



Planning and Development Acts 2000 to 2019

Planning Authority: Fingal County Council

Planning Register Reference Number: F18A/0340

Appeal by the Irish Heart Foundation of 17-19 Rathmines Road Lower, Dublin and by others against the decision made on the 6th day of March, 2019 by Fingal County Council to grant subject to conditions a permission to Marbleside Limited care of Corr and Associates of Unit 4, First Floor, Saint Fintan's, North Street, Swords, County Dublin in accordance with plans and particulars lodged with the said Council.

Proposed Development: A 527 square metres two-storey restaurant with a drive through collection and service point, removal of existing signage also incorporating hard and soft landscaping, new access and egress points, local foul and surface water connections, reconfiguration of Barnageeragh Road markings to facilitate right turns into the site, designated parking within the Skerries Point development, proposed daily opening hours of 6.30 am to 11.30 pm and all associated site works necessary to facilitate the development at Skerries Point, Barnageeragh Road, Skerries, 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

In coming to its decision, the Board had regard to the following:

- the Fingal Development Plan 2017-2023 and in particular to the following objectives;
 - Objective ED54 – prevent over supply of takeaways on main shopping streets,
 - Objective DMS 107 – strictly control fast food/takeaway outlets,
 - Objective DMS 108 – consider the appropriateness and location of fast food outlets in the vicinity of schools, to restrict the opening of new fast food/takeaway outlets in close proximity to schools so as to protect the health and wellbeing of school going children,

- the 'LC' zoning objective of the site whose vision is to provide a mix of local community and commercial facilities for the existing and developing communities of the County,
- the Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport in March, 2013,
- the National Transport Authority's Permeability Best Practice Guide (2015), in the provision of good urban design,
- the submissions of the parties, and
- the Inspector's report.

The Board considered that the proposed development was in compliance with 'LC' zoning objective for the site, would not lead to a proliferation of takeaways or the loss of retail opportunity in the area, and considered that the scale and design of the proposed development is appropriate for the catchment area and is appropriately located adjacent to the Skerries Point Shopping Centre. Furthermore, the Board was satisfied that the site location relative to the schools in the vicinity had been carefully considered and meets Objective DMS 108 of the Fingal Development Plan 2017-2023 and that subject to compliance with the conditions as set out below, would not endanger public safety by reason of traffic hazard and given its proximity to the shopping centre represented a permeable and accessible site contributing to a sustainable urban environment. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board concurred with the assessment of the planning authority and considered that having regard to the suitability of the site to accommodate such a use, specifically its 'LC' zoning, under which both restaurant/café and fast food outlet/takeaway use classes are permitted in principle, the distance to the closest school(s) and the nature of the closest school (a primary school), where the pupils are typically not permitted to leave during lunch break, it is considered that the proposed development would be in accordance with Objective DMS 108 of the Fingal Development Plan 2017-2023 and that careful consideration was given to the appropriateness and location of the proposed fast food outlet relative to both primary and post primary schools in the wider area. Furthermore, the Board was satisfied that the proposed development would promote and facilitate increased permeability and accessibility for those using active travel modes and contribute to a sustainable urban environment and would not give rise to traffic hazard having regard to the road layout and parking provision in the area. The Board was satisfied that potential conflicts between pedestrians/cyclists and vehicular traffic were addressed by the design and the road and vehicular access layout as proposed.

Conditions

1. The 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 8th day of February, 2019, 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 the 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. Prior to commencement of development, the developer shall submit to the planning authority for its written agreement, a revised site layout clearly indicating outdoor seating for a maximum of 15 number patrons within the paved area directly adjacent to the main entrance to the building hereby permitted. The outdoor seating area shall only be used in conjunction with the restaurant use operated within the building and shall not be used after 2130 hours. Any and all furniture (seating/tables etc.) shall be demountable in nature and shall be removed from this area by 2130 hours.

Reason: In the interest of clarity and to protect the amenity of the area.

3. Details of the materials, colours and textures to the proposed restaurant/drive through building shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. The landscaping proposals shall be as indicated on the 'Landscape Plan' drawing number 300 Rev 3 received by the planning authority as additional information on the 8th day of February, 2019 and shall be carried out and completed before the end of the first planting season following commencement of development.

Reason: To facilitate the integration of the proposal within a reasonable time and in the interest of proper planning and sustainable development.

5. The following requirements in relation to access and car parking for the proposed development shall be carried out in full;
- (i) the alterations to the existing road layout and lining on Barnageeragh Road to provide a right turn pocket shall be implemented at the cost of the developer and to the satisfaction of the planning authority. These alterations shall be implemented in full prior to the operation/opening of the restaurant/drive-through, and
 - (ii) the two number existing slanted spaces directly south of space number 65 shall be retained for use as set-down spaces. The four number slanted spaces further south shall be removed to allow for the disabled space as detailed on the Site Layout Block Plan drawing number 1730-P-102 Revision A received as additional information on the 8th day of February, 2019.

Reason: In the interest of traffic safety.

6. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

7. The restaurant/drive-through (including any takeaway use) shall not operate outside the hours of 0630-2330 Monday to Sunday including Bank/Public Holidays.

Reason: To protect the amenities of the area.

8. Goods deliveries to the restaurant/drive-through shall not be permitted between the hours of 2330 and 0630.

Reason: In the interest of the amenities of the area.

9. Any roller shutters, roller shutter boxes or other security shuttering for the premises shall be of the open grille type, dark coloured and installed internally behind the line of glazing.

Reason: In the interest of visual amenity and that effective control be maintained.

10. Windows shall be clear and devoid of window graphics and shall comprise clear glazing.

Reason: In the interest of visual amenity.

11. No additional advertising signs or structures shall be erected externally on the premises, except those which are exempted development, without the prior approval of the planning authority or An Bord Pleanála on appeal.

Reason: In the interest of the proper planning and sustainable development of the area.

12. No music or other amplified sound shall be broadcast externally. Noise emanating from the premises shall be such as not to cause nuisance to the occupants of adjacent properties and users of the public road.

Reason: To protect the amenities of the area.

13. 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.

Paul Hyde

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

Dated this day of 2019.