

An
Bord
Pleanála

Board Order
ABP-313555-22

Planning and Development Acts 2000 to 2022

Planning Authority: Dublin City Council

Planning Register Reference Number: WEB/1809/21

Appeal by Betty Wang/Fragrant City of 107B Malahide Road, Donnycarney, Dublin against the decision made on the 14th day of April, 2022 by Dublin City Council to grant, subject to conditions, permission to Fulin Investments care of Simon Beale and Associates of The Old School House, Casement Street, Ballina, County Mayo in accordance with plans and particulars lodged with the said Council.

Proposed Development: (1) Change of use from retail unit to take-away restaurant, (2) conversion of existing garage to dry food storage area, (3) first floor extension to rear of the property, and (4) demolition of existing w/c to allow proposed new staff entrance from the laneway to rear of the property and all associated site works at 99 Malahide Road, Grace Park, 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.

Reasons and Considerations

Having regard to the pattern of development in the area, the functions served by the multiple existing commercial units within the wider area and the limited scale of the development as proposed, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the character of the area or the visual or residential amenities of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board was also satisfied that the proposed development was in compliance with the criteria as set out in Section 15.14.7.3 of Chapter 15 of the Dublin City Council Development Plan 2022- 28 relating to Fast Food/Takeaways.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board shared the view of the planning authority that, when considered as part of the wider neighbourhood centre which consists of 12 commercial properties with a diverse range of uses at ground floor level, the decision to grant permission in this case would not be detrimental to the vitality, vibrancy and range of nearby retail uses.

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 to the planning authority on the 22nd day of March 2022, 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. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours 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 amenities of property in the vicinity.

3. During the construction and demolition phases, the proposed development shall comply with British Standard 5228 ' Noise Control on Construction and open sites Part 1. Code of practice for basic information and procedures for noise control.'

Reason: In order to ensure a satisfactory standard of development, in the interest of residential amenity.

4. The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining street(s) are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining roadways are kept in a clean and safe condition during construction works in the interest of orderly development.

5. The first floor office window on the south elevation facing the rear of number 97 Malahide Road shall be omitted from the development hereby permitted.

Reason: To protect the amenities and development potential of number 97 Malahide Road.



6. (a) The requirements set out in the Bye-Laws for the Storage, Presentation and Collection of Household and Commercial Waste, 2013 or any revision thereof shall be adhered to and, in particular, the requirement to segregate waste into separate fractions to facilitate the collection of dry recyclables, organic kitchen/garden waste and residual waste in line with Waste Management (Food Waste) Regulations 2009 (S.I. No. 508 of 2009), and the Waste Management (Food Waste) (Amendment) Regulations S.I. No. 190 of 2015, and the Eastern - Midlands Region Waste Management Plan 2015- 2021.
- (b) The following are also requirements:
- (i). receptacles that are designed for reuse, with the exception of in specific areas designated by a local authority as being only suitable for the collection of nonreusable receptacles such as bags, ideally of 1,100 Litre capacity, must be used; and
 - (ii). adequate storage space for a minimum of 1 No. 1,100 Litre receptacle
 - (iii) sufficient space shall be provided to accommodate the separate collection of dry recyclables and organic food/garden waste,
 - (iv). adequate space and height for a standard refuse collection vehicle (RCV) to access site,
 - (v). sufficient access and egress must be provided to enable receptacles to be moved easily from the storage area to an appropriate collection point on the public street nearby,
 - (vi). receptacle storage areas shall not be visible from or on a public street,

- (vii). the receptacle storage areas shall be designed so that each receptacle within the storage area is accessible to occupants/employees of the development (including people with disabilities),
- (viii). suitable wastewater drainage points shall be installed in the receptacle storage area for cleaning and disinfecting purposes,
- (ix). waste storage areas shall not present any safety risks to users and shall be well-lit,
- (x). adequate ventilation of waste storage areas so as to minimise odours and potential nuisance from vermin/flies.

Reason: In order to ensure a satisfactory standard of development.

7. The following requirements of the Environmental Health Officer of the planning authority shall be complied with:

(a) air pollution control measures:

- (i). Before the use thereby permitted commences, a scheme shall be submitted to, and agreed in writing with, the planning authority for the effective control of fumes and odours from the premises. The scheme shall be implemented before the use commences and thereafter permanently maintained.
- (ii). A suitably qualified and experienced person shall undertake the design and installation of the ventilation system.



- (iii). The ventilation system shall be designed to incorporate a stack erected to a minimum height of 1 metre above the eaves of the premises or adjoining premises and be so sited to ensure the emissions will cause no nuisance.
 - (iv). A suitable filtration system shall be installed to neutralise odours (if applicable) prior to their discharge.
 - (v). The fan used to propel the extract shall be installed and be of sufficient power to ensure high exit velocity of the fumes during all weather conditions.
- (b) Noise Pollution Control Measures:
- (i). The noise levels from the site, during the operational phase, measured as an LAeq (5 min at night, 15 min in day) when all proposed plant is operating, shall not exceed the LA90 by 5 dB(A) or more.
 - (ii). Noise levels should not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place.
 - (iii). Details relating to the likely sound power levels of all externally located plant and equipment associated with this development shall be submitted to the planning authority prior to installation.



- (c) **Delivery Control Measures:** Ensure that all drivers delivering to the proposed development carry out the delivery process using best practice to prevent a noise nuisance. To effect this, a noise minimisation plan shall be produced, subject to the approval of this unit of the planning authority, and put in place as soon as reasonably practicable to prevent noise nuisance during early morning deliveries.

Reason: To ensure a satisfactory standard of development.

8. The developer shall comply with the following requirements of the Drainage Division of Dublin City Council:

- (a) the developer shall comply with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0 (available from www.dublincity.ie Forms and Downloads),
- (b) all private drainage such as downpipes, gullies, manholes and armstrong junctions shall be located within the final site boundary. Private drains shall not pass through property they do not serve.

Reason: To ensure a satisfactory standard of development.

9. Notwithstanding the provisions of the Planning & Development Regulations 2001, as amended, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting element shall be displayed or erected on the building or within the curtilage, or attached to the glazing without a prior grant of planning permission.

Reason: In the interest of visual amenity.



11. Security shutters, if necessary, shall have their shutter box located entirely behind the fascia and no part of the shutters, their supports or fittings shall encroach on the public footpath. The said shutters shall be open mesh or see-through, shall be finished in a single colour and shall not be left unpainted or used for advertising.

Reason: In the interest of visual amenity.

12. All external signage shall be limited to the existing fascia area of the shopfront only and shall consist of individually mounted and backlit lettering, the height of which shall not exceed 0.3 metres. The colour scheme shall complement the materials and colours in the shopfront and adjacent shopfronts.

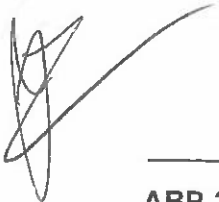
Reason: In the interest of visual amenity.

13. (a) The hours of operation shall be solely within the hours of 0800 to 0000 Monday to Sunday inclusive. All operations on site shall cease from 0000 to 0800 hours, Monday to Sunday.
- (b) Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from Dublin City Council. Such approval may be given subject to conditions pertaining to the particular circumstances being set by Dublin City Council.

Reason: In order to safeguard the amenities of adjoining residential occupiers.

14. The developer shall comply with the requirements set out in the Codes of Practice from the Drainage Division, the Transportation Planning Division and the Noise and Air Pollution Section of the planning authority.

Reason: To ensure a satisfactory standard of development.



15. 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.



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

Dated this *19TH* day of *September* 2023.