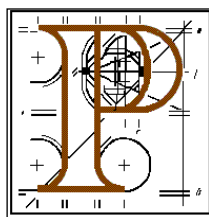


An Bord Pleanála Ref.: PL17.245840

An Bord Pleanála



Inspector's Report

Planning Application Change of use from retail to restaurant/takeaway at Unit 2 Ard Cluain, Main Street, Clonee, Co.Meath

Planning Authority: Meath County Council

Planning Authority Reg. Ref.: RA150857

Applicant: Halal Kentucky Chicken

Type of Application: Permission

Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s): Mel Beirne

Type of Appeal: 3rd Party

Observers: None

Date of Site Inspection: 18th February 2016

Inspector: Fiona Fair

Appendices: Photographs, Site location Map

1.0 SITE DESCRIPTION

The appeal site, which has a stated GFA of 93 sq. m and a stated site area of 0.0093 Ha, is located at Unit 2, Ard Cluain, Clonee in County Meath. The village of Clonee is situated to the south of the M3 motorway on the R147, approx. 15 Km from Dublin City Centre.

The site is located just North West of the village and within easy walking distance of Clonee Main Street, with footpaths, a cycle track and public lighting extending from the Main Street to the appeal site.

Unit 2, which comprises an existing ground floor retail unit, is currently vacant. It forms one of a number of ground floor retail units within a mixed use retail / residential development. The building is 3 storey with the roof top 4th floor recessed. Unit 2 faces south east, towards Clonee Village, and comprises a corner unit. The adjoining unit to the west is in use as a retail unit, named 'Malдова' and further to the west of this unit another ground floor unit is in use as a gym. The ground floor retail units to the north east are in the main vacant with the exception of a launderette business.

Clonee Tennis club is located to the rear, north east, of the Ard Cluain development accessed via the 'Old Kilbride Road' which is currently a cul de sac. Resident's car parking associated with the Ard Cluain development is accessed via a controlled electronic gate to underground and at ground level to the rear of the development. 7 number visitor / general car parking spaces are located to the north / rear of the building and some 3 parallel undemarcated car parking / pull in spaces are located to the east of the development, on the west side of the Old Kilbride Road.

2.0 PROPOSAL:

The proposed development comprises change of use of existing ground floor retail unit, currently vacant, to use as a restaurant / takeaway.

The development has a stated GFA of 93 sq. m with a proposed kitchen area of approx. 20 sq. m, customer seating area of stated 45 sq. m. The remaining 28 sq. m is to be used as circulation area, counter serving space, staff room, toilets and seated customer waiting area.

3.0 PLANNING AUTHORITY'S DECISION

Following a request for further information with respect to (i) justification for a takeaway at the proposed location (ii) proposal to comply with car parking requirements and (iii) potential impacts on residential amenity arising from odours on site, Meath County Council Granted planning permission subject to 8 number conditions. I consider the following of note:

Condition 2. States: *'Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001 – 2015, no changes to the exterior of the structure or site, including the erection of additional advertising signs, flags, lighting fixtures, satellite dishes, awnings, name plates, symbols, emblems, logos, roller shutters or other security or advertising devices, shall be carried out without a grant of planning permission from the planning authority, or, where these changes are minor, such as changes to the exterior colour scheme, without the written approval of the planning authority.'*

Condition 3. *'Details of the background materials for the proposed signage lettering, exterior light fittings and the exterior colour scheme connected with this development including the signage, shall be submitted for the written approval of the planning authority prior to commencement of development.'*

Condition 4. *'The proposed development shall be constructed and operated such that there will be no emissions of odours or gases, such as would give reasonable cause of annoyance to any person in any residence, or public place in the vicinity.'*

Condition 6. *'Facilities for the handling and external storage of waste with access for frequent collection shall be provided. Details in respect of the provision of same shall be submitted to the p.a. for written agreement prior to the commencement of development.'*

Condition 7 requires submission of a waste management plan.

Condition No. 8 restricts opening hours from 11.30am to 23:00 pm.

4.0 TECHNICAL REPORTS

4.1 Planners report:

The Planners report reflects the decision to grant planning permission.

4.2 Chief Fire Officer:

No Objection. Report indicates that a fire safety certificate is required.

4.3 Health Service Executive (HSE)

No objection subject to conditions.

4.4 Objections/Submissions

A number of letters of objection were submitted to the planning authority. The issues raised are similar to those raised in the 3rd party appeal summarized in detail below.

5.0 APPEAL GROUNDS

5.1 A third party appeal has been lodged by Mel Beirne 43 Ard Cluain, Clonee. The grounds of the appeal is summarised as follows:

- The site notice was not erected in accordance with the requirements of Article 19(1) of the Planning and Development Regulations, 2001 as amended.
- The unit the subject of the application was not purposely designed for restaurant use and is not suitable for the purposes intended; it is too small and has incorrect ventilation systems in place
- No indication of proposals for storage and disposal of refuse from the premises
- There has been no consultation with the Management Company for the Ard Cluain Development with respect to ventilation and refuse storage and disposal.
- There are already a proliferation of takeaways in the centre of Clonee Village. Currently 4 operational takeaways / restaurants and 2 non-operational takeaways / restaurants which could re-open.
- There is no demand for another takeaway.
- Proposal is contrary to ED OBJ 8 of the Meath CDP 2013 which seeks to prevent overdevelopment of particular non-retail uses such as takeaways
- The proposal has inadequate car parking and would result in noise, odour and litter issues and would be detrimental to residential amenity.
- Provision of extraction vent, required by EHO condition, into an enclosed public walkway for residents and guests of Ard Cluain is unacceptable.
- The location is unsuitable for night time opening / operation – Unit adjoins the principal door into the Ard Cluain residential complex.
- Concern with respect to anti-social behavior, late night opening, intoxicated customers coming from public houses or other locations where alcohol is consumed.

- Appeal accompanied with photographs and notification of decision
Reg. Ref. RA150857

6.0 RESPONSES

6.1 Two responses were received from the Planning Authority, they are summarized as follows:

1st Response

- The subject site is zoned B1 - ;*'To protect, provide for and /or improve town centre facilities and uses'*.
- Opening hours are restricted by way of condition
- Two takeaways have closed in the area in recent times and therefore the area is presently not over prescribed.
- Regard is had that the restaurant layout is mainly seated, and it is argued that it is a fast food restaurant and not a typical take-away.
- Additional requirements of 4 car parking spaces to serve the use proposed. Adequate car parking exists for the intended use.
- Ventilation system is non flue based and matters in relation to odour etc. are controlled by the EHO.
- Requests that the Board supports the decision of the council.

2nd Response (new additional points only)

- The p.a. is satisfied that the site notice was erected and was legible as statutorily required.
- The opening hours are limited and should alleviate normal concerns that would arise with a traditional takeaway.

6.2 A response to the appeal was received from Toseef Chaudry Halal Kentucky Chicken, it is summarized as follows:

- Concerns raised have been adequately addressed in the planning application
- Restaurant is designed to provide quick and healthy food options to the residents of Dublin 15

- It is the only Halal food option of its type in the area
- There is a demand for a Halal restaurant
- The restaurant will add to and provide a quality service to the area. 30 sitting places proposed. Restaurant use as opposed to traditional take-away use.
- Site Notice is fully legible and in accordance with standard format.
- Suitable location as determined by the zoning of the appeal site
- The adjoining unit was a restaurant and is now converted to a retail unit operating with the name Moldova
- Halal Fast Food Restaurant use with no alcohol sales proposed.
- There are currently only 3 take-ways operating in the Clonee area and none are Halal
- There are two designated car parking spaces for the property.
- There is no shortage of public car parking spaces where customers can park and walk.
- Ventilation system proposed will exclude 80 – 90 % of the odours. Best Practice proposed.
- Plans will be put in place to deal with refuse storage and disposal and litter prevention.
- Opening hours proposed to be 11:30 to 23.00 Mon – Sunday.
- The building complies with the standards of sound proofing and will eliminate noise pollution.
- Response accompanied with:
 - Extractor specifications and installer details
 - Suitability assessment
 - Site notice pictures
 - Photographs relating to Car parking
 - Photographs relating to Restaurant details
 - Fire Safety and Disability Certificate

6.3 A response was received from the appellant Mel Beirne, it is summarized as follows:

- The site notice does not comply with Article 19(1) of the Planning and Development Regulations 2001.
- The area in which the site is located is Co. Meath not Dublin 15. Clonee is not centrally located to serve the wider D15 area.
- Questions the demand for Halal food
- The unit is unsuitable for the intended use given its size
- There are a total of 6 takeaways / restaurants in Clonee village – 5 operational and 1 currently closed.
- Parking along the access road as proposed will give rise to problems going forward.
- Concerns again raised with regard to ventilation and odour
- The applicant has no agreement from the management company to carry out any modification to walls or common areas of the development
- No agreement or discussion has taken place with the management company with respect to refuse or litter
- No agreement was given by the original developers to use of their drawings in the planning application.

7.0 RELEVANT PLANNING HISTORY

The Planners report indicates that there is no recent planning history on site. The Boards Planning Register also indicates no evidence of recent planning history on the site.

8.0 DEVELOPMENT PLAN

The statutory Development Plan is the Meath County Development Plan 2013 – 2019.

The appeal site is designated as 'B1' with the zoning objective '*To protect, provide for and / or improve town Centre facilities and uses.*'

Relevant sections of the County Development Plan include:

Section 4.5.8 and ED OBJ 8

9.0 ASSESSMENT

I have read through the file documentation, the relevant provisions of the Development Plan and have carried out a site inspection. In my judgement the principle factors for consideration in this appeal relates primarily to:

9.1 The appropriateness or otherwise of the development at this location

9.2 Impact Upon Residential Amenity

9.3 Access and Car Parking

9.4 Appropriate Assessment

9.5 Other Matters

9.1 The appropriateness or otherwise of the development at this location

The appeal site albeit located at the perimeter of the village is within the designated 'Town Centre'. It is designated as 'B1' with the zoning objective '*To protect, provide for and / or improve town Centre facilities and uses.*' It is within the development envelope of Clonee Village within walking distance of the village centre and the retail element of this mixed use development will, I believe, serve the residential units on site and the area generally. The proposed use 'restaurant' / 'takeaway' is compatible with the zoning being a 'permitted use.'

It is submitted, by the appellant, that the adjoining unit was granted permission for restaurant use and that unit 2, the subject of the appeal, was not purposely designed for restaurant use and is not suitable for the purposes intended; it is too small and has incorrect ventilation systems in place. Cognisance is had that the adjoining unit is now in use as a retail unit

'Malдова'. I do not agree with the appellant that Unit 2 given that it was not purposely constructed as a restaurant is therefore unsuitable for such a use. Each planning application is dealt with on a case by case basis and applications for change of use are common place.

Albeit the subject unit is vacant it is a permitted retail unit, therefore, the principle of a commercial use in this location has been established. The question that arises for determination by the Board is whether the change of use from a retail use to a restaurant / take away use is acceptable at this location.

I have no objection in principle to the development, in this established mixed use, commercial / retail location. I consider having regard to the limited size (93 sq. m) of the unit and that the restaurant is not solely a takeaway but offers a fast food restaurant with seating that the proposed development is acceptable in principle.

Albeit there are a number of restaurant / takeaway units currently operating within the Main Street of Clonee Village, there are no other restaurant / takeaways within the Ard Cluain development. It is therefore my opinion that having cognizance to the B1 zoning objective, section 4.5.8 of the County Development Plan and ED OBJ 8 preventing '*overdevelopment of particular non retail uses such as takeaways*' of the Meath CDP 2013 the proposal is acceptable in terms of cumulative impact and is acceptable in principle at the subject appeal site location.

9.2 Impact Upon Residential Amenity

The appellant has raised concern with respect to negative impact upon residential amenity, in particular, concerns relate to noise, odour and litter. It is argued that the location is unsuitable for night time opening / operation as the Unit adjoins the principal door into the Ard Cluain residential complex.

The Ard Cluain development consists of a large mixed use residential and retail development over 4 floors with associated underground and surface level car parking. Unit 2 to which the subject appeal relates comprises a ground floor vacant corner retail unit. It is submitted that there are some nine other units of the same size on the ground floor of the Ard Cluain Development. Apartment units occupy the three upper floors of the Ard Cluain Development. It is clear from established and permitted uses that the principle of a commercial use at ground level in this location has been established.

I accept that fast food outlets by their very nature tend to generate impacts not associated with other retail uses such as odour, noise, litter, hours of operation etc, which have the potential to significantly impact upon amenity.

I note the applicant's submission that there is demand for a Halal food restaurant in the area and that no alcohol sales are proposed from the premises. The applicant is agreeable to the provision of a litter and refuse management strategy and proposes a ventilation system which will exclude 80 – 90 % of the odours prior to extraction. Thus it is submitted there is no requirement for a duct terminating above the eaves level. Best Practice is proposed.

Regard is had that the EHO's report which has no objection to the proposal subject to condition. It is proposed to open the restaurant / takeaway between the hours of 11:00 am - 22.30 pm Monday – Friday and Saturday and Sunday 11.00 am - 23:00pm.

Regard being had to section 4.5.8 of the Meath CDP and to ED OBJ 8 it is my opinion that the proposed development, subject to condition, will not generate any significant adverse impacts to amenity in the vicinity. To reduce potential impacts, I consider that it is reasonable to set a limit on the hours of operation of the premises and consider 23:00 is reasonable. This will also help to address concerns of attracting anti-social behavior, which I note is a matter for the guards.

I consider that the proposed development is likely to attract mainly local and “passing” business which is unlikely to impact adversely on the amenities of the area. I also consider that the proposed development is unlikely to attract large numbers of late night customers into the area as it is somewhat remote from any other late night uses.

Overall, regard being had that the use is acceptable in principle, in this established mixed use location, the limited size (93 sq. m) of the unit and that the restaurant is a fast food restaurant with seating, it is not a takeaway in typical terms; it is my opinion that concerns raised can be satisfactorily ameliorated by way of condition.

9.3 Access and Car Parking

The existing Unit (93sq.m) is currently in retail use, therefore, under section 11.9 of the Meath CDP 2013 it is calculated that 5 car parking spaces are apportioned to Unit 2. Calculated at 1 car space per 20 sq. m of retail floor area. The proposed restaurant has a dining area of stated 45 sq. m. restaurants are required to have 1 car space per 5 sq. m of dining area which equates to 9 spaces. Thus the proposed use, from my calculations, has an additional requirement for 4 car parking spaces.

32 visitor car parking spaces are indicated on the site layout plan submitted, to the p.a. on the 16th October 2015. Laid out to the north and north east of the Ard Cluain development complex. 7 visitor spaces are located approximate to the subject appeal Unit. I note and agree with the submission by the first party that there are a significant amount of residential units in close proximity to the unit and there is easy access without a car. The appeal site is well connected to Main Street Clonee by way of footpaths, a cycle path and public lighting.

I am also cognizant to the fact that the adjoining unit, now 'Moldova', which was originally designated for restaurant use is currently in retail use and therefore has a lessor car parking requirement than was originally anticipated.

All things considered it is my opinion in agreement with the opinion of the planning authority that adequate car parking exists for the intended use.

9.4 Appropriate Assessment

The appeal proposal is for a change of use of an existing serviced retail unit within the designated 'town centre' of Clonee Village.

The appeal site is not within or adjoining any Natura 2000 site.

The planning authority report states: *'...Five Natura 2000 sites exist within 15Km of the proposed development or have a hydrological linkage of 25Km or less. All Natura 2000 sites beyond these threshold distances (15 Km and 25 Km) are considered to be far enough away that no significant effects could be caused either directly or indirectly or in combination with other plans or projects to their interest features...'*

Having regard to the nature and scale of the proposed development, the nature of the receiving environment, proximity to the nearest European site and absence of a direct pathway from the site to the Natura 2000 site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.5 Other Matters

The appellant in the subject appeal case has raised issues with respect to the site notice, which it is claimed was not erected in accordance with the requirements of Article 19(1) of the Planning and Development Regulations, 2001 as amended.

Validation of planning applications is solely within the remit of the planning authority and is not a function of An Bord Pleanála. I note the response from the p.a. which clearly states that the p.a. is satisfied that the site notice was erected and was legible as required by the Planning and Development Regulations. I can confirm that the site notice was in place on the door of Unit 2 and legible at the time of my site visit. I see no evidence to suggest that the interests of third parties were undermined in this regard.

With respect to issues raised of need for Management Company agreement I consider this is a legal matter between the applicant and the management company and not a planning consideration.

10.0 CONCLUSION/RECOMMENDATION

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

11.0 REASONS AND CONSIDERATIONS

Having regard to the zoning of the site, its location and established pattern of development in the area, 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 property in the vicinity, would not give rise to a traffic, noise or odour hazard and would not, therefore, be contrary to the proper planning and sustainable development of the area.

12.0 CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted on the 16th October 2015, 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 restaurant / take away use shall not operate between the hours of 23:00 and 11.00am, save with a prior grant of planning permission.

Reason: In the interests of residential amenity.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001 – 2015, no changes to the exterior of the structure or site, including the erection of additional advertising signs, flags, lighting fixtures, satellite dishes, awnings, name plates, symbols, emblems, logos, roller shutters or other security or advertising devices, shall be carried out without a grant of planning permission from the planning authority, or, where these changes are minor, such as changes to the exterior colour scheme, without the written approval of the planning authority.

Reason: In the interests of the visual and residential amenities of the area.

4. Water supply and drainage arrangements, shall comply with the requirements of the planning authority for such works and services. In this regard, full details of the provision of grease traps, shall be submitted to the planning authority for written agreement.

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

5. The developer shall control odour emissions from the premises in accordance with measures including odour exclusion and extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

6. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

7. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

Fiona Fair
Planning Inspector
07.03.2016