



Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1, D01V902

21/10/2022

**RE: Section 5 Declaration R740/22 Lee Garage, Model Farm Road,
Cork**

Dear Sir/Madam,

Please find enclosed a referral under Section 5 (4) of the Development & Planning Act 2000 with a cheque for the referral fee of €110.00. On the remittance advice, 'Your Reference' is "SECTION 5 DECL. R470/22". Please disregard this error. The correct file reference number is R740/22.

Question Referred

Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is or is not development or is or is not exempted development.

Applicant Details

Lee Garage Cork Ltd. T/A Lee Auto Centre,
Lee Garage,
Model Farm Road
Cork T12 T326.

Person/Agent acting on behalf of the Applicant

John Spain/Yvonne McMahon,
John Spain Associates,
39 Fitzwilliam Place,
Dublin 2, D02 ND61.

AN BORD PLEANÁLA	
LDG-	<u>05858 -22</u>
ABP-	_____
27 OCT 2022	
Fee: €	<u>110</u> type: <u>cy</u>
Time:	_____ By: <u>psr</u>

Copies of the following documents are included in the appendices of this referral:

- Referral under Section 5(4) of the Planning and Development Act 2000
- Section 5 Declaration application, R740/22
- Planning Permission, TP 8278, notification of decision to grant planning permission with conditions, site layout map, elevations & floor plans
- Planning Permission 21/40518, notification of decision to grant planning permission with conditions



We are Cork.

Should additional information be required, please contact me directly on 021 492 4029 or
kate_magner@corkcity.ie

Yours faithfully,



Kate Magner
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



The Secretary
An Bord Pleanála
64 Marlborough Street
DUBLIN 1
D01 V902

12 October 2022

Referral under Section 5(4) of the Planning and Development Act 2000
Site at: Lee Garage, Model Farm Road, Cork
Cork City Council Ref: R740.22

This referral is made under section 5(4) of the Planning and Development Act 2000 (as amended).

This referral is structured as follows:

1. Introduction
 2. Background
 3. Referral
 4. Screening for Appropriate Assessment
 5. Conclusion
- Appendices 1 – 4

1. Introduction

1.1 Relevant Legislative Provision

All relevant legislative provisions of the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) are included as **Appendix 1** to this referral. In this referral, 'the Act' means the Planning and Development Act 2000, as amended, and 'the Regulations' means the Planning and Development Regulations 2001, as amended.

1.2 Particulars of Referral

Various particulars required under Section 127 of the Act are provided with this referral. The subject matter and grounds of the referral and the reasons, considerations and arguments on which they are based are included below in the body of this referral. Also enclosed is the fee of €110.

The referral is made by:

Development Management, Planning Department
Community, Culture and Placemaking Directorate,
Cork City Council, City Hall, Cork
Telephone: 021-492-4029
Email: kate_magner@corkcity.ie

1.3 The Question Referred

As per the application received from John Spain Associates on behalf of Lee Garage Cork Ltd the question referred here is:

Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is or is not development or is or is not exempted development.

1.4 The Referral Site

For ease of reference, the lands which are the subject of this referral are referred to as 'the referral site' in this referral.

The referral site is located at Model Farm Road, approx. 350m west of Dennehy's Cross in Cork City. The site is 0.64 ha, with 2 no vehicular entrances along the road frontage. On the site there is a motor fuel forecourt, hard surface area, small shop associated with the forecourt area with associated fuel pumps, parking and a small shop for the fuel pumps. To the rear of the of the shop there is a large building. The northern part of this building is used for the sale and display of motor cars, and it has a floor area of 502m². It is this part of the building used for the sale and display of the motor car which is the subject matter of the referral. The southern part of this building is used as a workshop/car service.

A land ownership map and site layout map are attached as **Appendix 2** along with determination form and report/cover letter received.

2. Background

2.1 General Background

The subject referral to the Board is subsequent to a request for a Planning Authority declaration on the question as set out in Section 1.3 above. The request for declaration is recorded under Cork City Council Ref: R740/22.

The application and report/cover letter, received by Cork City Council on 15 September 2022 by John Spain & Associates on behalf of Lee Garage Cork Ltd, are attached hereto as **Appendix 2**.

2.2 Site Planning History

The planning permissions associated with the subject site as follows –

<u>2140518</u>	<p>Lee Garage Cork Ltd. Trading as Lee Auto Centre <i>Permission for proposed development on site at Lee Garage, Model Farm Road, Cork. Proposed works: (1) Demolition of existing amenity shop forming part of existing filling station; (2) Change of use of part of existing car show room to new forecourt convenience shop ancillary to existing filling station, with internal alterations to provide the following areas: ancillary retail area (99.8m²) including off-licence use ancillary to the primary retail use, ancillary cafe deli food offer counter and food prep area, customer seating area, staff amenities, public amenities, manager office, ATM, fuel sale counter, food store and plant room; (3) Construction of proposed extension to front of existing building to accommodate new customer seating area; (4) Minor alterations to existing elevations; (5) New parking layout to include provision of E-car parking spaces, motorcycle parking spaces and bicycles parking area; (6) Construction of stand-alone bin storage outbuilding and stand-alone MV substation building; (7) Proposed alterations to existing forecourt canopy; (8) All associated site works</i></p>
Outcome:	Notification of Decision to Grant with Conditions – 31.05.2022
Application Status:	Appealed. First party appeal against condition no 2, ABP ref: ABP-313906-22 According to the ABP website, the case is due to be decided by 27.10.2022.

1034500 Lee Garage

Retention of alterations to extended forecourt canopy as granted under 09/36650

Outcome: Grant conditional 06.10.2010

0933660

Lee Garage

Construction of a) extension to existing canopy, b) addition of 2 new fuel dispensing pumps, c) installation of 2 additional under-ground fuel storage tanks, d) widening of existing entrance

Outcome: Grant conditional 21.04.2009

8211109

Lee Garage Cork Limited

Installation of LPC storage tanks and automatic dispenser

Outcome: Grant conditional 31.03.1983

798278

Lee Garage (Cork) Ltd

Erection of showroom, offices, service area and petrol forecourt

Outcome: Grant conditional 01.07.1979

Copies of the Notification of Decision to Grant with conditions, site layout plan and elevations for the 798278 are attached in Appendix 3.

2.3 Development Plan Objectives

Cork City Development Plan 2022-2028

The Cork City Development Plan 2022-2028 was made by the elected members of Cork City Council on 10 June 2022 and came into effect on 8 August 2022.

Under this plan, the subject site is zoned for sustainable residential use, ZO 01 (Map 08, Volume 2).

The objective is to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses, p 542-543.

The carparking requirements for a convenience retail in Zone 2 (city suburbs and areas accessible to mass transit (existing or proposed LRT, core bus network) is 1 space for 50m gross floor area, pp 522-526.

The site is not affected by any recorded monuments or protected structures.

The Core Strategy includes Neighbourhood Development Sites. These are locally important underutilised sites with capacity for mix used regeneration that deliver walkable neighbourhoods (p 47, p 303 and p 448).

This site is identified as a Neighbourhood Development Site No 9, p 453

Objective 10.100 Neighbourhood Development Sites, p 449

Cork City Council in collaboration with landowners and relevant stakeholders will progress the neighbourhood development sites through active land management. These sites will benefit the local neighbourhood and support compact growth. Development proposals will address the relevant points highlighted by the text and icons associated with the maps and relevant objectives throughout this plan.

3. Referral

The question referred is:

Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is or is not development or is or is not exempted development.

The application relates to the car sales showroom unit which has a floor area of 502m². The unit is located to the rear of an existing motor fuel forecourt and shop. The application does not include the service garage behind the car sales area.

The referral from John Spain & Associates states that the applicant intends to operate the car sales showroom as a shop as per the plans, Figure 3.1, on page 6 of the report/cover letter.

There is a pending first party appeal on the site, ref 313906. The subject matter of the planning appeal is condition no 2 of the notification of the decision to grant planning permission ref, 2140518. The planning application sought permission for *change of use of part of existing car show room to new forecourt convenience shop ancillary to existing filling station* and other works. The floor plan shown in Figure 3.1 was submitted with the first party appeal.

Under Section 5(4) of the Planning and Development Act 2000, as amended, the Planning Authority hereby refers this question to be decided by An Bord Pleanala.

4. Conclusion

The Planning Authority looks forward to An Bord Pleanala's consideration and determination of this referral.

Please do not hesitate to contact this office should any further information be required.

Encl.

Appendix 1 Legislative Provisions

Appendix 2 Copy Section 5 Referral to the Planning Authority, received from John Spain & Associates on the 15.09.2022 (includes application form, report/cover letter from John Spain & Associates, site location map, site layout, floor plan, elevations (existing and proposed)).

Appendix 3 Copies of relevant planning permissions associated with the Referral Site

Fee € 110

Appendix 1 – Legislative Provisions

PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED

Section 2(1)

“exempted development” has the meaning specified in section 4.

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1)

In this Act, “development” means, except where the context otherwise requires, 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.

Section 4(2)

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001, as amended.

Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—
any of the developments specified in subsection (1), or
development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Section 4(4)

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 5(1)

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

Section 5(4)

Notwithstanding *subsection (1)*, a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

PLANNING AND DEVELOPMENT REGULATIONS, 2001 AS AMENDED

PART 2 EXEMPTED DEVELOPMENT

Article 5(1) Interpretation for this Part

In this Part—

'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 or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,
- (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 launderette 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 or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

Article 6(1) Exempted development

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.

Article 9 Restrictions on exemption

This sets out restrictions on exemptions specified under article 6. Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development –

- (a) if the carrying out of such development 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,
 - (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
 - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
 - (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line 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,
 - (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,
 - (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed 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,

- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
- (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,
- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
- (viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,
- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified 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,
- (x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,
- (xi) obstruct any public right of way,
- (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 Changes of Use

- (1) 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.
- (2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

- (b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—
- (i) as an amusement arcade,
 - (ii) as a motor service station,
 - (iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,
 - (iv) for a taxi or hackney business or for the hire of motor vehicles,
 - (v) as a scrap yard, or a yard for the breaking of motor vehicles,
 - (vi) for the storage or distribution of minerals,
 - (vii) as a supermarket, the total net retail sales space of which exceeds 3,500 square metres in the greater Dublin Area and 3,000 square metres in the remainder of the State,
 - (viii) as a retail warehouse, the total gross retail sales space of which exceeds 6,000 square metres (including any ancillary garden centre), or
 - (ix) as a shop, associated with a petrol station, the total net retail sales space of which exceeds 100 square metres.

CLASS 1 of Schedule 2 Part 4, Classes of Use, refers to Use as a shop.

(Article 6) Schedule 2, Part 1, Class 14
Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
Change of use CLASS 14 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,.....	[NONE]

Appendix 2 – Section 5 Referral R740/22

Cork City Council

15 SEP 2022

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

**Community, Culture
and Placemaking**

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924762

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

Lee Garage, Model Farm Road, Cork, T12 T326

2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road, Cork is or is not development or is or is not exempted development.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

See attached cover letter and drawings

3. Are you aware of any enforcement proceedings connected to this site?
 If so please supply details:

N/A

4. Is this a Protected Structure or within the curtilage of a Protected Structure? N/A

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority? N/A

5. Was there previous relevant planning application/s on this site?

If so please supply details:

Reg. Ref.: 09/33660, Reg. Ref.: 10/34500, Reg. Ref.: 21/40518 – see attached cover letter for details.

6. **APPLICATION DETAILS**

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	502 sq.m
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) N/A
(c) If concerning a change of use of land and / or building(s), please state the following:	
<u>Existing</u> previous use (please circle)	<u>Proposed</u> existing use (please circle)
The sale or leasing or display for sale or leasing of motor vehicles.	Shop

8. **LEGAL INTEREST**

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner X	B. Other
Where legal interest is 'Other', please state your interest in the land/structure in question	N/A	
If you are not the legal owner, please state the name and address of the owner if available	N/A	

9. I / We confirm that the information contained in the application is true and accurate:

Signature: John Spain Associates

John Spain Associates (Agent),
 39 Fitzwilliam Place, Dublin 2, D02ND61

Date: 15/09/2022

CONTACT DETAILS

10. Applicant:

Name(s)	Lee Garage Cork Ltd. Trading as Lee Auto Centre
Address	Lee Garage, Model Farm Road, Cork, T12 T326 ----- ----- -----

11. Person/Agent acting on behalf of the Applicant (if any):

Name(s):	John Spain / Yvonne McMahon	
Address:	John Spain Associates, 39 Fitzwilliam Place, Dublin 2, D02ND61 ----- ----- -----	
Telephone:	01 6625803	
E-mail address:	ymcmahon@johnspainassociates.com	
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

12. ADDITIONAL CONTACT DETAILS

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

ADVISORY NOTES:

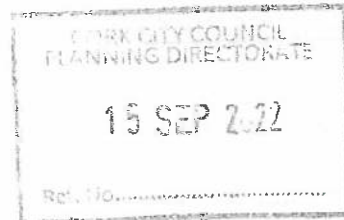
<p>The application must be accompanied by the required fee of €80</p> <p>The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.</p> <p>Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.</p> <p><i>The application should be sent to the following address:</i></p> <p style="text-align: center;">The Development Management Section, Community, Culture & Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork.</p>
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- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION: The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution.

Development Management Section,
Community, Culture & Placemaking Directorate,
Cork City Council,
City Hall,
Anglesea Street,
Cork



15th September 2022
JSA Ref.: YMCM 22022

Dear Sir/Madam,

RE: APPLICATION FOR A SECTION 5 DECLARATION IN RELATION TO THE PROPOSED CHANGE OF USE FROM AN EXISTING CAR SALES SHOWROOM TO SHOP AT LEE GARAGE, MODEL FARM ROAD, CORK.

1.0 INTRODUCTION

1.1 On behalf of our client, Lee Garage Cork Ltd. Trading as Lee Auto Centre, Lee Garage, Model Farm Road, Cork, T12 T326, we wish to make an application for a Section 5 Declaration from Cork City Council, in relation to the proposed change of use from an existing car sales showroom to shop at Lee Garage, Model Farm Road, Cork. It is considered that the proposed change of use is exempted development in accordance with the Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2001-2022.

1.2 This Section 5 application requests a declaration from the Planning Authority on the following:

'Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road, Cork is or is not development or is or is not exempted development.'

1.3 We enclose the following information with this Section 5 application:

- Statutory fee of €80;
- Completed Section 5 Declaration Application Form; and
- 2 copies of application drawings including Site Location Map, Existing and Proposed Site Layout Plans, Existing and Proposed Floor Plans, and Existing and Proposed Elevations (no changes proposed) prepared by DL Group Consulting Engineers.

1.4 In preparing this application we have had regard to;

(a) Section 4 (3) of the Planning and Development Act 2000, as amended;

Managing Director: John P. Spain BBS MRUP MRICS ASCS MRTPI MIPI
Executive Directors: Paul Turley BA MRUP Dip Environmental & Planning Law MIPI Rory Kunz BA (MOD) MScERM MAT&CP Dip EIA Mgmt. MIPI
Stephen Blair BA (Mod) MRUP MIPI MRTPI Blaine Cregan B Eng BSc MSc

Senior Associate Directors: Luke Wymer BA MRUP Dip Plg & Env Law Dip PM Prof Cert Env Mgmt MIPI

Meadhbh Nolan BA MRUP MRTPI Kate Kerrigan BA MSc MRTPI

Associate Director: Ian Livingstone MA (Hons) Town & Regional Planning, MSc. Spatial Regeneration. MRTPI

John Spain Associates Ltd. trading as John Spain Associates. Directors: J. Spain, S. Spain.
Registered in Ireland No. 396306. Registered Office: 39, Fitzwilliam Place, Dublin 2. VAT No. IE 6416306U

- (b) Class 14 of Schedule 2, Part 1- Exempted Development -General of the Planning and Development Regulations 2001 - 2022.
- (c) Articles 6 and 9 of the Planning and Development Regulations 2001 - 2022.

Background

1.5 The subject property has an established use as a car sales showroom, which has been the planning use of the premises for c. 40 years. The property is currently occupied by Lee Auto Centre.

2.0 SITE LOCATION AND DESCRIPTION

2.1 The subject unit is located at Lee Garage, Model Farm Road, Cork, to the west of the city centre in Bishopstown, on the southern side of Model Farm Road as shown in Figure 2.1 below. The Lee Garage site has an area of c.0.64 ha. and comprises a motor sales and petrol station premises, with a car sales showroom and service garage to rear, a forecourt, shop and associated curtilage for parking, display and storage of motor vehicles. The site is serviced by two entrances on the Model Farm Road, between which there is a raised section currently used for the display of cars for sale.

Figure 2.1: Satellite Image of the subject site and car sales showrooms (approximate site outlined in red, car showrooms in orange dashed line)



Source: Google maps

- 2.2 The subject application relates to the car sales showroom unit which is a single storey premises (502 sq.m), located to rear of the forecourt canopy structure, as illustrated in Figures 2.2 – 2.3 below. The subject application does not include the service garage located behind the car sales area.
- 2.3 The subject property is currently operating as Lee Auto Centre, a car sales showroom. The premises has a long established use for the sale and display of motor vehicles, with Lee Auto Centre having been established on the subject site c.40 years ago.

Figure 2.2: Photo of Lee Auto Centre car sale showrooms (east of forecourt)



Source: DL Group

Figure 2.3: Photo of Lee Auto Centre car sale showrooms (west of forecourt)



Source: DL Group

Figure 2.4: Existing entrances to Lee Auto Centre car sales showrooms from Model Farm Road (view east)



Source: DL Group

Figure 2.5: Existing eastern entrance to Lee Auto Centre car sales showrooms from Model Farm Road (view west)



Source: DL Group

3.0 PLANNING HISTORY

3.1 A review of the planning history of the subject site was undertaken using the online Cork City Council planning portal. The following planning permissions are of most relevance to the property.

Reg. Ref.: 82/11109/82 – Erection of Storage Tanks

3.2 A final grant of permission was issued by Cork Corporation on the 25th of March 1983 for development described as “*The Installation of L.P.C. Storage Tanks and automatic dispenser at Lee Garage Model Farm Road, Cork.*”.

- 3.3 The permission was subject to 2 no. conditions. The conditions required the protection of the private drains to guard against pollution of water in the event of storage tank failure and compliance with the requirements of the Fire Officer.

Reg. Ref.: 09/33660 – Canopy extension, new fuel pumps and widening of existing entrance

- 3.4 A final grant of planning permission was issued by Cork City Council on the 8th of March 2009 for development described as “*The construction of a) extension to existing canopy, b) addition of 2 new fuel dispensing pumps, c) installation of 2 additional under-ground fuel storage tanks, d) widening of existing entrance*” at Model Farm Road, Cork. The permission was subject to 8 no. conditions.

- 3.5 This permission provided for a larger forecourt canopy, additional forecourt pumps and alteration to the permitted easternmost entrance. The conditions relate to, *inter alia*, the reinstatement of footpaths, water and drainage and construction matters, financial contributions. None of the conditions attached to this permission relate to the car showrooms premises or use. Under Access, Parking and Traffic, the Planner’s Report notes no objection to the development.

Reg. Ref.: 10/34500 – Retention of alterations to permitted canopy

A final grant of planning permission was issued by Cork City Council on the 2nd September 2010 for development described as “*retention of alterations to extended forecourt canopy as granted under 09/36650*” at Lee Garage, Model Farm Road, Cork. The permission was subject to 2 no. conditions.

- 3.6 This permission provided for a slight reduction in the width of the permitted canopy, necessitated by the limitations of the existing forecourt canopy structure. The conditions require the development to be carried out in accordance with the drawings submitted and that the development be carried out in accordance with the conditions of Planning Reg. Ref.: 09/3360. The Planner’s Report on this application states that the Roads Department had no objection to the development.

Reg. Ref.: 21/40518 – Change of Use of car showrooms and construction of forecourt convenience shop

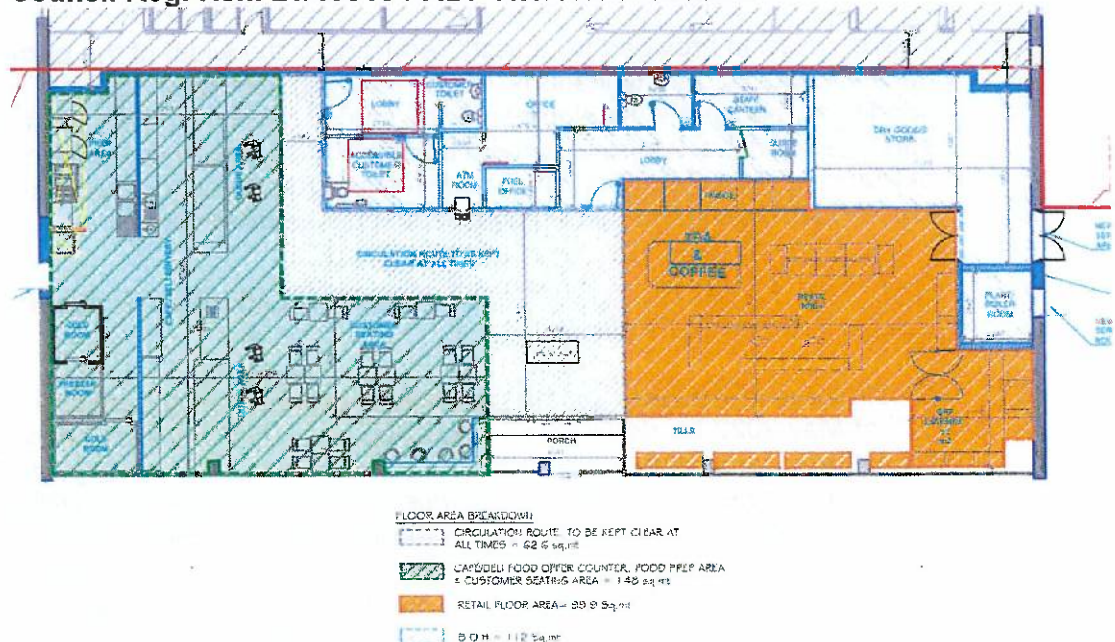
- 3.7 A notification of decision to grant permission was issued by Cork City Council on the 31st of May 2022 for development described as “*(1) Demolition of existing amenity shop forming part of existing filling station; (2) Change of use of part of existing car show room to new forecourt convenience shop ancillary to existing filling station, with internal alterations to provide the following areas: ancillary retail area (99.8m²) including off-licence use ancillary to the primary retail use, ancillary cafe deli food offer counter and food prep area, customer seating area, staff amenities, public amenities, manager office, ATM, fuel sale counter, food store and plant room; (3) Construction of proposed extension to front of existing building to accommodate new customer seating area; (4) Minor alterations to existing elevations; (5) New parking layout to include provision of E-car parking spaces, motorcycle parking spaces and bicycles parking area; (6) Construction of stand-alone bin storage outbuilding and stand-alone MV substation building; (7) Proposed alterations to existing forecourt canopy; (8) All associated site works.*” at Lee Garage, Model Farm Road, Cork.

- 3.8 The decision to grant permission was subject to 15 no. conditions. The roads department had no objection to the development subject to implementation of

revisions to the site layout plan submitted as part of the Further Information response.

- 3.9 This permission provided for the removal of the existing filling station forecourt amenity shop and change of use of part of existing car showroom to new forecourt convenience shop with retail area with ancillary off-licence use, delicatessen area, seating area, minor alterations to existing elevations; revised parking arrangements to include provision of E-car parking spaces, motorcycle parking spaces and bicycles parking area; bin storage outbuilding and substation building, and alteration of existing forecourt canopy. Condition No. 2(a) limits the total net retail sales space of the forecourt shop inclusive of any retail, delicatessen area, seating area and off-licence to 100 square metres. The planner's report on the application notes the site as comprising "an existing petrol filling station with associated ancillary services (car wash etc.) and a car sales showroom and service garage".
- 3.10 The decision is subject to a first party appeal to An Bord Pleanála, ABP-313906-22 refers. The appeal is due to be decided by 27th of October 2022. The appeal requests that Condition No. 2(a) be revised to provide for a forecourt shop of 100 sq.m to include the retail and ancillary off-licence, and an additional separate delicatessen and seating area. A revised proposed floorplan which provides for 99.9 sq. m. of retail unit (including ancillary off-licence use) and a separate 148 sq.m for café/deli unit including ancillary customer seating area was submitted with the appeal to demonstrate that the revised condition could be discharged. For information purposes, a copy of the floorplan is included at Figure 3.1 below.

Figure 3.1: Floor plan submitted with first party appeal in respect of Cork City Council Reg. Ref.: 21/40518 / ABP Ref. No. 313906-22



Source: DL Group Consulting Engineers

- 3.11 This Section 5 application relates to the area in use as car sales showroom only which the applicant intends to operate entirely as a shop as shown on the attached floorplans prepared by DL Group. The subject area comprises a car sales showroom and has been / is used for the display and sale of motor vehicles. This car sales showroom use has been in operation in the subject property for in excess of 40 years and therefore is the long established use of the single storey premises.

4.0 EXEMPTED DEVELOPMENT

4.1 This Section 5 application seeks confirmation from Cork City Council that the change of use of the subject premises from car sales showroom to shop is exempted development. It is submitted that the proposed change of use constitutes exempted development as defined under Class 14 of the Planning and Development Regulations 2001 – 2022 and Section 4(3) of the Planning and Development Act 2000, as amended.

4.2 Class 14 of Schedule 2, Part 1 - Exempted Development – General, of the Planning and Development Regulations 2001 - 2022, outlines that certain changes of use are exempted development and therefore do not require planning permission. This includes sub class 14 (a) which states:

“Class 14: Development consisting of change of use-

*(a) from use for sale of hot food for consumption off the premises, or **for sale or leasing or display for sale or leasing of motor vehicles, to use as a shop**”*
(Emphasis Added)

4.3 The existing Unit has permission / an established use as a car sales showroom and has been used for the sale of motor vehicles for a period in excess of 40 years. It is therefore considered that the proposed change of use from the existing car sales showroom use to a shop, constitutes exempted development under Class 14 (a) and does not require planning permission.

4.4 Section 4 of the Act refers to ‘Exempted Development’ and sets out categories of development that shall be exempted development for the purposes of the Planning and Development Act 2000, as amended. No works are proposed at present.

4.5 We are aware that Article 9 of the Planning and Development Regulations 2001-2022 specifies a number of restrictions which have the effect of removing the exemption which applies to developments to which Article 6 relates.

4.6 Article 6(1) states that subject to article 7, 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. The change of use from the car sales showroom to use as a shop, is exempt under Class 14(a) in Column 1 of Part 1 of Schedule 2. There are no conditions or limitations specified in column 2 of said Part 1 opposite Class 14(b) which restrict the proposed change of use. It should be noted that Article 7 is not applicable to this development.

4.7 Article 9 of the Planning and Development Regulations 2001 – 2022 states that, development to which Article 6 of the Regulations relates shall not be exempted development if it falls within any of the categories outlined in Article 9. Such categories include the following:

- If the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a condition under the Act;
- Consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width;

- Endanger public safety by reason of traffic hazard or obstruction of road users.

- 4.8 It is respectfully submitted that the proposed change of use and associated works is not subject to the provisions of Article 9(1)(a)(i) to (xii). The proposed change of use to "shop" does not contravene any condition attached to a planning permission for a "shop". The proposed change of use of the subject premises from car sales showroom to shop will not give rise to any issues in respect of traffic safety when compared with the long established use. The premises has a long established commercial use and there is sufficient provision of car parking on the site which has served and will continue to serve this commercial premises. As shown on the attached Site Layout Plan drawings prepared by DL Group, the established parking areas for the car sales showroom, extends to a linear length of over 66m which accommodates 26 no. car parking spaces. Additional car parking for the car services unit is provided to the rear of the site.
- 4.9 In respect of application Reg. Ref.: 21/40518 which provided for a change of use to retail unit at the subject premises, the City Council's Transportation Department Traffic: Regulation & Safety Report of the 2nd of November 2021 clearly states that there is no objection to a grant of permission subject to conditions. It is noted that no grant of permission has issued in respect of this application as it is currently the subject of an appeal to An Bord Pleanála.
- 4.10 Article 10, Changes of Use, which relates to restrictions on exemptions for change of use within any one of the classes of use specified in Part 4 of Schedule 2, does not apply to this development as the exemption the applicant is availing of is under Part 1 of Schedule 2 as set out above.
- 4.11 It is respectfully submitted that the proposed change of use of the subject property from car sales showroom to shop will not give rise to any of the categories set out at Article 9 above. Therefore, the proposed change of use is exempted development.

Relevant Precedent

- 4.12 The following is a relevant precedent from An Bord Pleanála for change of use from car sales showroom to shop.

An Bord Pleanála Ref. No.: 304204-19

- 4.13 A question arose as to whether the change of use from car dealership to retail sale of convenience goods at Pollamore Near, Dublin Road, Cavan, is or is not development or is or is not exempted development.
- 4.14 On the 24th of October 2019, An Bord Pleanála concluded that –
- (a) the proposed change of use pertaining to the former car sales premises would generally come within the scope of the exemption provided in Class 14 (a) of Part 1 of Schedule 2 of the Planning and Development Regulations, as amended, and
 - (b) the change of use to a shop is not subject to any of the restrictions on exemption set out in Article 9 of the Planning and Development Regulations, 2001, as amended.

- 4.15 On the 24th of October 2019, An Bord Pleanala issued the Order determining that the change of use from car dealership to retail sale of convenience goods at Pollamore Near, Dublin Road, Cavan is development and is exempted development.
- 4.16 It is apparent from the above decision that the Board considered that an exemption under Class 14 (a), i.e. change of use from car showroom to shop, applied in this instance.

5.0 SUMMARY AND CONCLUSIONS

- 5.1 The extent of development for which a Section 5 declaration is sought has been outlined. It is submitted that the proposed change of use from Car Sales Showroom to Shop constitutes exempted development under Class 14 of the Planning and Development Regulations 2001 – 2022 and Section 4(3) of the Planning and Development Act 2000, as amended.
- 5.2 We would be grateful if Cork City Council could issue a declaration under Section 5 of the Planning and Development Act 2000, as amended, on whether the proposed development constitutes exempted development.
- 5.3 Please do not hesitate to contact us should you require any clarification of the documentation enclosed.

Yours faithfully,



John Spain Associates

PLANNING DEVELOPMENT MANAGEMENT

CASHDESK RECEIPT CHECKLIST

Name: JOHN SPAW ASSOCIATES

Amount: €80.00 TP No.: R740/22

Description/ Address: LEE GARAGE, MODEL FARM ROAD

Business Unit	Description
I4110	Copies of Planning Permission <ul style="list-style-type: none">• Copies of Planning Decisions• Copies of Final Grant• General copying• Archive Retrieval• Microfiche
I4114	<ul style="list-style-type: none">• Application Fees
I4116	<ul style="list-style-type: none">• Section 5 applications (Exemption Certs)• Extension of Duration Applications• Planning Searches
I4117	<ul style="list-style-type: none">• Submissions/Objections on Planning Applications
I4118	<ul style="list-style-type: none">• Recouped Enforcement Expenses
I4121	<ul style="list-style-type: none">• Section 254 Licence fees (Fingerpost signs)
I4122	<ul style="list-style-type: none">• SHD Fees (Strategic Housing Developments)
I4124	<ul style="list-style-type: none">• Planning Bond Letters
I4100	<ul style="list-style-type: none">• Outdoor Event Licences

Planning Contributions

TP No. : _____ JDE Account No.: _____

Amount: _____

Signed: Kate Quinn Date: 16/09/22



ORK CITY COUNCIL
CITY HALL
ORK

09/09/2022 14:51:03

Receipt No. : PLAN3/0/7824576
*** REPRINT ****

740 22
John Spain

EXEMPTION CERTS - FEES 58800	80.00
ROADS	80.00
AT Exempt/Non-vatable	
John Spain	

Total : 80.00 EUR

Entered :
Cheque 80.00
01089

Change : 0.00

Issued By : Eoghan Fahy
Room : Planning Dept. 3
Mat reg No.0005426M

Appendix 3 – Copies of relevant extracts from planning application files associated with the referral site

79/8278

- Notification of decision to grant planning permission with conditions
- Site layout map dated 02.03.1979
- Elevations x 2 dated 02.03.1979
- Floor plans dated 02.03.1979

21/40518

- Notification of decision to grant planning permission with conditions dated 31.05.2022
-



Please Address Reply to

ROOM NO.

BARDAS CHORCAI

CORK CORPORATION

CITY HALL CORK

TELEPHONE 021-56611
21731

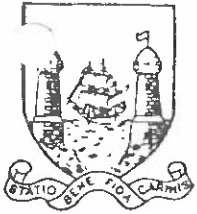
Schedule of conditions attached to
the Planning Permission issued by
Cork Corporation Ref. T.P. 8278

Column 1 CONDITIONS

1. Prior to commencement of development the developer to make a contribution of £3404 to Cork Corporation towards the cost of drainage works facilitating the proposed development subject to:
 - a. Where the proposed works are not commenced within twenty years of completion of the development, the Planning Authority shall return the contribution;
 - b. Where the proposed works are, within the said period, carried out in part only or in such manner as to facilitate the development to a lesser extent, the Planning Authority shall return a proportionate part of the contribution;
 - c. The Planning Authority shall pay interest on the contribution as long as and in so far as it is retained unexpended by the Local Authority.
2. All surface water must be disposed of on site and details of soakaways submitted for approval.
3. Petrol and oil traps with a minimum retention period of 15 mins. must be installed. Details of location of these traps must be submitted for approval.
4. Provision to be made for waste oil storage of minimum capacity 1500 litres.

Column 2 REASONS FOR CONDITIONS

1. The Cork Drainage Works will facilitate the proposed development
2. In the interests of satisfactory drainage arrangements.
3. In the interests of preventing environmental pollution and satisfactory drainage arrangements.
4. In the interests of satisfactory drainage arrangements and in the interests of public health.



Please Address Reply to
ROOM NO.

BARDAS CHORCAI

CORK CORPORATION

CITY HALL CORK

TELEPHONE 021-56611
21731

cont/

Column 1. CONDITIONS'

5. Prior to commencement of development ^{the developer} ^
to make a contribution of £390 to Cork
Corporation towards the cost of water,
works facilitating the proposed development
subject to:

a. Where the proposed works are not
commenced within twenty years of completion
of the development, the Planning Authority
shall return the contribution;

b. Where the proposed works are, within
the said period, carried out in part only
or in such manner as to facilitate the de-
velopment to a lesser extent the Planning
Authority shall return a proportionate
part of the contribution;

c. The Planning Authority shall pay
interest on the contribution as long as
and in so far as it is retained unexpended
by the Local Authority.

6. A hydrant must be fixed on the public
main at the entrance to the site at the
applicant's expense.

7. Development shall not take place for-
ward of the line AA endorsed on the submitted
site layout map. Any land between the line
AA and the existing road boundary line
shall be ceded free of charge to Cork Cor-
poration in lieu of a development charge
for future road works.

8. Prior to the commencement of development
on site the applicant shall submit a revised
site layout map indicating to the satisfaction
of the Planning Authority that clear sight
visibility of sight triangle dimensions
60 m x 5.5 m has been provided at the entrances
to the development site.

Column 2 REASONS FOR CONDITIONS.

5. The Cork Water Works (Wilton
Main) will facilitate the proposed
development.

6. In the interests of
satisfactory water arrangements.

7. Proposed new road works in the
area will facilitate the
development.

In the interests of providing sat-
isfactory sightlines along the
exits and entrances to the deve-
lopment and in the interests of
pedestrian and vehicular safety.



Please Address Reply to
ROOM NO.

BARDAS CHORCAI

CORK CORPORATION

CITY HALL CORK

TELEPHONE 021-56611
21731

cont

Column 1 CONDITIONS

9. All alterations necess. to the public footpath shall be carried out by the C.E. RDS., Department of Cork Corporation at the applicant's expense.

X
10. Prior to the commencement of development on site the applicant shall submit a revised site layout map indicating to the satisfaction of the Planning Authority that all development on site will be recessed at a minimum distance of 40' behind the road line endorsed AA on the existing site layout map. This 40' recession shall incorporate a planting strip of minimum depth 25 ft. with the remaining 15' being used for the purposes of on site vehicular circulation space.

11. Prior to the commencement of development on site and after discussion with the Local Planning Authority the applicant shall submit to the Local Planning Authority for their approval plans showing;

- i. A comprehensive scheme for the landscaping and planting of the development site;
- ii. Details of boundary wall treatment.

12. Details of dimensions and location of proposed name signs, advertising signs and site lighting shall be submitted to the Local Planning Authority for their approval prior to the commencement of on site development.

13. Any future on site development other than the 155000 sq. ft. which forms the subject of the current application must have the prior approval of the Local Planning Authority.

14. None of the conditions listed above must be considered prejudicial to the compliance of the applicant with condition No. 1. of T.P. 7324.

Column 2 REASONS FOR CONDITIONS.

In order to provide a satisfactory standard of alteration to the public footpath.

10. In order to preserve the environmental amenities of a predominantly residential area.

11. In the interests of visual amenity and to protect the amenities of adjoining residential properties.

12. In the interests of the amenities of the area.

13. In the interests of orderly on site development.

14. To ensure compliance with the condition No. 1. of Outline Permission T.P. 7324.

COMHAIRLE CATHRACH CHORCAÍ - CORK CITY COUNCIL

PLANNING AND DEVELOPMENT ACT 2000
NOTIFICATION OF DECISION TO GRANT

Permission

SUBJECT TO CONDITIONS UNDER SECTION 34 OF THE ACT OF 2000

To: Lee Garage Cork Ltd. Trading as Lee Auto Centre
c/o Camilla Botto Poala
DL Group Consulting Engineers
1 Hodders Villas Ballincollig
Cork P31X525

Ref No.: 21/40518 Application Received:
23/09/2021

In pursuance of the powers conferred upon them by the above mentioned Acts, Cork City Council have by order dated **31/05/2022** decided to GRANT **Permission** for the development of land, namely: Permission for proposed development on site at Lee Garage, Model Farm Road, Cork. Proposed works: (1) Demolition of existing amenity shop forming part of existing filling station; (2) Change of use of part of existing car show room to new forecourt convenience shop ancillary to existing filling station, with internal alterations to provide the following areas: ancillary retail area (99.8m²) including off-licence use ancillary to the primary retail use, ancillary cafe deli food offer counter and food prep area, customer seating area, staff amenities, public amenities, manager office, ATM, fuel sale counter, food store and plant room; (3) Construction of proposed extension to front of existing building to accommodate new customer seating area; (4) Minor alterations to existing elevations; (5) New parking layout to include provision of E-car parking spaces, motorcycle parking spaces and bicycles parking area; (6) Construction of stand-alone bin storage outbuilding and stand-alone MV substation building; (7) Proposed alterations to existing forecourt canopy; (8) All associated site works. at : Lee Garage, Model Farm Road, Cork,

In accordance with plans and particulars submitted on 23/09/2021.

Subject to the (15 No.) conditions and reasons set out in the attached Schedule.

If there is no appeal against said decision, a grant of **Permission** in accordance with the decision, will be issued after the expiration of the period within which an appeal may be made to An Bord Pleanála (see footnote).

It should be noted that until a grant of **Permission** has been issued, the development in question is **NOT AUTHORISED**.

Signed on behalf of Cork City Council



Valerie Kavanagh
Senior Staff Officer

Date: 31/05/2022

NB: See Notes Overleaf

Please read the following carefully

1. The Applicant is advised to carefully read through all conditions and notes attached to this decision. Please note that a number of conditions attached to this planning permission may require the submission of compliance plans and/or particulars for the agreement of the Planning Authority prior to the commencement of development. Failure to comply with a condition of a planning permission is an offence under the Planning and Development Act 2000 (as amended). **Such compliance submissions should be emailed to planningcompliance@corkcity.ie**
2. An appeal against a decision of a planning authority made under section 34 of the Planning and Development Act 2000 (as amended) may be made to An Bord Pleanála within 4 weeks beginning on the date of decision (note: not the date on which the decision is sent or received. This is a statutory time limit and An Bord Pleanála has no discretion to accept late appeals). See enclosed notes. Appeals must be fully complete in all respects, including the appropriate fee, when lodged. It is not permissible to submit any part of an appeal at a later date, even within the time limit. For details of the appeals procedure including details of the correct fee, contact An Bord Pleanála. An Bord Pleanála, 64 Marlborough Street, Dublin 1. www.pleanala.ie.
3. A grant of planning permission under the Planning and Development Act 2000 (as amended) is not to be taken as a waiver of the responsibility of the Applicant and/or developer to comply with the provisions of any Act, Order, Regulation or any other statutory provision (e.g. the Building Regulations, Waste Management Acts, etc).
4. A grant of planning permission under the Planning and Development Act 2000 (as amended) does not exempt the Applicant from any requirements which the Fire Authority (pursuant to the Fire Services Act, Building Control Act and Building Control Regulations) may require to be implemented. The Applicant is therefore advised to contact the Cork City Fire Department to discuss these matters prior to the submission of the Commencement Notice (as required under the Building Control Regulations) and/or the making of an application for a Fire Safety Certificate (pursuant to the Building Control Regulations, if applicable).
5. Please note that a grant of planning permission does not imply that the submitted drawings are in compliance with the Building Regulations. Compliance with the Building Regulations is a matter for the Applicant and their technical advisors.
6. Any requirements under the above two items may require physical or other changes to the development that may require a grant of permission under the Planning and Development Act 2000 (as amended). The Applicant is advised to contact the Planning Authority to clarify any issues that may arise.
7. Please note that a grant of planning permission does not entitle the Applicant / developer to undertake works which would involve excavation or damage to the public road, or to erect a hoarding, scaffolding or temporary fencing on the public footway/roadway. The specific consent by way of licence from Cork City Council (Roads Protection and Asset Management Division) will be required for any such works, subject to compliance with the licence conditions as based on the "Directions for the Management and Control of Roadworks in Cork City". In the event of accidental damage to the public footway/roadway the Applicant / developer shall be responsible for its immediate temporary reinstatement. Cork City Council at all times reserves its right to undertake the said works, at the Applicant's / developer's expense, in the event of failure or unsatisfactory execution of the works. The cost of same shall be calculated in accordance with the Roads and Transportation Directorate schedule of reinstatement charges prevailing at the date of the works by Cork City Council.
8. Please note that the provisions of Section 34(13) of the Planning and Development Act 2000 (as amended) which states that a person shall not be entitled solely by reason of a grant of planning permission to carry out any development. Compliance with other regulations and legal requirements may also be necessary.
9. Please note that no part of the proposed development should encroach onto or oversail adjoining public or private land. In the event of encroachment or oversailing of adjoining property, the consent of the adjoining property owner is required.
10. The Planning Authority, in deciding this planning application, has had regard to any submissions or observations received in accordance with the Planning and Development Regulations 2001 (as amended).
11. In accordance with Article 20 of the Planning and Development Regulations 2001 (as amended) you are hereby required to remove forthwith any site notice erected in respect of this planning application.

Planning Ref. No.: 21/40518

First Schedule

Having regard to the nature, location and context of the site and surrounding area, the policies and objectives of the Cork City Development Plan 2015-2021 and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out in the Second Schedule, the proposed development would not seriously injure the residential or visual amenities of the area, and is in accordance with the proper planning and sustainable development of the area.

**Schedule of Conditions attached to
Planning Permission issued by Cork
City Council – Ref.: 21/40518**

Second Schedule

No.	Condition	Reason
1	The development shall be carried out in accordance with the plans and particulars submitted to the planning authority on 23/09/2021, as amended by the Further Information plans and particulars submitted to the planning authority on 20/12/2021, and the Clarification of Further Information plans and particulars submitted to the Planning Authority on 04/05/2022, except where otherwise altered or amended by conditions contained in this Schedule.	To define the scope of the permission, and to enable the planning authority to check the proposed development when completed, in the interests of proper planning and sustainable development.
2	<p>a) The total net retail sales space of the forecourt shop inclusive of any retail, delicatessen area, seating area and off-licence shall not exceed 100 square metres. Revised plans with the necessary alterations shown thereon shall be submitted to the Planning Authority for written agreement prior to commencement of development.</p> <p>b) Use of the overall premises shall be restricted to the revised plans as required and to be agreed under condition 2a) and any change of use, whether within the same use class for exempted development of the Planning and Development Regulations 2001 as amended, or otherwise, shall be subject to the prior permission of the Planning Authority.</p> <p>c) The café/deli/food offer counter and food prep area shall be ancillary to the retail use of the service station and shall not operate independently from same.</p>	To comply with national policy, as set down in the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in January 2005 and Cork City Development Plan 2015.
3	The hours of operation shall be as per the details submitted on the 20.12.2022.	In the interest of the residential amenities of property in the vicinity.
4	All proposed vehicular and pedestrian access points shall be designed in accordance with the	In the interest of traffic safety.

	Design Manual for Urban Roads and Streets (DMURS). Exact details shall be agreed with the Planning Authority prior to commencement of development. All costs associated with this condition to be borne by the Applicant.	
5	A Construction Traffic Management Plan for the proposed development including dedicated haulage routes, a protocol to be followed by HGV drivers and allowable operational times for the HGV's on the city's road network shall be agreed with Cork City Council in consultation with An Garda Síochána before works commences on site.	In the interest of traffic safety.
6	The provision of Charge Points in the parking area shall cater for up to 10% of spaces being allocated for Electric Vehicles and shall be designed by the developer whereby all costs associated shall be at the developers expense.	To cater for more sustainable energy use in line with national policies for the deployment of EVs.
7	Surface water disposal shall be restricted to the existing run-off rates from the site.	In the interest of public health.
8	(a) The developer shall adhere to legislative requirements contained in the S.I. No. 630/2019 - Dangerous Substances (Flammable Liquids and Fuels Retail Stores) Regulations, 2019 and where appropriate other legislation following industry best practice. This includes, but is not limited to: Energy Institute Design, construction, modification, maintenance and decommissioning of filling stations (known as the Blue Book); The Institution of Engineering and Technology, Electric Vehicle Charging Installations at Filling Stations.	In the interest of Health & Safety and Environmental Protection.
9	(e) Prior to commencement of the development the Developer shall submit to the planning authority for agreement, full details of the waste management proposed for the development. Details shall include proposals on waste reduction, reuse, and segregation, recycling, and vented storage as well as who will manage the waste, dispose of it and present it for collection. The developer should refer to the British standards BS 5906: 2005 in relation to waste management in buildings to ascertain capacity required for development.	In the interest of orderly management and disposal of waste.
10	(a) Upon commissioning of the structure, noise from activities	In the interest of residential amenity.

	<p>associated with this development shall not give rise to noise levels off site exceeding 55dB(A) Leq, 15 minutes during the hours of 0800-2200 and 45dB(A) Leq, 15 minutes during the hours of 2200-0800. There shall be no audible tonal or impulsive noise. The developer shall engage the services of a noise specialist to assess compliance with this condition as required.</p> <p>(b) Prior to the commencement of the development, the developer shall identify all potentially significant noise sources at the proposed development site, and their expected noise output quantified by (a) reference to LWA levels or LAeq T levels (at a specified distance) provided by the manufacturer/supplier, (b) reference to typical levels set out in the relevant British Standards BS 4142:2014+A1:2019, or (c) direct measurement of the equipment onsite or at a similar facility. Items that need to be considered are extract fans, air-conditioning, and plant room. (This is a non-exhaustive list.)</p>	
11	<p>(a) Construction waste such as wood, metal, and concrete, shall be segregated and submitted for recycling. Waste Gypsum shall be segregated and delivered to an appropriate facility. Hazardous construction waste such as paint, lubricants, oil, lighting, wood preservative shall be segregated and disposed of at an authorised facility.</p> <p>(b) The developer shall ensure that any waste moved off site during site clearance operations or construction works is removed by authorised waste contractors only. The material shall be taken only to sites authorised by a local authority or the Environmental Protection Agency.</p> <p>(c) All asbestos arising from the demolition section of this development shall be disposed of in accordance with the procedures of Health and Safety Authority "Guidelines on Working with Materials Containing Asbestos Cement".</p>	In the interest of orderly management and disposal of waste.
12	a) Noise during site clearance and construction shall not exceed 65 dB (A), Leq 30minutes and the peak	In the interests of residential amenity.

	<p>noise shall not exceed 75 dB (A), when measured at any point off site.</p> <p>(b) Working hours during site clearance and construction shall be restricted to 0800-1800 hours on Mondays to Fridays and to 0800-1600 hours on Saturdays. Activities outside these hours shall require the prior approval of the Planning Authority.</p>	
13	<p>(a) The Developer shall ensure that no appreciable negative environmental impacts occur because of the construction works associated with this development. The developer shall give particular attention to dust, noise, odour, litter, dirt on public roads, surface water runoff and spillage of fuel oils. Operations liable to produce dust shall be screened and dust suppression devices used where appropriate. Fuel oils and other chemicals shall be adequately bunded, with bunds having volumes of at least 110% of the volumes of fuel stored.</p> <p>(b) The developer shall take measures to ensure that construction works do not give rise to dirt or litter on the public road, and shall be responsible for the immediate removal from the public road of any dirt or litter caused by the construction works.</p>	In the interests of orderly management and disposal of waste.
14	<p>(a) Tree felling and clearing of vegetation shall take place outside of the bird nesting season.</p> <p>(b) The Developer shall ensure that surface water from the development is free from herbicides, pesticides, fertilisers and any other substances which could have a harmful affect on the environment.</p> <p>(c) The developer shall ensure that any excavated material stockpiled on site during construction shall be held in a manner such as to ensure that no silt or run-off from these stockpiles enters any watercourse.</p>	In the interest of preservation of wildlife
15	<p>Prior to the commencement of the proposed development, the Developer shall pay or enter into an agreement with the Planning Authority to pay a contribution to Cork City Council in respect of the following classes of public infrastructure and facilities benefiting</p>	To comply with the General Development Contribution Scheme 2020-2022, which was adopted by Cork City Council on 14th September, 2020, and in the interests of the proper planning and sustainable development of the area.

development in the City of Cork and that is provided or that is intended to be provided by or on behalf of Cork City Council, in accordance with the General Development Contributions Scheme ("the GDCS scheme"):

Class 1 - Roads, Transportation Infrastructure and Facilities

Class 2 - Water and Drainage Infrastructure and Facilities

excluding Water and Wastewater

Class 3 - Parks, Recreation, Amenity and Community Facilities

The present value of the contribution as determined under the GDCS made by Cork City Council on the 14th September, 2020 is €4157.95, which sum is subject to indexation in accordance with the Consumer Price Index prevailing at the date of payment and subject further to such exemptions or reductions as apply to the proposed development having regard to the provisions of Tables 5 and 6 of the GDC Scheme.