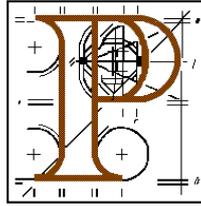


## An Bord Pleanála



### INSPECTOR'S REPORT

**DEVELOPMENT:**

**PL29N.246571:** Subdivision of ground floor into 2 units, partial change of use of one unit from a shop to take-away restaurant and associated works.

**PL29N.246570:** subdivision of ground floor into 2 units and partial change of use of one unit to a betting office and associated works.

**LOCATION:**

Corner site at North Road and Seamus Ennis Road, Finglas, Dublin 11

### PLANNING APPLICATIONS

<b>Planning Authority:</b>	Dublin City Council
<b>Planning Authority Reg. Ref.:</b>	2285/16 and 2284/16
<b>Applicant:</b>	Architects Workshop Ltd.
<b>Type of Application:</b>	Permission
<b>Planning Authority Decision:</b>	Refusal of Permission

### PLANNING APPEALS

<b>Appellant:</b>	Architects Workshop Ltd.
<b>Type of Appeal:</b>	First Party

**DATE OF SITE INSPECTION:** 10<sup>th</sup> August 2016

**INSPECTOR:** Suzanne Kehely

## 1.0 INTRODUCTION

- 1.1 The above cases relate to two concurrent cases within the same premises and this report addresses both cases due to the degree of overlapping of matters.

## 2.0 SITE LOCATION AND DESCRIPTION

- 2.1 The appeal sites are located on a corner site at the junction of North Road and Sean Ennis Road at the north western periphery of the commercial area of Finglas Village. The sites under appeal relate to parts of a ground floor unit of approx. 200 sq.m. in a two storey block constructed in place of a former dwelling on foot of permission granted in December 2000. The ground floor premises comprise a single unit recently vacated by a movie rental business. The sites as outlined in red correspond to the footprint of the premises which has been constructed along the original site boundary with the exception of the western boundary where it is stepped back from the original footpath on the North Road frontage and provides a forecourt area. To the north, the site of the premises is adjoined by a crèche facility (former garda station) which is undergoing construction works. The premises have frontage onto a lane which serves as a pedestrian access to a large car park to the rear of the adjacent public house which serves the supermarket further east. Vehicular access to the car park is to the east of the public house.
- 2.2 There is a restaurant use in the entire first floor level of the premises and access is via a door at ground level in the North West corner of the site. This area includes a recent canopy porch and natural timber enclosure in addition to some screens. A banner sign for the restaurant covers the western elevation at upper levels.
- 2.3 At time of inspection there was a sign advertising the subject premises for letting and some refurbishment work was being carried out.
- 2.4 There is a comprehensive planning history attached which sets out considerations and scope for permission for the original development and subsequent decisions to grant and refuse permission for various proposals. Two of the more recent Board decision pertained the site are attached and they also contain previous Board reports.
- 2.5 The site in the case of **PL29N.246571** refers to the western part of the ground floor unit which is on a corner location fronting both North Road and Seamus Ennis Road. It is adjacent to the upper floor access.
- 2.6 The site in the case of **PL29N.246570** refers to the eastern side of the existing unit with a proposed shop floor area of 120 sq.m. This fronts the Seamus Ennis road and includes the existing entrance. It also fronts the laneway but here is no direct access or opening at ground level.
- 2.7 Photographs of the site and its environs taken during the site inspection are attached.

## 3.0 PROPOSED DEVELOPMENTS

### 3.1 **PL29N.246571**

It is proposed to **change the use** of part of the ground floor area from retail use to use as a 67sq.m **take-away restaurant**. The proposal includes **layout and access alterations** and an internal bin storage area of 11.6 sq.m. with independent street access which also provides means of a fire escape. Two internal accesses to the proposed takeaway are proposed off this and elevation changes to the façade for the provision of a new shopfront

and two door openings. This leaves a residual area of 120 sq.m. in the remaining ground floor retail unit.

The cover letter attached to the application refers to:

- Planning context and history with particular reference to five decisions such as permission for the restaurant, permission for ground floor change of use to offices and refusal of alteration to restaurant premises.
- Not a residential area in context of potential nuisances
- The vacancy of the premises in the context of commercial vitality of area
- No appreciable change in traffic movements
- Finglas Village is capable of accommodating the development by reference to the role of district centre and the willingness of the applicant to address potential nuisances (litter, venting)
- Appropriate assessment is not considered to be required

### 3.2 **PL29N.246570**

It is proposed to change part of the c. 220 sq.m. ground floor unit which incorporates a covered delivery yard to use as a 120sq.m. betting office in addition to an internal bin store as described above. Internal access is proposed into the bin store area.

The cover letter attached refers to the planning history as above and the development plan objectives for the area. Betting offices are permitted in z4 zones. By reference to the development plan criteria for betting office use, it is pointed out that:

- the unit is vacant
- There are 4 betting offices in the zoned area including one on the opposite sides of the road. In the context of the scale and range of facilities envisaged in a district centre it is submitted the village is capable of accommodating an additional betting office. It is pointed out that there are no similar uses such as internet cafes, call centres, amusement arcades or car rental. Although 10 takeaways are acknowledged
- The use will be complementary to the village centre uses and will have no impact on the amenities of the area by reason of noise, hours of operation or litter,

## 4.0 **PLANNING AUTHORITY REPORTS**

### 4.1 **PL29N.256571 – Takeaway**

4.1.1 The **Engineering Department** (Drainage Division) has no objection in principle to the proposed takeaway subject to compliance with standard conditions.

4.1.2 The North West Area Committee of Dublin City Council objects to both the proposed betting office and takeaway restaurant on the basis that there is a saturation of such uses in the area.

4.1.3 The planning report notes the planning history in some detail and makes particular reference to the basis for the original grant of permission for the premises (1575/00 – PL120884) and the inclusion of service/delivery yard which includes a 5m frontage onto the adjacent laneway to the east. It is noted that this is now blocked up. A subsequent application for permission to retain this was refused and it is noted that to date the service yard has not been provided. The observations are acknowledged in detail and the assessment concludes the following:

- It is considered that the proposed development which involves subdivision would

result in a loss of a service yard and should be refused.

- With reference to the land use objectives in the development plan it is stated that a café/restaurant is permissible in principle. However section 17.26 is cited in respect of the nature of the use.
- The proximity of residential development is noted. There is an absence of detail with respect to hours and ventilation to fully ascertain impact on residential amenity, although the absence of complaints about the operating restaurant suggests compatibility of use. A cafe or retail would be preferable in this context.
- The vitality and viability of the shopping area is of concern in the context of number and frequency of restaurants. In this regard I note that there were 10 takeaways within 350m off the site and 3 of these are within 200m of the site and it is concluded that there is a sufficiency of such uses and that additional facilities would not be in accordance with section 17.26
- In terms of traffic there is stated objection to the absence of customer parking but the absence of a service yard is restated as a traffic consideration
- The internal waste proposals are acceptable
- Appropriate Assessment is considered not to constitute a significant issue

#### **4.2 PL29N.246570 Betting Office**

The planning report outlines the same planning history and context as above and notes the similar issues raised in the objections and interdepartmental reports. The same conclusion is reached that permission should be refused on the basis of the loss of a service yard. AA is similarly not considered to be an issue.

With reference to the betting office use it is acknowledged that such a use is permissible in principle, however section 17.28 is cited in respect of the nature of the use and considerations in light of development plan objectives.

The vitality and viability of the shopping area is of concern. It is considered that in the context of 4 bookmakers within 350m of the site and a further 10 takeaways and the existing retailing series in the village and also having regard to the refusal of permission by An Bord Pleanála for an amusement centre on the Main street that the proposed use would contribute to the erosion of the primary retail function in the area and undermine the retail function of Finglas Village.

### **5.0 THIRD PARTY OBJECTIONS / OBSERVATIONS TO THE PLANNING AUTHORITY**

#### **5.1 Objectors to both cases.**

Letters of objection were received by the planning authority from a mix of public representatives and locals in the area representing community, commercial and private interests. Submissions were made by:

- Dessie Ellis, TD and Cllr Anthony Connaghan jointly (object to both cases)
- Roisin Shorthall TD (objects to both cases)
- Paul McAuliffe (objects to both cases)
- Cllr David Costello (objects to both cases)

- Willie Brennan, (Finglas Road) (objects to betting office)
- Marie Duffy, Finglas Historical Society (objects to both cases)
- Philomena Murphy , Finglas Tidy Towns (objects to both cases)
- Sean Mooney, Finglas Village Renewal Partnership (objects betting office)
- Antonio Sacco, Luigis (objects to takeaway)
- Carmines Salavteas, (objects to takeaway)
- C. Dapino (objects to takeaway)
- M. Yahi, (objects to takeaway)

## **5.2 Issues raised in the case of the Takeaway (PL29N.246571)**

Issues raised in relation to takeaway facility refer to:

- Over concentration of one-particular use becoming mono-form and less able to attract footfall.
- Proliferation of takeaways of which there are at least 11
- There is already a range of takeaways
- KDC4 district centres should be centres of local services and form a basis of sustainable neighbourhoods
- The Tesco Clearwater and Charlestown shopping centres have torn heart out of Finglas by the diversity of choice there as compared to the village
- Retail diversity is not provided in Finglas village
- Tidy Town Committee has put much effort into the village. Litter from takeaways is an issue
- Site at gateway to village
- Conflict of use near residences including senior citizens complex across the road. Takeaways tend to generate congregating groups and anti-social behaviour at late hours.
- Traffic safety is of concern due to convenience parking near door of takeaway and the fact that the junction is one of the busiest in the area.
- Need a plan to reduce betting offices and takeaways

## **5.3 Issued raised in relation to the Betting Office (PL29N.246570)**

- Betting shops which provide for Gambling are objectionable on social grounds and morally wrong and damaging to the local community. They are typically used by the more vulnerable and less well-off. Greystones and Dalkey only have one bookies office.
- Case no. PL29N.241225 highlights a proliferation of gambling activities in the Finglas area
- In this case there are at elst4, 5 or 6 betting offices in the vicinity including one at a distance of 40m away.
- An additional Bookies would represent a substantial increase in gambling type use in a Key District area
- The use would not contribute to the enlivenment of the main street and would detract from the vitality of the village
- Another betting office would be Contrary to development plan provisions to prevent concentration of such uses. It is pointed out that similar uses such as takeaways and internet cafe for which regard must be had in accordance with the development plan are also numerous (11 takeaways).

## **6.0 PLANNING AUTHORITY DECISIONS**

## 6.1 PL29N.246571 (Takeaway)

In this case the Planning Authority issued notification of a decision to **refuse** planning permission for the proposed take-away for two reasons

- 1 The approved off-street servicing area for the overall building of which this site forms part has not been provided to date. Having regard to the planning history of the site and in particular reg ref 1138/04 where planning permission was refused for the retention of the omission of the off-street servicing area for the overall building due to traffic hazard and having regard to the zoning provision for the area where the site of the proposed development is zoned Z4 with the stated objective 'to provide for an improve mixed service facilities' the development including the subdivision by reason of its lack of street serving provision and location at the corner of a complex road junction would endanger public safety by reason of traffic hazard and obstruction of road users.
- 2 The proposed change of use from retail to take-away would result in an excessive concentration of such uses having regard to the existing proliferation of takeaways in the immediate area and would result in a concentration of non-retail uses which would detract from the viability and vitality of the existing district centre area would seriously depreciate the value of property in the vicinity and would be contrary to section 17.26 of the Dublin City Development Plan 2011-2017 and consequently to the proper planning and sustainable development of the area.

## 6.2 PL29N246570

In this case the Planning Authority issued notification of decision to **refuse** planning permission for the proposed betting office and internal alteration and elevation changes for two reasons

- 1 The site is located within a Key District Centre where the land-use zoning objective is to provide for and improve mixed services facilities. Section 17.28 of the Development Plan states that it is an objective of Dublin City Council to prevent a concentration of betting offices in the city, thereby ensuring the number of units in a city street, district or neighbourhood centre is not disproportionate to the overall number of community facilities and shop units. Having regard to the pattern of development in the area which includes a number of betting shops, it is considered that the proposed betting soip would contribute to the erosion of the primary retail function of this key district centre, would conflict with section 17.28 of the development Plan and would seriously injure the amenities of the area and of property in the vicinity. The proposed development would not therefore be in accordance with the proper planning and development of the area.
- 2 The originally approved off-street servicing area for the overall building of which this building forms part is proposed to be incorporated into the retail service floor area of the development proposed for this site – betting office. The proposed development therefore results in the loss of the approved off-street servicing provision for the commercial uses in the referred building. Having regard to the planning history of the site and in particular reg ref 1138/04 where planning permission was refused for the retention of the omission of the off-street serving area for the overall building due to traffic hazard and having regard to the zoning provisions for the area where site of the proposed development is zoned Z4 with the stated objective to provide for an improve mixed service facilities' the development by reason of its lack of off-street

servicing provision and location on the corner of a complex road junction would endanger public safety by reason of traffic hazard and obstruction of road users.

## 7.0 PLANNING HISTORY

**7.1 Parent Permission: An Bord Pleanála Ref. PL 120884/ Planning Authority ref. 1138/04** refers to a grant of permission for demolition of dwelling and construction of the original two storey commercial premises. The Board overturned the planning authority decision to refuse permission and was conditional on off-street servicing provision as per condition 2.

'Evidence of the required right of way agreement over the adjoining laneway shall be submitted to the Planning Authority before any construction work is undertaken on site, The service yard shall be used for delivery/service vehicles only and shall be accessed /exited only between 0730 hours and 0900 hours and between 1800 hours and 1930hours daily.'

This grant followed previous refusals of permission for redevelopment of site for reasons primarily relating to absence of off-street servicing having regard to its location at a complex traffic junction. **Planning authority reg ref 1455/98/An Bord Pleanála ref. PL29N.108954** refers to refusal 2 offices over 5 retail units. Planning authority ref **1286/99/An Bord Pleanála ref PL29N.112277** refer to refusal for one office unit over one retail unit. Planning authority ref 298/00 refers to refusal for offices and retail in two storey premises.

This proposal in this case was materially different and acceptable principally by reason of the provision of an off street service yard and the attachment of letter from the land owners solicitor confirm rights of way.

'I confirm that on behalf of Mr Owen Owens I have been in contact with the owner of the lands adjoining Mr. Owens premises in Finglas who has agreed that Mr. Owens may be granted a right of way for access purposes only between the hours of 7.30 am and 9.30 am and 6pm to 7.30 pm through the laneway to a gate to be erected that the rear of his premise. This agreement is subject to Mr. Owens of course obtaining planning permission. I enclose copy of the Map showing right of way to be granted marked yellow.'

## 7.2 Change of use - alterations

Planning authority ref 0365/01 refers to a grant of outline permission for change of use from office to restaurant at first floor level. The subsequent approval in reg ref 4688/03 was conditional on clarifying anomalies with respect to off-street servicing. This gave rise to a case below.

**Planning authority ref 1138/04 / An Bord Pleanála ref PL29N.207779** refers to a split decision: Grant of permission for the retention of omission of a corridor at ground floor level and to building line elevations. Refusal of permission to retain closure of the rear service yard involving the erection of a parapet wall along the eastern elevation for the stated reason:

Having regard to the zoning provision for the current development plan for the area where the site of the proposed development is zoned Z4 with the stated objective to provide for an improve mixed service facilities which objective is considered reasonable, the retention of the development as constructed would be reason of lack of off-street servicing provision and location on the corner of a complex road junction would endanger public safety by reason of traffic hazard and obstruction of road users.

**Planning authority reg 2669/04** refers to a refusal of permission for an additional floor for extended restaurant use and for external canopy at restaurant entrance

### 7.3 Other decisions

**PL29N.241225** refers to a split decision for change of use of ground floor to an internet café/amusement arcade at 11 Main Street Finglas. In this case the internet café was permitted but the amusement arcade was refused having regard to section 17.27 of the development Plan and to the pattern of development in the area which includes a number of betting shops and erosion of primary retail function of this key district area

This file attached and the inspector's report refers to number of decisions relating to similar proposal in different counties.

**PL48.236107 (Reg Ref 09/1958)** – Cavan Town Council decision to **grant permission** for a change of use of first floor area of previously approved storage / office space to arcade amusement area with associated signage all at Connolly Street, Cavan was appealed by a third party. An Bord Pleanála, having regard to the zoning objectives and pattern of development in the district centre.

### 8.0 POLICY CONTEXT - Dublin City Development Plan 2011-2017

8.1 The appeal site is governed by the objective to provide for and improve mixed services/facilities as it is within a Z4 zone **District Centres**. Finglas village is identified as a **Key District Centre** (KDC4) which will provide a comprehensive range of commercial and community services and that to maintain their role as district centres, new development should enhance their attractiveness and safety for pedestrians and a diversity of uses should be promoted to maintain their vitality throughout the day and evening. The underlying objective is to create a vibrant retail and commercial core with animated streetscape **Section 15.10.4** sets out key principles with regard to the overall development in such areas.

### 8.2 Take-aways

**Section 17.26** refers. In order to maintain an appropriate mix of uses and protect night-time amenities in a particular area, it is the objective of Dublin City Council to prevent an excessive concentration of takeaways and to ensure that the intensity of any proposed takeaway is in keeping with both the scale of the building and the pattern of development in the area. The provision of such facilities will be strictly controlled, having regard to the following, where appropriate:

- The effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents
- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses
- Traffic considerations
- The number/frequency of such facilities in the area
- The operators come to a satisfactory arrangement with Dublin City Council in relation to litter control
- The need to integrate the design of ventilation systems into the design of the building
- Dublin City Council will require, prior to the granting of permission that appropriate cleansing/anti-litter measurements be agreed with Dublin City Council

### 8.3 Betting Offices

**Section 17.28** refers. It is an objective of Dublin City Council to prevent a concentration of betting offices in the city, thereby ensuring the number of units in a city street, district or

neighbourhood centre is not disproportionate to the overall number of community facilities and shop units. The provision of betting offices will be controlled having regard to the following, where appropriate:

- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses
- The number/frequency of such facilities in the area
- The existing proliferation of similar retail service outlets in the area such as, internet cafes, call centres, takeaways, amusement arcades and car rentals
- The effect on the amenities of the area by reason of noise, hours of operation and litter

## 8.4 Wider Strategy Context

**Section 4.4.2 Inner Suburbs and Outer City as Part of the Metropolitan Area** identifies Finglas as a **gateway** where it states that these gateway locations create an opportunity to strengthen the city's visual identity and signal the entrance to the city, and so are ideal locations for high quality landmark buildings, structures and civic spaces.

**Section 4.4.2.1** The strategy is to continue to strengthen the hierarchy of suburban centres from the district to local level, to make these centres capable of providing sustainable city living and good urban place making and to integrate the three innovation corridors.

1. **Key district centres (KDCs)** as the top tier of urban centres outside the city centre.

These will be strong spatial hubs, providing for a comprehensive range of commercial and community services.

Section 10.4 in relation to retail states it is policy to Support the hierarchy of retail locations in relation to the suburban areas, and especially so the development and expansion of the functions of key district centres

Development proposals in key district centres shall be in accordance with the relevant land-use zoning objective and with the guiding principles set down out in section 15.10.4

Within these identified KDCs, the following general development principles shall apply:

- **Transport:** Ensuring provision is made for quality public transport systems. Provide improved access to these systems and incorporate travel plans, which prioritise the primacy of pedestrian movement and address the issue of parking facilities and parking overflow.
- **Commercial/Retail:** The creation of a vibrant retail and commercial core with animated streetscapes.
- **Community and social services:** The centres will be encouraged to become the focal point for the integrated delivery of community and social services.
- **Employment:** Encourage the provision of mixed-use developments incorporating retail, office, residential and live work units, and the creation of small start-up units. (The floor area limitations in respect of offices given in the land-use zoning objective Z4 shall not apply in the case of identified KDCs, and applications involving office development in these areas shall be assessed on their merits taking account of the overall objective to provide for a mixed-use environment).
- **Built environment:** The creation of high quality, mixed-use urban districts with a distinctive spatial identity and coherent urban structure of interconnected streets and child friendly public spaces and urban parks. Development should have regard to the existing urban form, scale and character and be consistent with the built heritage of the area.

- Capacity for development: Encourage the development/ redevelopment of underutilized sites

In terms of revitalisation of key district areas the development plan strategy seeks to focus on achieving an amount and quality of convenience shopping to minimise outflow of expenditure and unsustainable travel patterns. (Appendices p.237)

## **9.0 GROUNDS OF APPEAL**

9.1 A first party appeal has been made by Whelan and O'Connor planning consultants on behalf of the applicant. In both cases.

9.2 In the case of the proposed takeaway the grounds for appeal refer to the following matters:

- In the context of 10 takeaways out of 125 units where retailing is the dominant uses one additional takeaway is not significant.
- The re-use of a vacant unit for a takeaway accords with the development plan in that would contribute to a comprehensive range of commercial and community services to the surrounding populations which is a function of a Key District Area
- The development will reintroduce a commercial use which can only contribute to the vitality of the area. The potential for letting is described in an attached letter from CBRE letting agents.
- A number of the same uses are to be expected in a District Centre which quite distinct from a neighbourhood centre. It is estimated that the catchment is in the order of 34,000 and accordingly an additional takeaway could be absorbed. There is none on the same side of the road.
- It is clarified that hours of operation are 12.20 pm to 12.30 pm and up to 2.30 am at the weekends.
- Applicant is willing to accept a condition relating to litter and site cleansing
- Detailed specification of the proposed ventilation system is provided together with a statement that access to the roof can be provided for ducting through the restaurant overhead as it is also owned by the applicant.
- It is explained that rear of the building was never used as a service yard and it is acknowledged that permission was refused for its omission by the planning authority and an Bord Pleanála. In these circumstances it is suggested that it could be reinstated by condition of permission, Drawings attached show how this could be achieved.
- There is no justification for determining that the premise will depreciate the value of property.

9.3 In the case of the proposed betting office the grounds for appeal refer to the following matters:

- The re-use of a vacant unit for a betting office accords with the development plan in that would contribute to a comprehensive range of commercial and community services to the surrounding populations which is a function of a Key District Area
- The betting office use is insignificant in terms of ground floor units which amount to 125 and which include 68 retail units 15 of which are vacant
- The development will reintroduce a commercial use which can only contribute to the vitality of the area. The potential for letting is described in an attached letter from CBRE letting agents.
- A number of the same uses are to be expected in a District Centre which quite distinct from a neighbourhood centre. It is estimated that the catchment is in the order of 34,000 and accordingly a fifth betting office could be absorbed. There is none on the same side of the road.
- There is no justification for including impact on amenity as a reason for refusal
- It is explained that rear of the building was never used as a service yard and it is acknowledged that permission was refused for its omission by the planning authority and an Bord Pleanála. In these circumstances it is suggested that it could be reinstated by condition of permission, Drawings attached show how this could be achieved.

## **10.0 PLANNING AUTHORITY RESPONSE TO THE FIRST PARTY APPEAL**

### **10.1 PL29N.246571 and PL29N.246570**

No further comments on either appeal. Dublin City Council submitted the following additional comments:

## **11.0 OBSERVATIONS TO AN BORD PLEANALA**

### **11.1 PL29N.246571**

Objection from **Mokrane Yahi of Kebab Magic**: It is submitted that there are 17 restaurants/takeaways in the vicinity and accordingly the proposed development would not be in the interest of proper planning development of the area.

### **11.2 PL29N.246570**

Objection from **Finglas Tidy Towns, Finglas Historical Society/ Finglas Village** renewal to proposed development. While subdivision of retail units is welcomed the proposed use is not acceptable for the following reasons:

- Proliferation of both fast food and betting office with 11 and 6 of the uses respectively in the village.
- The uses would not contribute to the enlivenment of the Main Street and detract from the vitality of the village.
- Contrary to section 17.28 with respect to preventing concentration of betting offices. In the context of 11 takeaways a betting office is objectionable.

## **12.0 ASSESSMENT**

12.1 The concurrent appeals PL29N.246571 and PL29N.246570 relate to subdivision and partial changes of use of the same unit which occupies the ground floor (of about 200 sq.m.) of a

two storey premises. In the former case permission is sought for a takeaway of 67sq.m. on the western side and in the latter permission is sought for a betting office of 120 sq.m. on the eastern side. The balance of the floor area in each would be retained as retail, although the concurrent proposals are also indicated in the respective plans. Both applications provide for the same internal corridor and bin store which would serve the proposed unit and remaining retail unit with or without a change of use also. There is strong opposition to both developments on the basis of principal of a loss of a retail use to uses which are in proliferation already in the village. The developments are considered to result in an over concentration of particular uses and would, the case is made, impact on district centre vitality. This strongly refuted principally by reference to the pattern of development and district centre context. There is also the matter of the operational capacity of the site by reason of the loss of the servicing yard and the consequent traffic issues arising. As can be seen from the history section of this report there is a long history pertaining to the original site and the decisions made have informed the latest decisions of the planning authority which has been to refuse permission in both cases

The underlying issue in this case is the detracting from the vitality of Finglas Village - a Key District Centre primarily, on the basis of a loss of a retail unit. While this would be the case if both proposed units were permitted, each case is presented such that there would only be a reduction in the retail unit while providing for an additional use into this part of the village. This however throws up issues of intensity in addition to the merits of the respective proposals. . While the issues are similar the detailed considerations vary between the cases.

## **12.2 PL29N.246571 - The proposed takeaway**

The salient issues for consideration relate to:

- Loss of retail use/ Nature of use
- Traffic safety
- Impact on residential and visual amenity

### Loss of retail use/ Nature of use

With the aim of a locally vibrant and sustainable community, the consolidation of retailing and services in the Village area for the local district catchment forms the basis of the development strategy. To this end certain non-retail uses are identified as needing control and section 17.26 of the development plan sets out criteria for Takeaways. While acceptable in principle with a Z4 area, one such consideration is the prevention of over concentration of such a use. In this case there are in the order of 11 such establishments in the area as indicated in the submissions. The applicant indicates that there are 125 ground floor units of which retail units account for more than 60% and in this context retailing remains a dominant use. In a more localised context I note the neighbourhood centre opposite the site in addition to the immediate adjacent uses. The site is peripheral to the commercial core of the Village. However, while it could be argued that the site is removed from a retailing core – as it's not on the Main street, and is divided by a busy road from the neighbourhood centre it does have linkages that generate local footfall. It is adjoined to the north by community uses (child care) and garage. To the east there is a public house and further east there is a Supervalu, patrons of which park in the car park which also has pedestrian links to the site via the short laneway bounding the site.

The applicant makes the case that the site is vacant and is not presently contributing to the vitality. I note however that the former occupant was xtravision – movie rental business which has closed and which has been impacted upon by the change in industry and market

trends rather than the local spatial or economic conditions of the site. The site is not necessarily unsuitable for retail use.

I do note however that there are a number of vacancies in the village and I note the estate agent's comments, appended to the grounds of appeal, in this regard. The applicant states this to be in the order of 18 vacant retail units. I note some of these to be opposite the site in the small shopping centre and on the main street. While in the city centre there is a system of prioritising retail areas to consolidate shopping strips there is it seems a more fluid strategy in the suburban areas. I note the Board's recent decision to refuse permission for an amusement arcade in the main street but permit an internet café as being part of an enhanced range of services appropriate to a district area. I am inclined to hold the view that a non-retail use at this more peripheral use would not undermine the retailing operation of the district. In this regard I note that there is no café or takeaway in the opposing neighbourhood centre although I accept there is a high volume of takeaways in the vicinity. I consider there is some merit in the planning authority's view that the site would contribute to the vitality of the area particularly if it was a café which would have a more day time oriented use as distinct from the licensed premises adjacent and above the unit. A non-licensed café would provide a more day-time oriented facility for a different market. However a takeaway facility is typically a hot meal provider and evening service. It is proposed to open from early afternoon until late into the evening/early morning as outlined in the grounds of appeal. In order to be a compatible use I consider a day time café with an ancillary (subordinate) take-away element would be more appropriate to retailing and services and overall vitality in the area. While the Board may favourably consider the use subject to conditions of opening, this would be changing it into a different nature of use than that proposed. In any event, positive consideration is predicated on meeting other development criteria, most notably in relation to traffic and nuisance.

### Traffic

The site is located at a crossroads junction incorporating slip routes, is also opposite a junction with the main street and is also proximate to other junctions. In previous reports it is consistently described as a complex junction and from my observation it is busy (as stated in submissions) as it is at a north western gateway entrance location to the village. The site was formerly a residence and the planning history clearly indicates that traffic was a significant issue particularly in the context of off-street servicing. Permission for the commercial premises was only granted originally on the condition of provision for off-street parking for deliveries. While documentation (in the form of a solicitor's statement on behalf of the same site owner) was submitted indicating this could be provided the situation is such that it appears to have never been provided as required in the Board's condition of permission for the original premises. The applicant states that there are legal issues with securing access from the lane onto which the premises of which the site forms a part has frontage. The original proposed yard area to the rear has been built over by a ground floor extension. There is no proposal in the original application to reinstate the yard or provide access off the lane. Although, the grounds of apply indicate a willingness – with drawings - to reinstate the yard if required by conditions but this does not address external access.

While the applicant makes the case that there will be no appreciable difference in traffic, I consider lack of delivery space at this location to be a significant issue for a food related take-away business. The nature of the business will typically require frequent food delivery to and from the premises; possibly more frequent waste disposal and servicing of equipment. Given the location and nature of the junction fronting the site and the lack of loading areas (I note the double yellow lines fronting the site) this is a critical issue. Furthermore the nature of takeaway is likely to generate parking near the door regardless of parking provision and this would be particularly dangerous scenario.

In this context the subdivision and likely intensification of use that would arise from the nature of the proposed use would I consider be unacceptable from a traffic safety point of view

I note in the history files there is a suggestion by the applicant that a loading area could be provided but this was rejected. The adoption of DMURS to the junction would potentially reduce road space and may provide for improved loading area. This would be contingent on a detailed agreement with the Transportation and road design divisions. A condition of permission for the provision of such would I consider be outside the scope of the Board in its decision.

### Amenity

A takeaway restaurant can generate nuisances by way of odours, noise, littering and generation of late night anti-social behaviour. In the first instance I accept that the site is sufficiently segregated from the surrounding residential development and in this context nuisances can be reasonably controlled by design and control of operation in terms of setting limits for both noise levels and hours of operation. I do not consider these impacts to constitute grounds for refusal.

In terms of visual amenity a takeaway/ restaurant has the potential to have a significant adverse impact by reason of signage, external congregation of persons and littering, roof ventilation systems, smoking, external storage of bins and daytime closure contributing to a deadening of the street at a prominent corner. Some of these impacts are evident in the ancillary use of the extensive pavement and façade of the first floor restaurant which has a bin store in front of the subject premises ground floor window display area (of the subject site). There is a canopy, set of screens, sandwich board and a large draped banner sign over the façade. There is a large and visible extraction system at roof level. In terms of the forecourt area, original plans provided a landscaped public area with trees, benches and patterned paving in the forecourt area. The adhoc ancillary developments are not addressed in this proposal and this is I consider a missed opportunity to comprehensively address the visual attributes of the overall site. A further subdivision in this context constitutes in my judgement, piecemeal and disorderly development. While I note that the drawings include the restaurant within a blue outline indicating ownership and if the Board were to consider a grant there could be an opportunity to regularise this. For example, if the rear yard were reinstated in the north east corner as per original plans, this area and the new bin store are could be required to be used as the sole bin area for the entire two-storey premises. This however would be likely to require direct access from a chute or stairs (or some such arrangement that is practical and compliant with public health requirements) and consequently would require revision to the layout. The benefits could be considerable. The existing external bin enclosure, for example, could be removed and a more comprehensively landscaped outdoor area and entrance could be designed in the forecourt area. In light of the underlying objective of vitality this 'gateway' site could positively enhance the area. However in the absence of a comprehensive and legitimate scheme this would in my opinion be quite difficult to condition and enforce. As it stands the proposed development is more likely to contribute to the visual clutter at this prominent location and thereby detract from the amenities of the area. This would be contrary to the development plan objectives for the area.

### Conclusion

While a takeaway would consolidate the pre-dominance of non-retail uses in the area and lead to a proliferation of non-retail uses in Finglas village I am not entirely in agreement that non-retail use in itself it would necessarily detract from the vibrancy and vitality of the area. This would depend on the nature of operation and its interface with the street. However the nature of use as proposed, for later hours and in what is considered to be a piecemeal and

disorderly approach to the entire site would on balance detract from the vitality and vibrancy of the area and would be contrary to the development plan objectives for this key district centre.

On balance, having regard to the criteria in section 17.26 and the submissions on file, I consider the decision of the planning authority should be upheld and that permission should be refused. I do not however agree that the development would necessarily depreciate the value of property in the vicinity.

### **12.3 PL29N.246570 - Betting Office**

The issues in this case relate to

- Loss of retail – nature of use
- Traffic safety
- Amenity

#### Loss of retail – nature of use

A betting office use is acceptable in principle in the Z4 zone but such a use is subject to detailed assessment in accordance with criteria set out in section 17.28.

Loss of retail in the context of protecting the vitality of the district area is a key consideration in determining the impacts and compatibility of betting office in a district centre. By its nature a betting office is comparable to office in having a screened interior from the street with consequently little no interaction with the street other than customers coming and going to place bets in person and watch events. The proximity to the public house where events may be watched and waited upon makes the location of the bookmakers quite compatible. However there is a bookmaker directly opposite in addition to 3 other in the village and accordingly an over concentration of such a non-retail uses is at issue.

While there it is generally accepted that planning authorities should be neither concerned with whether the service to be provided is needed nor seek to prevent competition between operators. There is a clear objective to seek to control the over concentration of betting offices for reasons relating to the vibrancy of the town Centre.

The case is made that there are only 4 units out of 125 at ground floor level that provide betting offices and that one more at less than 1% will not affect the primacy of retail. It is further argued that the village serves a catchment of 34,495 and in this context it is submitted to be capable of accommodating another betting office.

There is no comparative analysis to give this context and there are no standards. However I note Rathmines, a Key District Centre on the south side of the City with a larger catchment at 36164 (2006 census) has only two bookmakers; Ladbrokes and Paddy Power – one on the main thoroughfare and one a side street. In this context 5 such premises along and within the vicinity of the Main street would I consider constitute a disproportionate concentration of uses. (I have compared the village Centre rather than the entire electoral area, for example there is one bookmakers in Ranelagh and 2 in Harold's Cross but similarly there are bookmakers on Sycamore Road in Finglas East and Fitzmaurice Road in Glasnevin North within the population catchment area as delineated in the grounds of appeal.

The objection by Finglas Village Renewal Partnership throws up the issue of social problems with gambling public health. While there are certain parallels with a Board decision in 2015

to refuse permission for a particular fast food operator beside a school on grounds public health (obesity being the issue) in the case of betting offices it is not supported by any evidenced based research. I note however that the Scottish Ministry for Local Government and Planning has carried out research on Planning has carried out some research (**Planning Controls and Pay Day lending and Betting Offices**) on gambling and considers it come within the realm of public health policy and relevant in the consideration of the well-being of communities as well as the vibrancy of the town centre. However it is my understanding that the planning system should not be used to implement all public health objectives where matters are more appropriately governed by other legislation, in this case I refer to bookmakers licensing regulations. Although I note that the fitness to hold the license is the qualitative consideration rather than the capacity of the market. I note the development plan policy focuses on the displacement issue town centre retailing and physical attribute of the use and does not refer to public health. The policies of the Council reflect government policy as set out in the Retail Planning Guidelines of 2012 – these recommend a plan led approach with a strong emphasis on fostering retail development within town centres in order to enhance transport choice, promote vitality and streetscape character. The question is will the use result in a depletion of retailing and detract from the vibrancy of the village centre.

As I see it, a betting office uniquely hosts a specialist and legally restricted use with limited variance between bookmakers. I do not consider concentration of such a limited profile use which contributes little to the enlivenment of the street would in the longer be compatible with the objective for this Key District Centre.

#### Traffic Safety - Servicing

While I accept the nature of a betting office is akin to an office type use in that it is not heavily reliant on frequent deliveries of goods into or from its premises, a permission for the development as proposed would have consequences for the overall premises. The proposed layout seeks to retain the omission of the service/ delivery yard and its incorporation into the retail premises. It is in effect to be replaced by the bin store and access through to the public road. This however does not address the issue of managing delivery vehicles for the entire premises at this busy and complex junction which appears to remain unresolved and is not helped by the piecemeal approach to the overall site. The applicant proposes in the grounds of appeal that the yard could be reinstated by condition and illustrates how this could be achieved in appended drawings. In these drawing the yard shows capacity for three commercial wheelie bins and 2 smaller bins. Both the proposed betting office and the takeaway restaurant would have independent access from the shop floor. This would mean that the food waste bins, in order to be emptied in the usual manner would have to be wheeled through the dining area and through what appears to be a relatively small doorway. I do not consider this to be practical. The proposal either way reverses the benefits of the scheme as previously approved.

#### Conclusion

#### **12.4 Appropriate assessment**

As both appeal relate to change of use within an existing serviced premises I do not consider the issue of appropriate assessment arises in either case.

#### **13.0 RECOMMENDATION IN THE CASE OF THE PROPOSED TAKEAWAY – PL29N.256571**

- 13.1 Based on the submissions on file, my site inspection and my assessment in sections 12.1 and 12.2, I consider the proposed takeaway development to not be in accordance with the proper planning and sustainable development of the area. I recommend a decision to **refuse permission for the proposed takeaway** for the reasons set out below.

### REASONS AND CONSIDERATIONS

- 1 The proposed take-away which would operate from afternoon to late night hours would result in an excessive concentration of such uses in the Finglas Village area and would result in a concentration of such non-retail uses which would detract from the viability and vitality of the existing district centre area and would be contrary to section 17.26 of the Dublin City Development Plan 2011-2017. Furthermore it is considered that the subdivision of the site having regard to the planning history constitutes piecemeal and disorderly development. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
- 2 The approved off-street servicing area for the overall building of which this site forms part has not been provided to date. Having regard to the planning history of the site and in particular reg ref 1138/04 where planning permission was refused for the retention of the omission of the off-street servicing area for the overall building due to traffic hazard it is considered that the proposed development including the subdivision and the nature of use proposed would result in an intensification of use and accordingly by reason of its lack of street serving provision and location at the corner of a complex road junction would endanger public safety by reason of traffic hazard and obstruction of road users.

### 14.0 RECOMMENDATION IN THE CASE OF THE PROPOSED BETTING OFFICE – PL29N.256570

Based on the submissions on file, my site inspection and the assessment in sections 12.1 and 12.3, I consider the proposed betting office development to not be in accordance with the proper planning and sustainable development of the area. It would consolidate the predominance of non-retail uses in the area and would further erode the primary retail use of the street and lead to a proliferation of non-retail uses in Finglas village. Therefore it is recommended that **permission be refused for the proposed amusement development** for the reason set out below.

### REASONS AND CONSIDERATIONS

- 1 The site is located within a Key District Site where the land-use zoning objective is to provide for and improve mixed services facilities. Section 17.28 of the Development Plan (Betting Offices) states that it is an objective of Dublin City Council to prevent a concentration of betting offices in the city, thereby ensuring the number of units in a city street, district or neighbourhood centre is not disproportionate to the overall number of community facilities and shop units and that the provision of betting offices will be controlled having regard to inter alia the existing proliferation of similar retail service outlets in the area such as, internet cafes, call centres, takeaways, amusement arcades and car rentals. This objective is considered reasonable. Having regard to the pattern of development at this location and the pattern of permitted and existing gambling type uses such as betting offices in the general area, it is considered that the proposed change of use to betting office would consolidate

the pre-dominance of non-retail uses in the area and lead to a proliferation of gambling type uses in Finglas village and would by its nature be limited in its capacity to contribute to vitality and vibrancy of this Key District Centre. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 2 The originally approved off-street servicing area for the overall building of which this site forms a part is proposed to be incorporated into the floor area of the proposed betting office development proposed for this site – betting office. The proposed development therefore results in the loss of the approved off-street servicing provision for the commercial uses in the entire building. Having regard to the planning history of the site and in particular planning authority reg ref 1138/04 where planning permission was refused for the retention of the omission of the off-street serving area for the overall building due to traffic hazard the proposed development by reason of its subdivision and lack of off-street servicing provision and location on the corner of a complex road junction would endanger public safety by reason of traffic hazard and obstruction of road users.

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**Suzanne Kehely**  
**Senior Planning Inspector**  
**18<sup>th</sup> August 2016**