



Planning and Development Acts 2000 to 2018

Planning Authority: Fingal County Council

Planning Register Reference Number: F18A/0447

Appeal by The Townyard House Management Company Limited care of O'Neill Town Planning of Oakdene, Howth Road, Howth, County Dublin against the decision made on the 25th day of October, 2018 by Fingal County Council to grant subject to conditions a permission to Siam Thai Restaurant Limited care of Corry Design Associates of 93 Martello Court, Portmarnock, County Dublin in accordance with plans and particulars lodged with the said Council:

Proposed Development: The change of use of 140 square metres at first floor level from office accommodation to previously approved restaurant use, and minor internal revisions. The development will also consist of the removal of internal stud partitions and reinstatement of the connecting staircase from ground to first floor. Permission is also sought for the retention of occasional and seasonal placing of tables and chairs ancillary to the restaurant on the front forecourt of the premises, all at 1-3 The Green, Malahide, County Dublin.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

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

Reasons and Considerations

Having regard to the zoning Objective “TC – Town and District Centre” for the area, as set out in the Fingal County Development Plan 2017-2023 and to the pattern and mix of development in the area, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention, and the proposed development, would be in accordance with the provisions of the Development Plan, would not seriously injure the amenities of the neighbourhood 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 development proposed for retention, and the proposed development, would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development proposed for retention shall be retained, and the proposed development shall be carried out and completed, in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 28th day of September, 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The retention permission for the seasonal, outdoor front seating area is a temporary permission only, and shall expire three years from the date of this order unless, by that time, permission for its further retention has been granted by the planning authority, or by An Bord Pleanála on appeal.

Reason: To allow for further assessment of impact on residential amenity.

3. The hours of operation shall be as follows:
 - (a) The first floor section of the restaurant from 0800 to 2300 hours on Sunday to Thursday, and from 0800 to 2400 hours on Friday and Saturday.
 - (b) The outdoor seasonal dining area from 0800 to 2200 hours on Monday to Sunday from the start of June to the end of August of each year.

Reason: To ensure protection of residential amenity within a mixed-use area.

4. At the end of each night, and outside of the permitted months of operation, the chairs, screens and other equipment shall be removed from the front parking area, and stored internally.

Reason: To avoid clutter within an 'Architectural Conservation Area'.

5. The first floor section of the restaurant and the outdoor seasonal dining area shall be used as part of the permitted restaurant use, and shall not be sold, sub-let or otherwise operated as separate restaurant or bar uses.

Reason: To prevent unauthorised development.

6. Any screens to be used within the temporary outdoor area shall be canvas, shall not contain any advertisements and shall not be fixed to the ground. Similarly, other features, such as chairs, shall not be fixed to the ground.

Reason: To prevent unauthorised development.

7. (a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 0800 to 2200 hours and by more than 1 dB(A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeq.T.
- (b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be subject to the same locational and decibel exceedence criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at LAeqT.
- (c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either
- (i) during a temporary shutdown of the specific noise source, or
 - (ii) during a period immediately before or after the specific noise source operates.
- (d) When measuring the specific noise, the time (T) shall be any five-minute period during which the sound emission from the premises is at its maximum level.
- (e) Any measuring instrument shall be precision grade.

Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. An acoustical analysis shall be included with this submission to the planning authority.

Reason: In order to protect the amenities of residential property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

John Connolly

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this day of 2019.