at Dunnes Stores, Liffey Valley Shopping Centre, Fonthill Road, Dublin 22 is or is not development or is or is not exempted development?**





## SITE LOCATION & DESCRIPTION

The subject site is located within Liffey Valley Shopping Centre on the West Mall opposite the West Rotunda. The shopping centre is designated as a Major Retail Centre in the South Dublin Development Plan 2016-2022. Anchor tenants at the centre include Marks & Spencer, Dunnes Stores, Next, H&M, New Look and Boots.

### Dunnes Stores Shop

Dunnes Stores opened in Liffey Valley Shopping Centre in 2001 and was extended in 2007. The shops retail sales area extends to approx. 3,205 sqm at ground floor and 2,771 sqm at first floor level. The shops storage is provided at second floor level. The shops primary function is for the display and sale of retail (clothing/homeware) goods. The shop has two large entrances on to the centres western shopping mall. Both entrances are defined by a line of electronic antennas which forms part of the shops electronic surveillance system (Electronic System for preventing shoplifting).

### Ancillary Coffee Shop

The coffee shop, *Café Sol*, is located to left of the shops entrance beside the shops elevators and in front of the shops children's ware department. The coffee shop area extends to approx. 79 sqm which equates to 1% of the shops gross sales floor area (5,976). *Café Sol* is a Dunnes Stores own brand and has been introduced in a number of our stores in recent times.

The coffee shop is not enclosed and is accessed off the shops main retail floor. The coffee shop does not have an independent access to the Centre's shopping mall. The coffee shop does not provide toilet facilities.

The coffee shop kiosk comprises of service counter, a food display area, coffee machine, a small reheating oven, a small fridge and other appliances behind the counter. There is no kitchen or food prep in the coffee shop area and none is required. All food (e.g. pre-packed sandwiches, pastries, cakes etc.) sold on the premises are prepared off site.

### Shop Seating Area

The coffee shop area is also serviced by tables and chairs however this area has been introduced to serve the entire shop and not just *Café Sol*. All of our customers will be permitted to use the seating area, not just those purchasing goods at the *Café Sol* kiosk. The introduction of tables and chairs is incidental to the main retailing use of the premises, and it is an optional facility or service associated with the coffee shop. Photographs of the coffee shop and seating area are attached at **Appendix 2**.

Subject to agreement with the landlord, Dunnes Stores may also introduce a small seating area in the mall, which will be available for use by all of Dunnes Stores', and the Centre's, customers. If introduced, access to the café for the purchase of goods will still be within the existing Dunnes Stores area.

## 2.0 RELEVANT PLANNING HISTORY

### **Planning Ref: SD06A/0189 – Extension to Existing Retail Outlet**

On the 22 June 2006 planning permission was granted to extend the Dunnes Stores Liffey valley shop at ground, first and second floor levels. There are no conditions attached to this consent that would prohibit the part use of the shops ground floor for a small coffee shop use (Copy of Final Grant attached at **Appendix 3**).

## 3.0 RELEVANT LEGISLATION

In order to assess whether or not a coffee shop use in Dunnes Stores retail shop constitutes development or exempted development, regard must be had to the following items of legislation.

### **Planning and Development Act, 2000 (as amended)**

Section 3 (1) of the Planning and Development Act 2000 (as amended) defines development as "...any **works** on, in, over or under land or the making of any **material change** in the use of any structures or other land."

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act and includes (h) 'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.'

Section 4 (2) provides for the making of Regulations. The main Regulations are the Planning and Development Regulations, 2001.

### **Planning and Development Regulations, 2001 (as amended)**

Article 5 (1), Part 2 provides interpretations for the purposes of exempted development. The following is relevant to this case:

"shop" means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public—

- (a) for the retail sale of goods,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other food for consumption off the premises, where the sale of such food is subsidiary to the main retail use,
- (e) for hairdressing,
- (f) for the display of goods for sale,'
- (g) for the hiring out of domestic or personal goods or articles,
- (h) as a laundrette or dry cleaners,
- (i) for the reception of goods to be washed, cleaned or repaired,

but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food for consumption off the premises, except under paragraph (d) above, or any use to which class 2 or 3 of Part 4 of Schedule 2 applies.

Article 6 (1) states as follows:

"Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1."

Class 14 of Part 1 of Schedule 2 includes development consisting of a change of use -

- (a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,
- (b) from use as a public house, to use as a shop,
- (c) from use for the direction of funerals, as a funeral home, as an amusement arcade or a restaurant, to use as a shop,
- (d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop.

Article 9 (1) (a) sets out the instances where development, to which Article 6 relates, shall not be exempted development for the purposes of the Act if the carrying out of works would:

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

Article 10 (1) relating to changes of use states as follows:

"Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,
  - (b) contravene a condition attached to a permission under the Act,
  - (c) be inconsistent with any use specified or included in such a permission,
- or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned."

Article 10 (2) (a) further states that a use which is ordinarily incidental to any use specified in Part 4 of Schedule is not excluded from that use as an incident merely by reason of its being specified in the said Part of the said schedule as a separate use.

Class 1 of Part 4 of Schedule 2 refers to: "Use as a shop."

#### **4.0 PLANNING CONCEPTS/DEFINITIONS**

##### ***Material Change of Use***

For a material change of use to exist, such as to amount to "development" and require planning permission, it is necessary to satisfy two conditions. First, there must be an actual change in how the property is used. Secondly, that change must be material. For a change or shift in use/activity to result in a material change it will be necessary to establish that the change has been substantial or significant, rather than some trivial/minor shift in activity.

There must therefore be an analysis of whether or not the character of the existing use of the property will be altered by the proposed change, and whether the quality of that change is of a material nature, such that it impacts on the proper planning and sustainable development of the area (e.g. visual impact, hours of operation, traffic or pedestrian generation, odour etc). Ultimately, the question as to whether or not a change in use is *material* is one of fact and degree, which falls to be determined on the particular facts of each case<sup>1</sup>.

##### ***Planning Unit***

In determining whether a material change of use may occur or has occurred, the planning unit must be considered. The main principle derived from case law is that the planning unit should be taken to mean the unit of occupation or ownership<sup>2</sup>.

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<sup>1</sup> Westmeath County Council v Quirke & Sons, Unreported, High Court, Budd J, May 23, 1996.– "Many alterations in the activities carried out on land constitute a change of uses; however, not all alterations will be material. Whether such changes amount to a material change in use is a question of fact as explained in Monaghan County Council v Brogan (1987) I.R. 339. Consideration of the materiality of a change of use means assessing not only the use itself but also its effects".

<sup>2</sup> Burdle v Secretary of State for the Environment [1972] 1WLR 1207.

## **Ancillary Use**

Although an individual planning unit will generally have a primary or dominant use, there may also be an ancillary/incidental uses present. For example in *Rehabilitation Institute v Dublin Corporation*<sup>3</sup>, the developer had used certain premises for the assessment, training and placement of disabled persons. In the main, the premises were used for administration, although some training was carried out there. It was proposed to discontinue all training and to use the premises for the sole purpose of an office. The High Court analysed the use of the lands as follows. In law, there was only one use of the premises: use as an office for any purpose. The training use was regarded to be as ancillary to the general administrative use.

Thus a change of use to a pure office did not involve a material change in use. Thus the commencement of an ancillary use will not necessarily constitute a material change of use and will not be considered a fresh act of development.

### **5.0 RELEVANT ABP REFERRAL CASES**

In considering whether development has taken place the planning authority/ABP will have regard to previous referral decisions in which ABP determined that the partial use of a coffee shop within a larger retail unit did not involve development.

#### ***Partial Change of Use of a Mace Shop to accommodate a Coffee Shop (ABP Ref: RL2941)***

*The Board determined on the 28 February 2012 that the part use of a Mace shop in Drogheda as a coffee shop was not development as no material change of use occurred. The front of the shop comprised a small coffee shop with serving counter for food and beverages and approximately 8 no. tables and chairs. The coffee shop was operated by 'Perk: The Coffee Company'. Food available for takeaway or consumption on the premises included muffins, scones and deli sandwiches.*

#### ***Partial Change of Use of Penneys to accommodate an Insomnia Coffee Shop (ABP Ref: RL3444)***

*The Board on 17 August 2016 concluded that part change of use of the Penneys shop to an Insomnia Coffee Shop did not result in a material change of use and therefore did not constitute development. In coming to this decision the Board had regard to the substantial scale of the overall shop (c.5,000 sqm) relative to the small scale of the coffee shop (120 sqm), its operation only during the opening hours of and in conjunction with the overall shop, the absence of independent access from the public street and the absence of potential for use as an independent unit.*

---

<sup>3</sup> *Rehabilitation Institute v Dublin Corporation*, Unreported, High Court, Barron, J., January 14, 1988.

We believe the Penneys case sets an important planning precedent which is a relevant material consideration in determining whether or not the part use of a coffee shop in Dunne Stores Liffey Valley SC is in fact development. The key determining factors in the Penneys case included: **(a)** the overall scale of the shop, **(b)** the relative small scale of the coffee shop, **(c)** its operations only during the operation hours of the shop, **(d)** the absence of an independent access to the coffee shop and **(e)** absence of potential to operate as an independent unit.

A copy of the Penneys decision is attached at **Appendix 4**.

### **Starbucks Referral Cases**

At this juncture we would like to make it clear that the above Penneys Referral decision can be clearly differentiated from ABP's decisions relating to Starbucks Cafes in Cork City and Airside Retail Park, Swords.

#### Starbucks, Cork (RL3424/RL3425/RL3426)

In these cases ABP determined that the use of the coffee shops did not constitute use as a "shop" because the scale, nature and layout of the coffee shop was more akin to a restaurant use which is expressly excluded from the definition of 'shop' and the change of use raised issues that were material. In all three cases the subject matter related to the use of an entire retail unit as a coffee shop.

In the Penneys referral case (RL3444) the subject matter relates to the part use of a coffee shop in a larger retail unit.

#### Starbucks, Airside Retail Park, Swords (RL3481)

In this case the subject matter related to the change of use of part of a unit from a toy shop to use as a coffee shop (i.e. Starbucks). In this case ABP decided that the change of use of part of a unit from toy store to use as a coffee shop was development and was not exempted development.

In this case the coffee shop area was physically separated from the retail unit (the unit was sub-divided by a partition wall), the coffee shop had its own customer toilets and the coffee shop had a separate entrance from the car park. Essentially the coffee shop operated as an independent coffee shop which could be accessed separately of from the adjoining toy shop.

In the Penneys Case the coffee shop formed part of shops retail floor. There was no physical separation between both areas. Also access to the coffee shop was via the shops main entrance (the coffee shop did not have independent access).

## ASSESSMENT

### ***Has Development Occurred?***

The development works required to install the café (e.g. lighting, seating, tables, new flooring etc.) fall within the meaning of Section 4 (1) (h) of the Planning Act and therefore are deemed exempt. The second limb of the 'development' definition (i.e. Material Change) is considered below.

For a change or a shift in use/activity to result in a material change it will necessary to establish that the change has been substantial or significant, rather than some minor change in activity. To do this you must look at the overall character of the Planning Unit in question. For the purposes of this assessment, the unit of occupation (i.e. the Dunnes Stores shop) is the planning unit.

### Planning Units Character before the introduction of the coffee shop use

The Dunnes Stores unit is an established retail shop trading over 17 years.

When you enter the shop at ground floor level you have to walk pass a line of security antennas (see Mail Photo 3 at Appendix 2) which are generally only installed in shops to help prevent shop lifting. So when you enter the Dunnes Stores unit you know your entering a large department shop and not a coffee shop.

### Impact of Coffee Shop on the Shop's Character

Having considered the planning unit's character the next logical step is to consider the impact of the coffee shop has on the shops existing character.

- **Coffee Shop Use** – The coffee shop sales primarily relate to the sale of coffee which can be consumed on and off the premises. There is no kitchen or food prep area and none is required. There is no table service or waiting staff and no customer toilets are provided. It is therefore arguable that the coffee shop's use is more akin to a retail shop than a café/restaurant use.
- **Size of Coffee Shop** - The coffee shop extends to 79sqm which equates to only 1% of the shops gross sales floor area (5,976sqm). The scale of the coffee shop is clearly incidental to the shops primary retail use.
- **Coffee Shop Location** – The coffee shop is not segregated from the shops main shop floor. Customers can easily walk between the coffee shop and the shop floor.
- **Access** - The coffee shop does not have an independent access on to the Centre's shopping mall. Access to the coffee shop is via the shop's existing entrances.

- **Seating/Tables** – A nominal amount of seating/tables are provided to allow Dunnes Stores customers to consume their coffee purchase on site. However, as noted above the seating area is not exclusively dedicated to customers purchasing coffee. The seating area is provided for all Dunnes Stores customers and therefore this area is deemed incidental to the main retailing use of the premises.
- **Hours of Operation** – The coffee shop only operates when the main shop is open. As such the coffee shop cannot operate independently.
- **Noise/Odour** – As the coffee shop does not have a kitchen, planning issues relating to noise and/or odour do not arise.
- **Traffic & Pedestrian Footfall** - The coffee shop use has no impact on pedestrian footfall or traffic movements to and from the store. The main reason why customers visit this store is to purchase retail goods. The purchase of coffee on these premises is incidental to the shop's primary use.

For the reasons outline above we contend that the coffee shop use has no material impact on the shops retail character and the part change of use from retail to coffee shop use does not result in any new planning issues (odours, hours of operation, traffic etc.).

Furthermore, given that ABP deemed a coffee shop within a Penneys Store was not development we can see no justifiable reason why an ancillary coffee shop in Dunnes Stores can be classified as development given the similarities between both cases.

## 7.0 Conclusion

There is a well-established principle that the right to use a planning unit for a primary purpose includes the right to use it for a purpose which is ancillary to the primary use provided a material change of use does not occur. With reference to the use of a coffee shop within the Dunnes Stores unit it is our position that the coffee shop use is incidental to the shop's primary retail use and that no material change of use occurs. Any works required for installing the ancillary coffee shop are exempt under Section 4 (1) (h) of the Planning and Development Act (as amended).



Yours faithfully

*Patrick O'Neill*

Patrick O'Neill

Dunnes Stores  
Property Department  
46-50 South Great Georges Street  
Dublin 2  
Direct Dial: 01 6112766  
Email: [poneill@dunnes-stores.ie](mailto:poneill@dunnes-stores.ie)

**DOCUMENTS ENCLOSED:**

- APPLICATION FORM COMPLETED X 1
- THE CORRECT FEE – €80.00
- SITE LOCATION PLAN X 1
- SITE LAYOUT PLAN X 1
- GROUND FLOOR PLAN (ORIGINAL STORE LAYOUT) X 1
- GROUND FLOOR PLAN (EXISTING STORE LAYOUT) X 1



APPENDIX 1 – ENFORCEMENT NOTICE (REF: ENF/S720)





**AN BORD PLEANÁLA**

**04 DEC 2018**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LOG- \_\_\_\_\_

AEP- \_\_\_\_\_

**COUNTY COUNCIL OF THE COUNTY OF SOUTH DUBLIN**  
**PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED)**

**ENFORCEMENT NOTICE**  
**PURSUANT TO SECTION 154(5)(a)(i) OF THE**  
**PLANNING & DEVELOPMENT ACT, 2000 (AS AMENDED)**

**ENF. S7920**

**DATE: 13<sup>th</sup> September, 2018**

Dunnes Stores Unlimited Company  
2 Liffey Valley Shopping Centre  
Fonthill Road  
Clondalkin  
Dublin 22

**WHEREAS** South Dublin County Council (hereinafter called "the Council") is the Planning Authority for the County of South Dublin in which are situate the lands at Dunnes Stores, 2 Liffey Valley Shopping Centre, Fonthill Road, Clondalkin, Dublin 22 in the townland of Irishtown.

**AND WHEREAS** the following development has been carried out without a grant of permission:

**The material change of use of the portion of the retail store at Dunnes Stores, 2 Liffey Valley Shopping Centre, Fonthill Road, Clondalkin, Dublin 2 which is being used as a café/restaurant (Café Sol).**

**AND WHEREAS** such development is not exempted development.

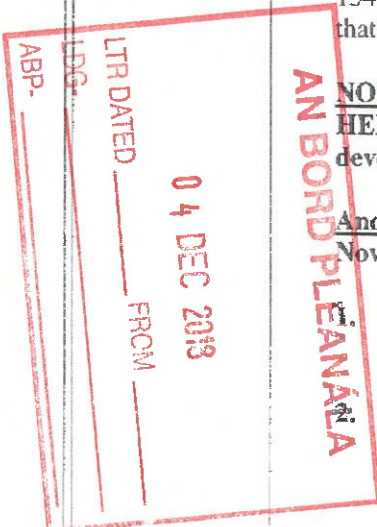
**TAKE NOTICE** that the Council having considered only the proper planning and sustainable development of its area, including the preservation and improvement of the amenities thereof, regard being had to the provisions of the South Dublin County Development Plan 2016-2022 in exercise of the power conferred on it by Section 154(5)(a)(i) of the Planning & Development Act, 2000 (as amended), has decided that it is expedient to serve on you this Notice under the said Section 154(5)(a)(i).

**NOW** the Council as Planning Authority pursuant to the said Section 154(5)(a)(i) **HEREBY REQUIRES** that where no permission has been granted, that the development cease.

**And** within the specified period commencing **17<sup>th</sup> September, 2018** and ending **12<sup>th</sup> November, 2018** to take the following steps:-

**Cease and discontinue the material change of use of the portion of the retail store which is now being used as a café/restaurant (Café/Sol).**

**The entire café/restaurant to revert back to its former authorised use.**





## AND FURTHER TAKE NOTICE


That any person who knowingly assists or permits the failure by another to comply with an Enforcement Notice shall be guilty of an offence.

That this Notice takes effect on the date it is served on you AND that if you do not carry out the steps required above within the specified period commencing **17<sup>th</sup> September, 2018 and ending 12<sup>th</sup> November, 2018** referred to herein or within such extended period as the Planning Authority may allow, the Planning Authority may enter on the land and take such steps including the removal, demolition and alteration of a structure and the restoration of the land and recover any expenses reasonably incurred by them in that behalf from you.

That if within the period specified by this Notice or such extended period (if any) you do not take the steps required by this Notice, you may be guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment, or on conviction on indictment to a fine not exceeding €12.7 million or to imprisonment to a term of two years or to both such fine and imprisonment and further that you will be required to pay the costs of any proceedings brought by the County Council in such sum as the Court may measure, unless you can satisfy the Court that there are special and substantial reasons for not so doing.

That you are hereby required to refund to the Planning Authority, **Six Hundred and Fifty Euro**, that being the costs and expenses incurred by the Authority in relation to the investigation, detection and issue of this **Enforcement Notice, S7920** and further costs incurred in the investigation, in respect of the remuneration and other expenses of employees, consultants and advisors. A schedule of costs is contained below.

Item	Cost
Provision of Warning Letter	€ 40.00
Referencer's Investigation and Report	€ 200.00
Inspection by Enforcement Officer	€ 100.00
Inspection Report	€ 75.00
Provision of Enforcement Notice	€ 60.00
Follow-up Inspection by Enforcement Officer	€ 75.00
Administration. Register Maintenance	€ 100.00
	€ 650.00

  
Acting Senior Planner,  
Land Use, Planning &  
Transportation Department,  
South Dublin County Council,  
County Hall,  
Tallaght,  
Dublin 24.





**APPENDIX 2 – PHOTOGRAPHS OF THE COFFEE SHOP**

**MALL PHOTO 1 – TAKEN FROM SHOPPING MALL NEAR LIFESTYLE SPORTS LOOKING TOWARDS DUNNES STORES**

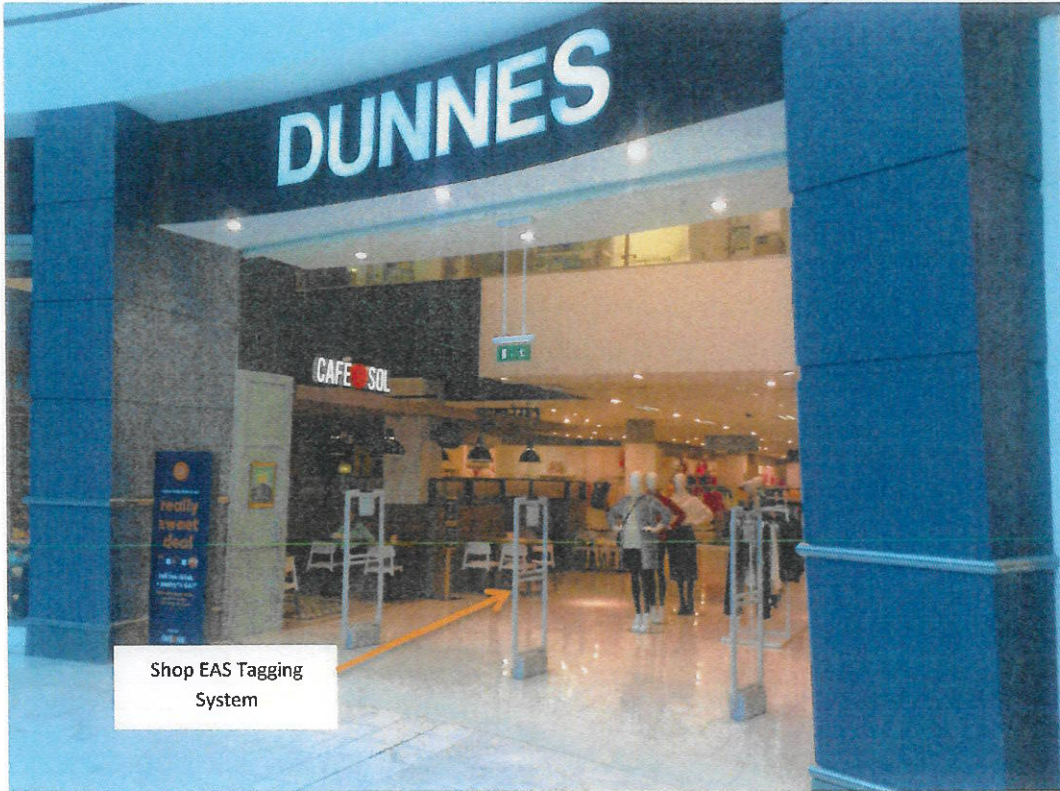


**MALL PHOTO 2 – TAKEN FROM SHOPPING MALL NEAR COSTA COFFEE LOOKING TOWARDS DUNNES STORES**





MALL PHOTO 3 – TAKEN AT ENTRANCE INTO DUNNES STORES



SHOP PHOTO 1





SHOP PHOTO 2



SHOP PHOTO 3





SHOP PHOTO 4









AN BORD PLEANÁLA

04 DEC 2018

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

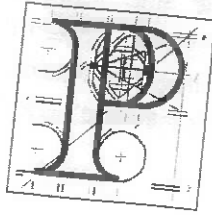
LDG- \_\_\_\_\_

ABP- \_\_\_\_\_





# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

**Waterford City and County**

**Planning Authority Reference Number: D5/201522**

**An Bord Pleanála Reference Number: 93.RL.3444**

**WHEREAS** a question has arisen as to whether the change of use of part of a shop to use as a coffee shop at Penneys, 32-37 Barronstrand Street, Waterford is or is not development or is or is not exempted development:

**AND WHEREAS** Primark Limited care of Kieran O'Malley and Company Limited of Saint Heliers, Saint Heliers Copse, Stillorgan Park, Blackrock, County Dublin requested a declaration on the said question from Waterford City and County Council and the said Council issued a declaration on the 19<sup>th</sup> day of November, 2015 stating that the said matter is development and is not exempted development:

**AND WHEREAS** the said Primark Limited referred the declaration for review to An Bord Pleanála on the 15<sup>th</sup> day of December, 2015:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) the definition of 'shop' under article 5(1) of the Planning and Development Regulations, 2001, as amended,

- (c) the planning history of the site, including An Bord Pleanála appeal reference number PL 31.219213 (planning register reference number 05/500242), whereby planning permission was granted for a substantial shop at this location, as amended under planning register reference number 10/500208, and
- (d) the large scale of the overall shop at circa 5,000 square metres, and the small scale of the coffee shop involved at 120 square metres:

**AND WHEREAS** An Bord Pleanála has concluded that -

- (a) the existing use of the entire premises is as a "shop" as defined in Article 5(1) of the Planning and Development Regulations, 2001, as amended by Article 3 of the Planning and Development Regulations, 2005,
- (b) the use of the front of the premises for the consumption of food items purchased on the premises does not come within the scope of the definition of a shop, which definition does not provide for the consumption of food on the premises,
- (c) the use of part of the shop as a coffee shop is, therefore, a change of use from use as a shop, and is considered to constitute a restaurant use, particularly given the layout, the extent of seating, and the physical separation from the retail area, and
- (d) having regard to the substantial scale of the overall shop relative to the small scale of the coffee shop, its operation only during the opening hours of and in conjunction with the overall shop, the absence of independent access from the public street, and the absence of potential for use as an independent unit, it is considered that the change of use does not constitute a material change of use and is, therefore, not development:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the said change of use of part of a shop to use as a coffee shop at Penneys, 31-37 Barronstrand Street, Waterford is not development.

## **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this        day of                    2016.**





ED18/0035

S.S.

# SOUTH DUBLIN COUNTY COUNCIL



Senior Executive Officer  
Land Use Planning & Transportation

22 OCT 2013

## SECTION 5 APPLICATION FORM

South Dublin County Council

### Declaration on development and exempted development

Section 5 of Planning and Development Act, 2000 (as amended)

Land Use, Economic and Transport Planning Department, County Hall, Town Centre,  
Tallaght. Dublin 24.

Tel: 01 4149000 Fax: 01 4149104 Email: [planning.dept@sdblincoco.ie](mailto:planning.dept@sdblincoco.ie)

### **STANDARD APPLICATION FORM & ACCOMPANYING DOCUMENTATION:**

Please read directions & documentation requirements at back of form before completion.

**All questions relevant to the proposal being applied for must be answered.**

Non-relevant questions: Please mark n/a

*Please ensure all necessary documentation is attached to your application form.*

### **DATA PROTECTION**

*The publication of applications by planning authorities may lead to applicants being targeted by persons engaged in direct marketing. In response to a request from the Data Protection Commissioner, you are given an opportunity to indicate a preference with regard to the receipt of direct marketing arising from the lodging of this application.*

*If you are satisfied to receive direct marketing please tick this box.*

**It is the responsibility of those wishing to use the personal data on applications for direct marketing purposes to be satisfied that they may do so legitimately under the requirements of the Data Protection Acts 1988 & 2003 taking account of the preference outlined above**

AN BORD PLEANÁLA  
LTD.  
LDG.  
ABP.  
FROM \_\_\_\_\_



**1. Name of Applicant:**

DUNNES STORES UNLIMITED COMPANY

*Address To be supplied at end of this application form - Question 9*

**2. Name of Person/Agent acting on behalf of applicant (if any):**

PATRICK O'NEILL

*Address To be supplied at end of this application form - Question 10*

**3. Location:**

*Postal Address or Townland or Location (as may best identify the land or structure in question)*

DUNNES STORES, LIFFEY VALLEY SHOPPING CENTRE, FONTHILL ROAD, DUBLIN 22, A65 F4E2

*Ordnance Survey Map Ref No (and the Grid Reference where available):*

50030044-1 (707026, 734763)

**4. Description of Proposed Development:**

WHETHER THE CHANGE OF USE OF PART OF A SHOP TO USE AS A COFFEE SHOP AT DUNNES STORES, LIFFEY VALLEY SHOPPING CENTRE, FONTHILL ROAD, DUBLIN 22 IS OR IS NOT DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT

**2(a): Section of Exempted Development Regulations under which exemption is claimed (if known):**

IT IS THE APPLICANTS OPINION THAT NO MATERIAL CHANGE OF USE OCCURS AND THAT ANY WORKS REQUIRED IN RESPECT OF THE INTERNAL COFFEE SHOP ARE EXEMPT UNDER SECTION 4 (1)(H) OF THE PLANNING AND DEVELOPMENT ACT (AS AMENDED).

**5: Protected Structure:**

<p><i>Does the proposed development consist of work to a protected structure and/or its curtilage or proposed protected structure and/or its curtilage?</i></p> <p><b>Please tick as appropriate:</b></p>	<p>YES</p>	<p>NO</p> <p>✓</p>
---	------------	--------------------



**6. Applicants Interest in site:**

OWNER

**7. List of plans, drawings etc. submitted with this application:**

- SITE LOCATION PLAN X 1
- SITE LAYOUT PLAN X 1
- GROUND FLOOR PLAN (BEFORE THE COFFEE SHOP USE) X 1
- GROUND FLOOR PLAN (INCLUDING COFFEE SHOP USE) X1
- PHOTOGRAPHS OF THE CAFÉ SOL UNIT.

**8. Development within the curtilage of a house:**

- (a) area of site: \_\_\_\_\_ N/A sq.m.
- (b) floor area of existing extension(s) (if any): \_\_\_\_\_ N/A sq.m.
- (c) floor area of proposed development: \_\_\_\_\_ N/A sq.m.
- (d) area of rear garden remaining: \_\_\_\_\_ N/A sq.m.

Signed (Applicant or Agent as appropriate)	<i>Patricia O'Sullivan</i> on behalf of Dunnes Stores Unlimited Company
Date:	17 October 2018

Payments Office  
 South Dublin County Council  
 County Hall, Tallaght, Dublin 24.  
 Phone 4149121  
 Monday to Thursday 9:00am to 4:00pm  
 Friday 9:00am to 3:30pm  
 23/10/2018 12:23:41  
 Receipt No.: T4/0/588003  
 ED18/0035  
 Agent



PLANNING APPLICATION FEE 80.00  
 GOODS 80.00  
 VAT Exempt/Non-vatiable  
 Total: 80.00 EUR  
 63.01 IEP  
 Tendered: 80.00  
 Cheque C291454  
 Change: 0.00

Issued By: Maria Bannion  
 From: Tallaght Lodgement Area 4.  
 01 446 0000



**NOTES:**

- (a) Application must be accompanied by fee of €80.00
- (b) application must be accompanied by:
  - (1) site location map with site clearly outlined in red,
  - (2) site layout plan including all existing structures on site (this is required as conditions and limitations of exempted development include location of development and distances from site boundaries),
  - (3) scaled floor plans and elevations (this is required as conditions and limitations of exempted development include height of structure and distances of windows from boundaries).

\*\*\*\*\*

**OFFICE**

Ref. No. ED18/0035

Fee Received: € 80.00



Payments Office  
South Dublin County Council  
County Hall, Tallaght, Dublin 24.  
Phone 4149121  
Monday to Thursday 9 00am to 4 00pm  
Friday 9 00am to 3 30pm  
23/10/2018 12:22:48

Receipt No: T4/0/586000

ED18/0036  
Agent

PLANNING APPLICATION FEE 80 00  
GOODS 80 00  
VAT Exempt/Non-vatable

Total : 80 00 EUR  
63 01 IEP

Tendered  
Cheque 80.00  
C001344

Change : 0 00

Issued By : Maria Bannon  
From : Tallaght Lodgement Area 4  
Vat reg No. IE9609808P





**6. Applicants Interest in site:**

OWNER

**7. List of plans, drawings etc. submitted with this application:**

- SITE LOCATION PLAN X 1
- SITE LAYOUT PLAN X 1
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- GROUND FLOOR PLAN (INCLUDING COFFEE SHOP USE) X1
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**8. Development within the curtilage of a house:**

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- (c) floor area of proposed development: \_\_\_\_\_ N/A sq.m.
- (d) area of rear garden remaining: \_\_\_\_\_ N/A sq.m.

Signed (Applicant or Agent as appropriate)	<i>Patricia O'hull</i> on behalf of Dunnes Stores Unlimited Company
Date:	17 October 2018



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  - (3) scaled floor plans and elevations (this is required as conditions and limitations of exempted development include height of structure and distances of windows from boundaries).

\*\*\*\*\*

**OFFICE USE ONLY**

Ref. No. ED18/0035 Date Received: 22/10/18  
Fee Received: € 80.00 Receipt No. \_\_\_\_\_



**AN BORD PLEANÁLA**

**04 DEC 2018**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_