

An Bord Pleanála



Inspector's Report

<u>Appeal Reference No :</u>	PL06F.245871
<u>Development :</u>	Change of use of restaurant area at ground floor into new pizzeria takeaway & related works, with new detached cold room built at rear
<u>Location :</u>	28 Upper Main Street, Rush, Co. Dublin
<u>Planning Application :</u>	
Planning Authority :	Fingal Co. Co.
Planning Authority Reg.Ref.No. :	F15A/0441
Applicant :	Declan Burke
Planning Authority Decision :	Refusal
<u>Planning Appeal :</u>	
Appellant(s) :	Declan Burke
Type of Appeal :	1st Party
Observers :	V. & A. Galusca B. O'Connell
<u>Date of Site Inspection :</u>	15th February 2016
<u>Inspector :</u>	Leslie Howard

1. SITE LOCATION AND DESCRIPTION :

The application site comprises a 2-storey terraced property located at No.28 Upper Main St., Rush, Co. Fingal. Located approx. midway along the S side of Upper Main St., at ground floor level, the site is a double unit, with at present one of the units' accommodating a Chinese Take-away & the adjoining unit (ie. subject of this application) currently vacant. A single residential unit occupies the 1st floor level above the application site. Main street passed No.28 is well trafficked, by all modes. No on-street parking is possible immediately in front of No.28 (ie. double yellow line). 'Pay & Display' on-street parking is provided along the N side of Main St., opposite No.28.

2. PROPOSED DEVELOPMENT :

Advertised as – *“Change of use of restaurant area at ground floor into new pizzeria takeaway & related works, with new detached cold room built at rear. The pizzeria takeaway is proposed at side of the existing takeaway at same address”.*

3. PLANNING HISTORY :

Reg.Ref.No.F98A/0517 Permission GRANTED for alterations to premises at 28 Upper Main St., Rush, Co. Dublin, incl.:

- change of use of part of ground floor to restaurant, linked to existing takeaway outlet;
- incorporating part of 1st floor into existing 1st floor apartment; &
- use of existing garage as store.

4. PLANNING AUTHORITY DECISION

(1) Planning Authority Decision :

Fingal Co. Co. decided to REFUSE PERMISSION for the proposed development, for 2no. stated 'Refusal Reasons', summarised as follows :

Refusal Reason No.1: Non-compliance / contravention with 'TC' Zoning Objective & Objective UD07 re. :

- an over predominance & increased concentration of such uses at this location; &
- failure to contribute towards a satisfactory diversification of uses;

Therefore proposed dev. would :

- “contravene materially Objective UD07”;
- “seriously injure the amenities of the area” &
- “be contrary to the proper planning & sustainable dev. of the area”;

Refusal Reason No.2: “... would set an undesirable precedent” for similar development (ie. both itself, & cumulatively).

(2) **Planning Reports :**

The Planning Officers report dated 11/11/2015, recommends that permission be REFUSED, generally for the same 2no. ‘Refusal Reasons’ set out in the Manager’s Order below. This recommendation was made having regard to:

(i) **Planning Assessment of Key Issues:**

- Clarify proposed dev.:
 - change of use from existing vacant unit (ie. ‘restaurant’ permitted under **Reg.Ref.No. F98A/0517**), to a ‘take-away’;
 - cold room store to the rear; &
 - fascia level signage;
- Ref. applicant’s conviction that “there is a market need in Rush for a pizza take-away”;
- Site is located within ‘Town Centre’, where Dev. Plan Objective UD07 applies (ie. “to prohibit an over predominance of specific uses – take-aways – in order to maintain an appropriate mix of uses & protect the amenity of the area”);
- Application for ‘take-away’ within an urban area, must be assessed re. the cumulative impact of such uses :
 - on local amenity, &
 - on the existing character of the area;
- Land-Use along Main St., Rush proximate to No.28 incl. 7no. ‘take-aways’ :
 - 3no. Chip Shops;
 - 2no. Indian Takeaways;
 - 1no. Chinese Restaurant; &
 - 1no. Pizza Take-Away;

- Several additional ‘take-away’ restaurants exist, beyond immediate area, as referenced in 3rd Party submissions;
- Current proposed dev. would :
 - “further add to this total”; &
 - “result in 2no. take-away restaurants, a Chinese take-away & a pizza take-away side by side”;
- Therefore, “an additional take-away at this location would result in an over-dominance of such uses in this area of Main Street”;
- Having regard to existing land use along Main St., Rush, proximate to No.28, the proposed change of use would not positively contribute to a diversification of the area, and thus would not be in accordance with Dev. Plan Objective UD05 (ie. to positively contribute to the diversification of uses locally);

(3) **Departmental Technical Reports :**

Transportation Planning Sect. : ‘No objection’, having regard to

- site location within the 50km/hr zone; &
- existing on-street ‘pay & display’ parking in the immediate vicinity;

Environ. Health Sect. : ‘Dev. is acceptable’ subject to Conditions;

Water Services Sect. : ‘No objection’ subject to Conditions;

(4) **Prescribed / Statutory Bodies :**

Irish Water : ‘No objection’ subject to Conditions;

(5) **3rd Party Objections / Submissions:**

(a) 3no. 3rd party objections / submissions noted;

(b) Planning issues argued incl. :

(i) impacts on prevailing amenity (incl. residential);

(ii) resultant proliferation of take-aways locally;

(iii) no consequent diversity of uses;

(iv) weighted ref. to Condit.No.11 (see **Reg.Ref.No. F14A/0449** re. PP for restaurant on Main St.) excluding takeaway use;

(v) overdevelopment of the site;

(vi) traffic safety & car parking;

(vii) public health concerns;

5. **1st PARTY GROUNDS OF APPEAL – Declan Burke (c/o MacCabe Durney Barnes – Town Planning, Urban Economics & Design. – 07/12/2015) :**

- (1) **Proposed dev. does not contravene the Fingal Co. Dev. Plan 2011 :**
- **ie. no Objective re. Rush to restrict the type of commercial uses, as applies to other areas; &**
 - **ie. no loss of residential or visual amenity :**
- (a) Under the TC Zoning Objective, ‘fast food outlet’ & ‘takeaway’ are clearly “permitted in principle” (pg 368), & not in the more restrictive “open for consideration” category;
- (b) The specific Co. Dev. Plan 2011 objectives re. Rush, “do not include any restriction such as are included in the Swords Objective – SWORDS 8”, particularly re. “... limiting the expansion of certain non-retail & inactive street frontages incl. ... takeaways’ / fast food outlets”;
- (c) Emphasise that such a restrictive Objective was not included specifically for Rush;
- (d) “It is inconsistent to include the proposed use as ‘acceptable in principle’, not to restrict the proposed use in the objectives relating to Rush as a town & then to apply part of the general UD07 objective”;
- (e) the PA specifically sets out to restrict take-away uses, by way of stated specific Objectives in Appendix 6 of the Co. Dev. Plan 2011. However, “no such specific objective relates to Rush”;
- (f) The PA partially ref. general objective UD07 in the ‘refusal reason’. In its entirety, Objective UD07 reads – “*ensure all applications for new or extensions of existing uses such as hot food take-aways, ... protect Residential & Visual Amenity. Prohibit an over predominance of these uses in urban areas*”. Point out the PA planning report “does not consider that the proposed use would adversely impact on either residential or visual amenity which are the first elements of Objective UD07”
- (g) The proposed ‘Apache’ franchise is an established & respected business, operating in many locations; Orientated towards families & operating ‘good business practice’, no adverse impacts on local residential amenity will result;
- (h) Operationally, the business will incl, a take-away & a delivery element, “focussing on the family market in Rush & the hinterland”;

- (i) Pizzas' are not popular with casual, late night, passing trade (ie. the product takes time to prepare);
- (j) Emphasise the high demand for pizzas in the area;
- (k) The 3rd party objectors, operate commercial take-aways in Rush, & are competitors, "have not established how the proposed dev. would adversely impact on residential amenity";
- (l) the proposed dev. supplements the Rush market with choice (ie. pizza), "for which there is a demand as most of the existing take-aways in Rush provide different types of product";
Stress that the market population for take-away food locally will not change, "just the choice of product"
- (m) No logic exists as to why clients of the proposed dev., attending to collect take-away pizza, "would be in any way less mannerly than those waiting to collect fish & chips from the Objectors premises";
- (n) Weighting reference to the 'family orientated product' from the proposed dev., customers would not cause the anti-social behaviour normally assoc. with pubs after closing time;
- (o) re. 'Visual Amenity' :
 - (i) proposed dev. is respectful of the existing door & fanlight, & "has retained the integrity of this element of the building in full";
 - (ii) propose :
 - a slim traditional fascia above the door; &
 - no protruding advertising signage;
 - (iii) compared with other shop fronts in Rush, & particularly 'take-aways', "the visual amenity of the area will be improved with the proposed shop front";
- (p) Having not failed either of the 2no. first elements of UD07, give consideration to the second part of UD07 – "to avoid an over predominance of these uses" :
 - (i) the proposed pizzeria can be distinguished from the other take-aways;
 - (ii) no other take-away in Rush, solely provides "a high end pizza" product;
 - (iii) most take-aways locally are ethnic foods orientated (eg. Chinese; Indian; traditional fish & chips)
 - (iv) only one other local take-away has a "significant pizza element" (ie. the two units at Nos'. 3-5 Main St., Rush

- (v) other take-aways locally are not in the same category as the proposed dev., “with specialised pizza ovens & a consistency of a product”;

(2) **Proposed ‘take-away’ at this location :**

- **“is acceptable in planning terms as it offers an extension of choice of type of food within the one site”;** &
- **“does not represent an overdevelopment of this category of use”:**

(a) Proposed dev. “offers a choice of take-away food on an existing site”. In same building, a Chinese food take-away occupies adjacent ground floor unit, whilst 1st floor residential apartment used by the adjacent take-away;

(b) Precedent exists on Main Street, Rush (ie. 2no. side by side units offering different food choices). The Objectors premises incl. :

- a fish & chip shop; &
- a pizza / pasta

This arrangement “provides choice while confining the use to one premises”;

(c) Use of the appeal unit (ie.No.28) is limited / constrained by :

- (i) small, long & narrow shape;
- (ii) 52m² floor area; &
- (ii) desire to retain the doorway & fan light

(d) re. 3rd Party Objector arguments, respond that :

- (i) there is no demand “for retail of higher order uses in this very small premises”;
- (ii) higher order units are not usually in Level 4 designated centres in the Retail Hierarchy;
- (iii) Main St., Rush, “is blighted by vacant units & derelict units”;
- (iv) No.28 exists in a block of 7no. ground floor units, 3no. of which are vacant (ie. 4no. occupied units comprise – ‘dog groomers’; ‘Chinese take-away’; ‘barbers’ & ‘jewellery shop’);

(e) The adjacent block to the E, “is entirely derelict (several properties), although with benefit of planning permission for a mixed-use dev.” No certainty is apparent locally whether this development will take place.

Consistent with many Irish Towns, vacancy rates along Main St., Rush remain high (ie. these vacancies incl. both older and new properties);

- (f) re. 3rd Party Objector listing of outlets operating on Main St. :
 - (i) the 'Little Chip' operates from Sandy Rd; &
 - (ii) none of those listed "are a concentrated pizzeria";
 - (g) re. argument of "over predominance of uses" :
 - (i) there is very limited provision of the type proposed (ie. a dedicated pizzeria in Rush);
 - (ii) the 'Kenure – Rush LAP 2019', makes available 31ha for 1000 additional housing units, which together with the existing 9,200 local population, "will further increase demand for this family orientated product";
 - (iii) having reference to the permitted 'retail floor area', the PA consider Rush is having "significant capacity for demand & growth from the hinterland areas";
 - (iv) the PA have permitted a Tesco dev., which together with the EuroSpar provides "a total net retail sales area of 2,437m² ;
 - (v) ref. further PP for a mixed dev. – 3,437m², incl. a discount food store & off-licence of 1,452m² (ie. **Reg.Ref.No. F12A/0225 & PL06F.241708**);
- (3) **Proposed dev. already serviced from Skerries. Therefore, "is more appropriate in this location" :**
- (a) Applicant – Mr. D. Burke, is an existing franchisee, successfully operating from Skerries;
 - (b) applicant is aware of the demand in Rush, for the proposed 'pizzeria' (see applicant's letter re. the business incl.);
 - (c) re. Objector argument that pizza can be delivered from Skerries, to Rush, respond :
 - Distance between Skerries & Rush is 8.7km (ie. town to town, excl. wide hinterland of Rush)
 - (d) Argue a demand exists in Rush, having regard to :
 - the existing & proposed population of Rush;
 - Rush is a large commuter town for Dublin;
 - Rush comprises of mainly family home type accommodation;

- (e) The Skerries outlet may be presently accessed by customers from Rush for both take-away & delivery, however, proposed development will :
 - reduce the amount of travelling by car; &
 - delivery to access the product
 - (f) Applicant would not make the required investment to open the business, if he did not believe it could be successful;
 - (g) re. traffic movements & environmental concerns, agree “it is much more appropriate to provide the take-away service where the demand is rather than encouraging excessive driving”;
- (4) **Proposed dev. “will occupy a vacant unit & provide ongoing employment on a full time & part-time basis” :**
- (a) weight reference to the vacancy rate all along Main St. (see App.2 photographs)
 - (b) ref. suggestion by 3rd Party Objectors re. aspiration for “high order units”. Rather, “the reality on the ground for a Tier 4 level town is unrealistic”;
 - (c) emphasise the limited & restrictive size of the site (ie. difficult to commercially operate & limited re. type of commercial enterprise could use the unit);
 - (d) point out failure of the recent ‘charity shop’ use to make the small unit viable;
 - (e) the unit has been on the market for occupation / take-up “for a number of years without interest”;
 - (f) use options for consideration :
 - (i) “an ongoing Main St. vacant unit”; or
 - (ii) a small business offering full & part – time employment (ie. 10-14 persons);
 - (g) proposed use provides “a traditional shop front & retain the original door & fanlight”;
 - (h) proposed take-away is an extension of an existing use ‘restaurant’ on site. These uses have similar impacts on residential & visual amenity;
 - (i) the proposed take-away offers choice to customers & meets an identified demand;

- (5) **3rd Party Objections – “are solely on commercial grounds from competitors without having regard to the proper planning & sustainable development of the area” :**
- (a) Point out Objections, “are in the main from competitors within the ‘take-away’ market;
 - (b) The PA “have given significant weight to these objections in arriving at its decision”;
 - (c) Objectors at Nos’. 3-5 Main St. (ie. 2no. side-by-side take-away units) - offer choice to customers similar to that proposed;
 - (d) Nos’. 3-5 Main St. –
 - (i) are larger than No.28 (ie. application site); &
 - (ii) offer ‘traditional fish & chips’, as well as ‘pasta / pizza’;
 - (e) No evidence has been submitted substantiating Objector argument “the proposed dev. will lead to closure of existing businesses”;
 - (f) the existing & future population of Rush “is capable of sustaining a healthy competition for two quality pizzeria products”;
 - (g) the Retail Planning Guidelines state that PA’s, “should avoid taking actions which would adversely affect competition”;
- (6) **PA “must consider each case on its own merits & regard to precedent is irrelevant :**
- (a) Refusal Reason No.2 addresses “undesirable precedent”;
 - (b) In each case, the PA is required to have regard to –
 - (i) Co. Dev. Plan provisions; &
 - (ii) the proper planning & sustainable dev. of the area; all with specific regard to the development proposed;
- (7) **Other “Grounds of Objections” :**
Understood as argued by the 3rd party objectors –
- (a) **“Over-Development of the Site” :**
 - (i) 3rd Parties argue threat to ‘health & safety’ consequent of overdevelopment of site;
 - (ii) Response :
 - dev. incl. a very small cold room extension – 7.5m² (ie. modular type structure, suitable for outdoors);
 - all Building Regs. complied with, with no threat to ‘health & safety’;
 - all of the Depts’. ‘Health & Safety’, ‘Engineering’ & ‘Water Services’ state – “no objection”; &

- emphasise restrictive site of 52m². the viability of use of this unit as proposed, requires “a small modest extension built in accordance with Building Regulations”;
- (b) **“Traffic Movements” :**
- (i) 3rd Parties argue threat to ‘traffic safety’ consequent of “excessive & dangerous traffic movements”;
- (ii) Response :
- multiple commercial units exist along Main St., all taking deliveries & attracting customers;
 - more than adequate on-street car parking exists on Main St., & assoc. parking areas;
 - contrary to Objectors arguments’, no Main St. units / shops in Rush have a set down for deliveries (nor Main St. shops/ units around the County);
 - no interruption or blockage of Main St. is anticipated;
 - 2no. small vehicles to be used for deliveries;
 - Co’s. ‘planning report’ does not anticipate consequent difficulties in parking;
 - adequate paid parking spaces are available along Main St. & assoc. parking areas, to service commercial units;
 - the small 52m² unit “is not going to cause long term parking from customers” (ie. take-away by nature means collect pizza & bring home immediately);
 - the pizza takeaway “will service people who are already in the town doing their shopping”;
 - re. ‘deliveries’ – the delivery vehicle will most of the time be away from Main St. (ie. leave, return to collect product & leave again);
- (c) **“Proximity to Schools” :**
- (i) 3rd Parties object re. the proximity to school & health impacts;
- (ii) Response :
- point out the Objectors at Nos’. 3-5 Main St. (ie. a fish & chips take-away & a pizza / pasta take-away), themselves offer ‘school specials’ (ie. 14no. different school time specials, Mon-Fri, 12h00-14h00)
 - none of the ‘school specials’ incl. Pizza;

- proposed 'Pizzeria' will not target school children as pizzas' are "too expensive & too slow to cook for a school child at lunch time"
- the delivered / take-away food market is progressing from "the traditional 'deep-fried' high fat content foods toward fast food constituting a more balanced nutritional offering to an increasingly discerning consumer";
- 'Apache Pizza' are leading the way re. –
 - working with 'Health-Pro';
 - providing nutritional values & portion advice (ie. not only on website, but also printed on all menus in-store)
- objection by an existing fast food take-away / competitor, who themselves target the 'school children' market, "is unreasonable as the proposed dev. will not be available to school children";

(8) Conclusion :

- (a) Accordingly, request that the Board grant permission for the proposed dev.;
- (b) Summary :
- (i) No.28 is very small & limited as to its commercial use;
 - (ii) No. 28 is vacant, "like many other units on Main St.";
 - (iii) Proposed dev. incl. :
 - retention of original traditional doorway; &
 - erection of "attractive modest traditional shopfront";
 - (iv) Proposed dev. :
 - offers a genuine choice away from traditional & ethnic take-aways currently operating;
 - is focussed on the family market;
 - "will have no negative impact on residential or visual amenity";
 - will provide both full-time & part-time employment;
 - (v) Rush is currently served from Skerries, with consequences of :
 - greater driving distances; &
 - unnecessary traffic volumes;
 all of which can be reduced by the proposed dev.;

- (c) Applicant happy, should the Board be mindful to grant PP :
 - (i) to agree the shop-front with the PA, by way of a Condition; &
 - (ii) that the closing time be midnight, in line with other operators.

6. RESPONSES / OBSERVATIONS TO THE 1st PARTY GROUNDS OF APPEAL :

- (1) **Planning Authority Response (see 18/01/2016) :**
 - (a) Clarify details of the proposed development;
 - (b) Affirm the PA's 2no. stated 'refusal reasons';
 - (c) The proposed development would :
 - (i) result in an over predominance & increased concentration of such uses at this location;
 - (ii) fail to contribute towards a satisfactory diversification of uses;
 - (iii) negate the Zoning Objective – 'TC' which expressly seeks to "protect & enhance the special physical & social character of town centres", by way of an over provision of one type of use;
 - (d) re. Land Use – a 'Pizza' takeaway is :
 - (i) the same as a chip shop , a Chinese takeaway etc.; and
 - (ii) provides "an offering in a similar manner to chip shops at night time";
 - (e) reference 'Planning Officer's' view that Objective UD07 applies countywide;

The fact that no specific objective exists for Rush, 'limiting takeaways', does not imply that the assessment criteria (ie. UD07) would be applied any differently in Rush, to other Fingal settlements, where there are specific objectives in this regard (ie. Swords & Balbriggan);
 - (f) request that An Bord Pleanála uphold the decision of the Planning Authority;
 - (g) Were appeal to be successful, request the Board make provision for application of a 'financial contribution' in accordance with Fingal Co. Co's. 'Sect. 48 – Development Contribution Scheme';

- (2) **Observation – Valentin & Allannah Galusca (see 09/01/2016) :**
- (a) Emphasise need for their original 3rd party objection, to be read “as part of our Observation”;
- (b) Respond to the applicant’s grounds of appeal as follows :
- (i) **Material Contravention of the Fingal Dev. Plan :**
- the Dev. Plan may permit a ‘take-away’, ‘in principle’. However, argue “each application should be assessed in accordance with the overall policies & objectives of the Fingal Dev. Plan”;
 - reference Council’s confirmation that the proposed development contravenes Objective UD07 of the Dev. Plan, as it will :
 - negatively impact on residential amenity; &
 - result in an “oversupply of take-aways within Rush”;
- (ii) **Overdevelopment of this Land Use within Rush :**
- 7no. ‘take-aways’ already exist within Rush;
 - these exclude the local ‘Spar’ & ‘Centra’, which offer limited ‘take-away’ service;
- (iii) **Already Serviced from Skerries :**
- Apache already operate from Skerries;
 - Whereas, applicant argues that having an outlet in Rush will “reduce the amount of traffic”, argue in response that this is not true because –
Although overall distance travelled from each outlet may be less, “the overall number of trips being made will likely increase”;
- (iv) **Provision of Employment :**
The proposed dev. will
- “result in closure of other existing take-aways within Rush”; &
 - not result in increased local employment;
- (v) **Not an Anti-Competition Objection :**
- Contrary to appeal argument, their argument is not “anti-competition”;
 - Rather their Observation “seeks to provide a sustainable future for Rush Village, where we also live”.

- (3) **Observation – Brendan O’Connell (see 11/01/2016) :**
- (a) **Fingal Co. Co. :**
- (i) affirm the PA’s reasons for refusal of the planning application ;
 - (ii) having regard to the applicant’s grounds of appeal, affirm the PA’s conclusion, reiterating it’s own decision to refuse planning permission, that the proposed dev. :
 - would be contrary to the Zoning Objective ‘TC’ - ‘to protect & enhance the special physical & social character of town centres’, due to over provision of a single type of ‘land use’ (ie. in this case takeaway restaurant);
 - (iii) affirm the conclusions of the PA in their assessment;
 - (iv) assert need for greater mix of uses along Main Street, Rush, in compliance with Objective UD05;
- (b) **Over Predominance of such Uses :**
- (i) emphasise the “large number of fast food outlets in Rush”;
 - (ii) the proposed dev. would :
 - further add to this; &
 - result in an overdominance of such landuse along the Main Street;
 - (iii) weight reference to recent PP granted under **Reg.Ref. No.F14A/0449**, proximate to the application site, for change of use to restaurant , but with Condit. No.11 attached – “the unit shall not be used for the sale of hot food consumption off the premises (a takeaway)”;
 - (iv) ref. reason for Condit. No. 11 above – “In the interests of adjoining residential amenity”;
 - (v) proposed dev. at No.28 Upper Main St. would result in “an unacceptable proliferation of similar takeaway land uses within the town of Rush;
 - (vi) this would “have an adverse impact on surrounding residents & businesses”;
- (c) **Traffic :**
- (i) Consequent increased threat to traffic safety due to :
 - increased traffic volumes, along an already busy section of Main St.;
 - bus stops nearby;
 - limited car parking in the vicinity; &
 - narrow footpaths along this stretch of Main St.;

- (ii) Weighting reference to additional traffic anticipated under **Reg.Refs' No. F12A/0225 & PL06F.241708** (ie. both granted PP), the proposed development “is not in the interest of local residents & businesses”;
- (d) **Conclusion :**
 - (i) proposed dev. would “have a detrimental effect on the existing amenities & quality of the Main St. & in particular for the existing businesses in the area”;
 - (ii) request the Board “uphold the decision of Fingal Co. Co., to refuse the proposed dev.”.

7. POLICY CONTEXT :

Fingal Co. Development Plan (2011-2017) :

Relevant provisions incl. –

Ch.9 Land Use Zoning :

9.6 Zoning Objectives, Vision & Use Classes :

Aim Create and conserve high quality, vibrant and sustainable urban areas.

Zoning Objective “TC” Town & District Centre

Objective – to “protect & enhance the special physical & social character of town & district centres & provide & / or improve urban facilities.

Vision – “maintain & build on the accessibility, vitality & viability of the existing Urban Centres in the County. Develop & consolidate these Centres with an appropriate mix of commercial, recreational, cultural, leisure & residential uses, & to enhance & develop the urban fabric of these Centres in accordance with the principles of urban design, conservation & sustainable development. Retail provision will be in accordance with the County Retail Strategy, enhance & develop the existing urban fabric, emphasise urban conservation, & ensure priority for public transport, pedestrians & cyclists while minimising the impact of private car

based traffic. In order to deliver this vision & to provide a framework for sustainable development, Urban Centre Strategies will be prepared for centres in accordance with the Urban Fingal Chapter objectives”.

Use Classes related to Zoning Objective

Permitted in Principle incl. – ‘Fast Food Outlet / Take-Away’
(see Map – Fingal Co. Dev. Plan 2011 Land Use Zoning Objectives).

Ch.7 Urban Fingal

7.2 Urban Design :

Mixed Uses & Vitality of the Urban Areas :

Objective UD05 Assess planning applications for change of uses in all urban centres on their positive contribution to diversification of the area together with their cumulative effects on traffic, heritage, parking & local residential amenity.

Objective UD07 Ensure all applications for new or extensions of existing uses such as hot food takeaways, ... protect Residential & Visual Amenity. Prohibit an over predominance of these uses in urban areas.

7.3 Urban Centres :

Shop Fronts :

Objective UC23 Ensure new shopfront design respects the character & architectural heritage of the existing streetscape. Encourage, where appropriate, the use of contemporary shop front design.

8. ASSESSMENT :

(1) I have examined the file and the planning history, considered the prevailing local and national policies, physically inspected the site and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application. I note at the outset the reference to material contravention in the planning authority’s reasons for refusal. The site is, however, zoned for ‘town

centre' uses within which fast food outlets/ take-way are permitted in principle, and I do not consider that the proposed development can be reasonably considered to constitute a material contravention of the Fingal Co. Dev. Plan 2011 under such circumstances.

I believe that the relevant planning issues in review of the merits of this appeal relate to :

- (a) Principle and location of the proposed development;
- (b) Proliferation of 'take-away' uses (Compliance with Objective UD07)
- (c) Diversification of uses locally (Compliance with Objective UD05);
- (d) Visual Impact / Streetscape – Main Street, Rush;
- (e) Residential Amenity Impact;
- (f) Requirement for 'Appropriate Assessment' under Article 6(3) of the Habitats Directive 92/43/EEC

(2) **Principle and location of the proposed development :**

I believe the planning 'principle' of pizzeria 'take-away' development at No.28 within the existing, established Upper Main Street, Rush community has been established. Clearly zoned "TC – Town Centre", the applicable zoning matrix designates 'fast-food outlet / take-away' land use as being 'permitted in principle' within the 'TC' zone. I do not believe that any of the PA, 3rd Party or 1st Party interests contest this principle. However, in terms of the applicable 'TC' zoning objective, and supplemented by the 'TC' – Vision, the primary consideration is to, whilst enabling a mix of generally town centre type land use development, incl. of 'take-away', ensure the provision and improvement of town centre located urban facilities, whilst protecting and enhancing the special physical and social character of the Rush town centre.

In the context of the proposed pizzeria 'take-away' development, further qualification is enabled by the application of the suite of relevant Co. Dev. Plan 2011 'Dev. Objectives', including Objectives UD05 & UD07 re. 'Mixed Uses & Vitality of the Urban Areas' and Objective UC23 re. 'Town Centre – Shop Fronts'. It is in this regard that the proposed pizzeria 'take-away' is challenged and requires further consideration. Understandably, this is a weighted concern for the attention of the Planning Authority.

Having regard to the discussions below, I believe that the proposed pizzeria 'take-away' is sufficiently compliant with these Fingal Co. Dev.

Plan 2011 policies and objectives, and as proposed, would be in accordance with the proper planning and sustainable development of Main Street, Rush.

(3) **Proliferation of ‘take-away’ uses (Compliance with Objective UD07) :**

Whereas in my view, the proposed ‘pizzeria take-away’ use is clearly ‘permitted in principle’ within the ‘TC’ zone, the PA in its planning report (see 11/11/2016) appears to focus directly on the application of Dev. Plan Objective UD07, which in it’s words seeks “to prohibit an over predominance of specific uses – take-aways – in order to maintain an appropriate mix of uses & protect the amenity of the area”. Being ‘permitted in principle’, and without any other locally specific, clearly restrictive development objectives for Rush, I affirm the view that the proposed development cannot reasonably be considered as a ‘material contravention’ of the Co. Dev. Plan 2011 under such circumstances. I am empathetic to the frustration apparent by the applicant in this regard.

Whilst having been vacant for several years, I weight reference to the ‘restaurant’ use permitted at No.28 (ie. the application site) under **Reg.Ref.No. F98A/0517**. Consistent with that use, the proposed ‘pizzeria take-away’ use is clearly ‘permitted in principle’ within the ‘TC’ zone. In and of itself, I advocate that in the public interest, the occupancy of No.28 with the proposed ‘pizzeria take-away’, is a planning gain for the Rush community, rather than its sustained vacancy. Having established that, I believe the reasonable application of Dev. Plan Objective UD07 is to establish whether a grant of planning permission for the proposed ‘pizzeria take-away’, will result in an oversupply or proliferation of such ‘take-away’ uses within the Rush town centre, at the cost of amenity. I share the applicant’s view that this will not be the case.

Firstly, I note that the Rush town centre is linear and strip-like, having evolved around and along Main Street. The consequence of this in my view, with specific reference to the existing approx. 7no. ‘take-aways’ is that they are spread out along Main St. Consequently, their impacts both visually and operationally are diluted. This would clearly not be so, were they all concentrated around a more centrally arranged space within Rush, where economies of scale would be more inclined to magnify the cumulative impacts about which the PA are

understandably concerned. In my view, this is to the advantage of the proposed 'pizzeria take-away' at No.28, and notwithstanding its adjacency to the Chinese 'take-away'. In this regard, the applicant correctly references that this is exactly the case with respect to the 2no. adjacent 'take-away's' at Nos'. 3-5 Main Street, understood operated by the 3rd party objectors' / observers' (see Appendix 1 incl. with the appeal submission). Therefore, spatially, I am inclined to the view that a concentrated, "predominance" of take-away's would not result, consequent of the proposed development and that contrary to the convictions of all of the PA and the 3rd party objectors' / observers', reasonable satisfactory compliance with Dev. Plan Objective UD07 is achieved.

Further, and contrary to the arguments made by the PA and the 3rd party objectors' / observers', I share the conviction argued by the applicant that the franchised 'Apache' pizzeria take-away proposed at No.28 will not result in an oversupply or proliferation of 'take-away' uses within the Rush town centre. Rather, weighted consideration is necessary of the distinction of the proposed pizzeria 'take-away' from the other 'take-aways' existing within Rush. Notwithstanding what is understood as the 3rd party objectors / observers take-away enterprise at Nos'. 3-5 Main Street, no other take-away in Rush, solely provides "a high end pizza" product, and weighting reference to its 'Apache' profile. Certainly, the other take-aways locally, do not appear in the same category as the proposed dev., "with specialised pizza ovens & a consistency of a product", contractually required and publically expected as an 'Apache' franchise. I agree with the observation made by the applicant that whilst an element of 'generalised' take-away exists, most take-aways locally are ethnic foods orientated (eg. Chinese; Indian; traditional fish & chips). Therefore, rather than resulting in oversupply or proliferation, I believe the proposed 'pizzeria take-away' at No.28 Main St., supplements the Rush market with choice (ie. specialist 'Apache' pizza), "for which there is a demand as most of the existing take-aways in Rush provide different types of product". The applicant in my view, correctly distinguishes that the market population for take-away food locally will not change, "just the choice of product".

Having regard to the above, I affirm the view, contrary to the convictions of all of the PA and the 3rd party objectors' / observers', that no oversupply or proliferation of 'take-away' uses within Rush will

result, and that reasonable satisfactory compliance with Dev. Plan Objective UD07 is achieved. In my view therefore, the PA's 'Refusal reason No.1' cannot be sustained. Accordingly, the proposed pizzeria take-away at No.28 Upper Main St., Rush would be in accordance with the proper planning and sustainable development of the area. I recommend to the Board accordingly.

- (4) **Diversification of uses locally (Compliance with Objective UD05) :**
As opposed to Dev. Objective UD07 (ie. mitigation of oversupply / proliferation), complementary Dev. Plan Objective UD05 requires assessment of planning applications "for change of uses in all urban centres on their positive contribution to diversification of the area together with their cumulative effects on traffic, heritage, parking & local residential amenity".

Having regard to discussion at para. 8(3) above, and paras'. 8(5) & (6) below, and to my own informal analysis of existing land use along Main St., Rush, proximate to No.28, at the time of physical inspection, I am satisfied that the proposed change of use at No.28 to 'pizzeria take-away', would indeed positively contribute to a diversification of landuse locally, and in accordance with Dev. Plan Objective UD05. I share the conviction argued by the applicant in this regard. The proposed 'pizzeria take-away' supplements and enables diversification within the Rush market with choice (ie. specialist 'Apache' pizza), for which the applicant substantiates an identified demand.

In my view therefore, the PA's 'Refusal reason No.1' cannot be sustained. Accordingly, I conclude the proposed pizzeria take-away at No.28 Upper Main St., Rush would be in accordance with the proper planning and sustainable development of the area. I recommend to the Board accordingly.

- (5) **Visual Impact / Streetscape – Upper Main Street, Rush :**
The sense of place of Upper Main St., Rush is clearly influenced by the architectural style, design, and general finishing with respect to materials and colouring of the existing generally 2-storey buildings fronting onto Main St. All parties to the current case, in my view, aspire to preserve this amenity. This amenity and assoc. sense of place, can be seen from the photographs attached, taken at the time of physical inspection, and supplemented by the photographs incl. by the applicant in the appeal submission. I have taken note of the established,

contextual scale and pattern of mixed urban, town centre development along both the N & S frontages of Main St., Rush generally, and proximate to No.28 (ie. the application site) specifically. Good approach visibility of No.28 is clearly possible both from the W and E, along Main Street.

In my view, no fatally flawed, negative impact on the existing visual amenity assoc. with the Upper Main St., Rush streetscape will result, consequent of the proposed development. In fact, rather than a negative visual externality, the proposed development would positively contribute to the consolidation of the Main Street streetscape, firstly by way of take-up of an existing long vacant unit, and secondly, by way of the proposed traditional shop front, with retention of the original door and fanlight. In this regard, I share the applicant's weighted reference to the vacancy rate of properties / units all along Main St., Rush, proximate to No.28. Having regard to my own informal land use analysis, unfortunately Main St., Rush is blighted with both vacant and derelict highly visible units. This is consistent with many Irish urban centres. In itself, No.28 exists in a block of 7no. ground floor units of which 3no. are vacant (ie. approx.. 50%). The applicant correctly references that the adjacent block to the E, "is entirely derelict (several properties), although with benefit of planning permission for a mixed use development", and with no certainty apparent as to whether this development will take place.

In itself, I note the applicant's clarification that No.28 has been on the market for occupation / take-up "for a number of years without interest". I regard the use options put by the applicant (ie. 'ongoing vacancy' vs. 'small take-away business offering full & part-time employment') as reasonable comparison. I accept the applicant's advocacy as reasonable that the proposed 'pizzeria take-away' makes effective and efficient use of the limited and restrictive size (ie. 52m²) of No.28, whilst being a landuse consistent with the 'restaurant' use granted planning permission under **Reg.Ref.No.F98A/0517**.

Accordingly, I am inclined to the view of the resultant change in the prevailing Upper Main St., Rush streetscape, consequent of supplementation with the proposed pizzeria 'take-away' at No.28, and subject to agreement with the PA re. both 'material's, colours & textures of all external finishes', as well as an 'Advertising Signage & Illumination Plan' (to be Conditioned), as an improvement, positively

contributing to consolidation of the streetscape, and would not be overbearing on the common scale and uniformity of the immediate adjacent properties, and the Rush town centre locality in context, with no obvious disproportionate negative impact on the prevailing residential amenity apparent. I believe that the proposed development would be in accordance with the proper planning and sustainable development of the area

(6) **Residential Amenity Impact :**

In as much as I understand amenity values as referring to those natural or physical qualities and characteristics of Upper Main St., Rush, that contribute to residents appreciation of its pleasantness, liveability and its aesthetic coherence, I am of the view that the proposed new 'take-away' at No.28, will have no serious, or disproportionate negative impact on this prevailing residential amenity. In this regard, I weight reference to the fact that excepting for the 1no. residential unit / apartment above the application site, and itself linked to the existing Chinese restaurant / takeaway, immediately adjacent the application site – No.28, no other noteworthy residential landuse is clearly apparent, along Main St., proximate to the application site. In this regard, I am inclined to share the views argued by the applicant. However, in the public interest, I believe that should the Board be inclined to grant planning permission, relevant Conditions be attached in mitigation of any reasonable threat to contextual residential amenity (ie. opening hours; litter control / waste management; noise / fumes / odours etc.).

(7) **Requirement for 'Appropriate Assessment' under Article 6(3)of the Habitats Directive 92/43/EEC:**

I have had reference to Article 6(3) of the Habitats Directive (Council Directive 92/43/EEC). Having regard to the DoEHLG Directive for Planning Authorities', together with the provisions of Article 6(3); the location of the application site at No.28 Upper Main St., Rush, proximate to Natura 2000 sites within Fingal Co. and beyond; to the nature and scale of the 'change of use' – development proposed; to the nature of the receiving environment, namely an urban and fully serviced location; and to the separation distance and absence of a clear direct pathway to the nearest Natura 2000 sites, 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. RECOMMENDATION :

Having regard to all of the above, I recommend that permission be GRANTED in accordance with the following Schedules.

REASONS AND CONSIDERATIONS

Having regard to the Zoning Objective "TC" for the area and the pattern of urban development in the area, it is considered that, subject to compliance with Conditions set out in the Second Schedule, the proposed development would be in accordance with the relevant provisions of the Fingal Co. Dev. Plan 2011-2017; would not seriously injure the amenities of the Main Street, Rush neighbourhood, or of the property in the vicinity; would not be prejudicial to public health; and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

- (1) The development shall be carried out in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.
Reason: In the interest of clarity, and that effective control be maintained.

- (2) The proposed development shall only be used as a 'pizzeria takeaway'.
Reason: In the interest of clarity and in the interest of residential amenity.

- (3) The opening hours of the 'pizzeria takeaway' shall be agreed in writing with, the Planning Authority prior to commencement of development. In this regard, the 'pizzeria takeaway' shall not be operated between 24h00 / midnight and 07h30 on any day.
Reason: In the interest of clarity and in the interest of residential amenity.

- (4) Details including samples of the materials, colours and textures of all the external finishes to the building, shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. Such details to be submitted in the form of trade brochures/ details and which shall clearly indicate the colour and type of material.
Reason: In the interest of orderly development and the visual amenities of the area.
- (5) The scheme for the effective control of mechanical noise, fumes and odours from the premises shall be submitted for the written agreement of the Planning Authority, prior to the commencement of development.
Reason : In the interests of general amenity and health and safety.
- (6) 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 order to safeguard the civic amenities of the area.
- (7) The Developer shall comply in full with the requirements of the Fingal Environmental Health Officer, as set out in the report dated 19th October 2015.
Reason: In the interest of environmental health.
- (8) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.
Reason: In the interest of public health and to ensure a proper standard of development.
- (9) Prior to the commencement of development, the applicant shall submit a formal 'Advertising Signage & Illumination Plan' to the Planning Department of Fingal County Council for written agreement prior to Commencement Notice stage. This plan shall, inter alia, include detail demonstrating compliance with the provisions of the Fingal Co. Dev. Plan 2011 at Chapt. 7 – 'Advertising Signage' & 'Shop Fronts', read in conjunction with Specific Objectives' UC19 – UC26. In this regard, specific attention is required re.:

- (a) the placement of 'Advertising Signage';
- (b) the internal illumination of proposed 'Advertising Signage' (ie. whether to illumine the featured names and motifs only);
- (c) the external illumination, or not, of proposed 'Advertising Signage'; &
- (d) restriction of the illumination of the proposed 'Advertising Signage' to during the hours that the proposed development, is open to the public; &.

Reason: In the interests of clarity and orderly development, and of the protection of visual and residential amenity.

- (10) No advertising or other publicity material shall be posted in or around the front façade of this development including that which is exempted development under the Planning and Development Regulations 2001 (as amended) without the prior grant of Planning Permission by the Local Authority or from An Bord Pleanála following appeal.

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

- (11) No music or other amplified sound shall be broadcast externally from the proposed development.

Reason: To protect the amenities of the area

- (12) 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Leslie Howard
Planning Inspector
04/03/2016