



An Bord Pleanála

Development: Change of use of shop unit to restaurant/cafe and all associated site works at 16 Kilbarron Road, Kilmore West, Coolock, Dublin 5.

Planning Authority: Dublin City Council

Planning Authority Reg. Ref: 3383/12

Applicant: James Mulvaney

Type of Application: Permission

Planning Authority Decision: Grant

Planning Appeal

Appellant(s): Jacqueline Lambert

Type of Appeal: 3rd-v-Grant

Site Inspection: 02nd May 2013

Inspector: Colin McBride

## **1. SITE DESCRIPTION**

- 1.1 The appeal site is located at the corner of Kilbarron Road and Cromcastle Avenue, which is to north of Beaumont Hospital. The appeal site is occupied by a two-storey building with a vacant shop unit at ground floor level and an apartment at first floor level. The structure on site is part of an existing terrace fronting onto Kilbarron Road. Immediately adjacent the site to the west is a shop unit with residential accommodation overhead and to the east is a two-storey dwelling.

## **2. PROPOSED DEVELOPMENT**

- 2.1 Permission is sought for the change of use of an existing shop unit into a restaurant/cafe. The restaurant has a floor area of 96.75sqm and includes a seating area with a floor area of 43.06sqm, a counter area, kitchen, office, storage and sanitary facilities with access to the rear yard.

## **3. LOCAL AUTHORITY AND EXTERNAL REPORTS**

- 3.1
- a) EHO (26/10/12): No objection subject to conditions.
  - b) Drainage Division (29/11/12): No objection subject to conditions.
  - c) Roads & Traffic Planning Division (19/10/12): No objection subject to conditions.
  - d) Water services Division (No date): Conditions to be attached.
  - e) Planning Report (14/12/12): It was noted that restaurant uses are permitted within the zoning. It is noted that the definition of restaurants & cafes under appendix 29 suggests that not all of the sales of food have to relate to those consumed on the premises and an ancillary element of takeaway would be allowable. It was considered that a condition restricting use of the premises to entirely on-site consumption of food would be difficult to enforce. It was considered that restriction of opening hours to early evening was appropriate. A grant of permission was recommended subject to the conditions outlined below.

## **4. DECISION OF THE PLANNING AUTHORITY**

- 4.1 Permission granted subject to 15 conditions. Of note are the following conditions...

Condition no. 2: Permission granted for a period of 3 years.

Condition no. 3: Restrictions on size of counter size, provision of back lit menu boards and opening hours and delivery hours.

Condition no. 7: Stainless steel bollards to be removable and not fixed, existing bus stop to be moved at applicant's expense to the requirements of Dublin Bus.

## **5. DEVELOPMENT PLAN POLICY**

- 5.1 The relevant plan is the Dublin City Development Plan 2011-2017. The site is zoned Z1 with a stated objective 'to protect, provide and improve residential amenities'.

## **6. PLANNING HISTORY**

- 6.1 2139/12: Permission refused for change of use from shop to take-away. Refused based on one reason which is as follows...

*1. The proposal to develop a take-away use on these premises would materially contravene the zoning for the area Residential (General) – Zone Z1 and is contrary to the proper planning and sustainable development of the area.*

## **7. GROUNDS OF APPEAL**

- 7.1 A third party appeal has been lodged by Jacqueline Lambert, 14 Kilbarron Road, Coolock, Dublin 5. The grounds of appeal are as follows...

- The appellant lives adjacent the appeal site. The appeal submission is very brief and notes the wish to appeal the decision to grant permission owing to nature of the development proposed.

## **8. RESPONSES**

- 8.1 Response by Gavin Byrne Architect on behalf of the applicant, James Mulvaney.

- In response to the third party appeal submission it is noted that no new arguments are made over and above that made in the submission during the original application. It is noted that the appellant appears to be against all forms of development in the adjacent building and it is noted that some of the language used by the appellant is inappropriate.
- The applicant notes that extensive conditions have been attached to deal with the concerns of adjoining residents and the lifetime of the permission is also restricted to 3 years.
- The applicant notes that the observation submitted adds nothing new to the argument and the concerns raised are adequately dealt with in the conditions attached by the City Council. The applicant refutes claims regarding the level of information provided with the application and the quality of traffic analysis submitted.

- It is noted that the proposed use is permitted on the site and the level of conditions will ensure it would have no adverse impact on the amenities of adjoining properties.

## 9. OBSERVATION

### 9.1 Observation by Thomas P. Broughan TD.

- The observer refers to the previous decision to refuse a take-away on this site and notes that the concerns relating to the take-away relate to this development. The conditions attached are not sufficient to deal with the concerns of the adjoining residents and it is considered that the grant of temporary permission is unusual.
- There is no need for a restaurant at this location given the proximity of existing facilities within the area.
- Concern is expressed that the opening times would still be late in regard to impact on residential amenity and the potential that they may become later in the future. Concern is also expressed about the takeaway element of the proposal and the intensity of such.
- The observer notes that the information submitted in the application is lacking in detail with no traffic impact analysis. There has been no liaison with An Garda Síochána regarding the development and the conditions are not sufficient to deal with the concerns regarding residential amenity.
- The observer is critical of the lack of pre-planning discussion with local representatives.

## 10. ASSESSMENT

Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Zoning policy, residential amenity  
Traffic

### **10.1 Zoning policy/residential amenity:**

10.1.1 The proposal is for a change of use of a shop unit to a restaurant/cafe at a location zoned Z1 ('to protect, provide and improve residential amenities'). Under this zoning it is noted that restaurant use is open for consideration. In this regard the proposal for a restaurant/cafe use would be acceptable in the context of land use zoning policy of the Dublin City Development Plan.

10.1.2 There was a previous proposal on site for a takeaway which was refused under ref no. 2139/12. This proposal was refused based on the fact that takeaways are not permitted or open for consideration within the Z1 zoning. The appellant and observer note that the current proposal is similar in terms of impact and inappropriate at this location. In this regard I would note that the current proposal is different from the previous proposal on site in that it is for a restaurant/cafe use. Under appendix 29 of the City Development

Plan, Restaurant Use is defined as “a building where the primary function is for the sale of food, meals/refreshment for consumption on the premises”. I am satisfied that this is to be the case with the proposal having a seating area of 43sqm. In regards to the issue of impact upon residential amenity, I would note that the site is established as being in commercial use with its last use as a shop. The site is one of two shop units at the corner of Kilbarron Road and Cromcastle Avenue. Having regard to the established commercial land use on the site and at this location, I am satisfied that the change of use does not constitute a significant departure or intensity of use over the existing use on site. In granting permission a number of conditions have been attached including stipulations that the opening hours are until early evening. I would consider that such a restriction would be adequate to protect the amenities of the adjoining residential properties. In regards to the issue of smells and discharges it is proposed to mount extractor fans on the roof of the single-storey portion of the existing structure. I am satisfied that these extractors are sufficient distance from the adjoining properties.

10.1.3 The issue of takeaway use within the proposed restaurant is raised in both the appeal submission, the observer’s submission and the planning report associated with the proposed development. The site is zoned Z1 under which a takeaway use is not permitted and a previous proposal for a takeaway within the unit in question was refused. Although a takeaway use within the proposed restaurant would be ancillary to the main use, I would consider it appropriate that a condition be attached prohibiting the sale of hot food for consumption off the premises. As noted earlier the site is zoned Z1 with a stated objective ‘to protect, provide and improve residential amenities’. Having regard to this fact and the development permitted within such zoning, I consider it appropriate to restrict the use of the proposed development to a restaurant use with the sale of hot food for consumption off the premise prohibited.

## **10.2 Traffic:**

10.2.1 The proposal also entails the provision of parking within the area to the front in the form of three car parking spaces for staff and the apartment unit. These are to be cordoned off using bollards. The proposal also entails relocation of the bus stop to the south of site further to the east. I do not consider that there are any significant traffic issues, with the existing area to the front open and not clearly defined for car parking. The proposal provides for better definition and a more orderly layout. In addition there is a sufficient level of car parking available both off-street (to the side and front of existing shops) and on street within the area to cater for traffic generated by the proposed development. Subject to the applicant coming to an agreement with Dublin Bus regarding relocation of the bus stop, I am satisfied with the proposal in regards to traffic layout and traffic safety.

## **CONCLUSION**

The proposed use is open for consideration with the Z1 zoning at this location. I am satisfied that subject to a number of conditions including restriction on opening hours and the restriction on the sale of hot food for consumption off the premises, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of

traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **RECOMMENDATION**

I recommend a grant of permission subject to the following conditions...

Having regard to the nature of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

1. The development shall be carried out in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. The sale of hot food for consumption off the premises is not permitted.

**Reason:** In the interest of the residential amenity and orderly development.

3. The opening hours of the restaurant shall be between 09:00 to 19:30 Monday to Saturday and 10:00 to 18:30 on Sundays.

**Reason:** In the interest of the residential amenity and orderly development.

4.

a) The proposed stainless steel bollards shall be removable and not fixed. Prior to the commencement of development details of the bollards shall be submitted to the Planning Authority for written approval.

b) The existing bus stop shall be removed at the applicant's expense to the requirements of Dublin Bus.

**Reason:** in the interests of traffic safety and orderly development.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

6. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations, 2001, shall be displayed or erected (on the building/within the curtilage of the site) without the agreement of the planning authority.

**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. Site development and building works shall be carried out only between the hours of 08.00 to 18.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

Colin McBride  
07th May 2013