

# An Bord Pleanála



## Inspector's Report

**PL06F.246045**

**DEVELOPMENT:-**

The change of use of ground floor from retail use to café/restaurant use at Unit 1 Weavers Row, Clonsilla, Dublin 15.

**PLANNING APPLICATION**

**Planning Authority:** Fingal County Council  
**Planning Authority Reg. No:** FW15A/0112  
**Applicant:** Janice Devaney  
**Application Type:** Permission  
**Planning Authority Decision:** Grant

**APPEAL**

**Appellant:** Rocco Tiedt  
**Types of Appeal:** 3<sup>rd</sup> Party -v- Grant  
**Observers:** None  
**DATE OF SITE INSPECTION:** 10<sup>th</sup> May, 2016.

**INSPECTOR:** Paul Caprani

## **1.0 INTRODUCTION**

PL06F.246045 relates to a third party appeal against the decision of Fingal County Council to issue notification to grant planning permission for a change of use of ground floor from retail use to café/restaurant use. Concerns are expressed that the proposed use of the café/restaurant would give rise to issues in respect of residential amenity. The overall design would adversely impact on the character of the village of Clonsilla.

## **2.0 SITE LOCATION AND DESCRIPTION.**

The subject site is located centrally within Clonsilla Village on the south side of Clonsilla Road directly opposite its junction with the Shelerin Road. The subject site forms the western end of a block of four terraced buildings. The subject site fronts directly onto the southern side of the R121 (Clonsilla Road). A small neighbourhood centre is located on lands to the immediate west of the subject site and this includes an area of surface car parking along the western boundary of the site.

Lands to the east of the site accommodate a row of residential dwellings beyond which Orchard Avenue runs southwards from the Clonsilla Road. It serves a small residential enclave.

Clonsilla Village is primarily based along the southern side of Clonsilla Road. An array of land uses are accommodated along this section of roadway including single storey traditional residential cottages some of which accommodate commercial uses together with more recent developments accommodating commercial lands uses and services. There are a number of fast food outlets in the vicinity, including a Chinese and Indian take-away. Other commercial developments include convenience stores, pharmacies, restaurants, public houses as well as individual dwellings. Lands on the northern side of Clonsilla Road accommodate larger scale suburban residential type development.

The subject site forms the western end of a block of four buildings. Three adjoining buildings accommodate small two-storey residential dwellings. The subject site is also two-storey with a slightly lower roof profile in the adjoining structure. Until recently, the subject site accommodated an Estate Agents with office development at first floor level. This use has been recently vacated and the site is currently vacant. A small separate structure is located to the rear of the main

premises. This building previously accommodated a small flower shop but this premises has closed also. A small laneway runs along the western boundary of the site this leads to a dwelling to the rear. A pedestrian crossing on the Clonsilla Road is located adjacent to the subject site.

### **3.0 PROPOSED DEVELOPMENT**

Planning permission is sought for a change of use from an existing unoccupied retail unit to use as a café/restaurant and associated internal and elevational alterations/reconfiguration. The original drawings submitted with the application indicated that a large portion of the ground floor area was given over to food preparation and counter facilities and only a small residual area to the front of the building was to be used as a café/restaurant sit down area (providing a seating area for approximately 6 patrons). However additional plans submitted with the application (dated 1<sup>st</sup> December, 2015) indicated a larger portion, approximately 50% of the floor area was to be given over to café/restaurant sit down area with public toilets and the counter and food preparation area was restricted to the rear part of the ground floor. The existing detached building to the rear is to be used as a storage area.

### **4.0 PLANNING AUTHORITY'S DECISION**

The planning application was lodged on 17<sup>th</sup> August, 2015. The application form indicated that the gross floor area of the building on site amounts to 144 square metres. The proposed café/restaurant amounts to a total area of 61 metres. The planning application form also indicates that the applicant is the current owner of the building.

A planning statement submitted with the application states that the ground floor was previously used by an estate agents. The café/restaurant seeks to provide for "quick grab and go food" whilst the café will also provide for longer sit down dining facilities including sit down coffee and pastries, as well as lunches and dinners. The opening hours are proposed from 8 a.m. to 11 p.m. Details of proposed signage associated with the new unit has not been fully agreed and as such the details and letterings of the signage is to be confirmed by way of a condition should planning permission be forthcoming.

#### 4.1 Planning Authority Initial Assessment

A report from **Irish Water** states that there is no objection subject to conditions.

A report from the **Water Services Division** likewise states that there is no objection subject to 2 conditions.

**An observation** from the **current appellant** has been submitted, the contents of which has been read and noted.

A report from the **Transportation Planning Section** states that the Section is satisfied that there is no intensification associated with the proposed use and therefore there is no objection to the proposed development.

A report from the **Principal Environmental Health Officer** recommends that planning permission be granted subject to 10 conditions.

The initial **Planning Report** expressed concerns that the design and layout of the proposed establishment is more akin to a take-away rather than a sit down café/restaurant. It is recommended that additional information be submitted in respect of four issues.

- The Planning Authority is of the opinion on the basis of the submitted floor plans, that the primary usage of the proposed development is for the preparation, sale and consumption of food off the premises. The applicant is requested to clarify matters in this regard.
- If there is a take-away element to the proposal either as a primary use or an ancillary use the applicant is requested to submit new notices and newspaper advertisements.
- The applicant is requested to submit a revised floor plan which clearly indicates the area associated with the take-away facility.
- Further details are requested in relation to noise insulation measures, details of proposed ventilation extraction, and details of external waste disposal. Details are also required for an intervening ventilated lobby for the toilet, siting of any external located

refrigeration and air conditioning motors and further details in relation to washing and cleaning facilities within the layout.

## 4.2 Further Information Submission

In relation to the first issue, it is stated that the primary use of the premises is first and foremost as a seated café and restaurant with ancillary take-away in the form of coffees/pastries etc. The proposed development is not a take-away in the form of an Indian/Chinese take-away that operates in the afternoon until late at night. The take-away element will be associated with take-away coffee. Similarly food from the restaurant may be taken away, as is standard practice within established restaurants. The applicant is modelling the proposal on the 'Milano's' Italian restaurant or "Il Café de Napoli" which provide for both coffee and pizza collection.

In response to Issue No. 2 it is stated that the proposed development is for a restaurant and café and is not a take-away for consumption of food off the premises such as a Chinese or Indian take-away. The proposed development is for a dine-in restaurant/café where coffee/pastries can be taken to go if required. Revised drawings were submitted indicating the new layout.

In respect of the issues raised Item No. 4 of the Planning Authority's request for additional information revised Drawing 18/216/PL01 Rev A clearly sets out all the requirements in respect of environmental health and safety (ventilation, noise insulation etc).

## 4.3 Further Assessment by Planning Authority

A further observation from the **current appellant** was submitted in respect of the revised proposals, the contents which have been read and noted.

A further report from the **Environmental Health Officer** recommends conditions to be attached in relation to deliveries and noise limits.

A further **Planner's Report** notes the further information submission and notes that the proposed development will be a sit down café/restaurant with an ancillary take-away which is deemed to be appropriate in terms of strengthening the village fabric and character within Clonsilla. It is therefore recommended that planning permission

be granted for the proposed development. In its decision dated 1<sup>st</sup> December, 2015 planning permission was granted subject to 12 conditions.

## **5.0 PLANNING HISTORY**

Details of one application is attached. Under Reg. Ref. FW15A/0057 planning permission was sought on the 27<sup>th</sup> April, 2015 for a change of use from retail use at ground floor level to take-away use with internal alterations on the subject site. On 18<sup>th</sup> June, 2015 this application was withdrawn.

The planning statement submitted with the application also makes reference to Reg. Ref. F96A/0863 where planning permission was granted for a change of use from the existing house to retail use at ground floor level and office use at first floor level together with a two-storey extension to the side and rear. Details of this application are not contained on file.

## **6.0 GROUNDS OF APPEAL**

The appeal was submitted by Mr. Rocco Tiedt. The grounds of appeal are outlined below.

It is stated that the take-away use will not preserve the social character and amenity of the area. Take-aways in general are frowned upon because of their association with anti-social behaviour, litter, noise, smells and health problems. The subject site is adjacent to a terrace of residential dwellings and there are more dwellings to the rear.

Condition No. 2 which requires the take-away element to be ancillary to the permitted main use on site was never referred to in the site or newspaper notices.

Any reference to Italian type restaurants in the city centre (such as Milano's or Café De Napoli) are not relevant or appropriate in the village type setting in the case of the current application.

There is no suitable road parking on Weavers Row to facilitate the proposed development. The proposal will be give rise to traffic congestion and a traffic hazard. It is suggested that the proposed development will inevitably evolve into a take-away notwithstanding the

applicant's proposal to setback the counter area in order to provide some extra seating. References are made to other restaurants which started out as sit down restaurants only to subsequently be turned into chipper/take-away facilities. It is misleading to suggest that the proposed development will not be a take-away.

It is suggested that the floor area is too small to be a restaurant with 16 seats as shown on the revised plans. The proposal will also result in an overprovision of restaurant/take-away uses in Clonsilla Village.

It is argued that the proposed development will result in a severe traffic hazard being located at the junction of two busy roads. The siting of the property as a junction results in extreme traffic hazard. The Road Safety Authority leaflet is submitted with the grounds of appeal. No consideration has been given to the fact that the subject site is located at a signalised junction.

Reference is made to the planning history associated with the subject site and the various uses which the subject site has accommodated. It is also noted that bollards were removed from the front of the building. This has enabled cars to manoeuvre in and out of the property thereby exacerbating traffic safety concerns.

## **7.0 APPEAL RESPONSES**

### **7.1 Applicant's Response to Grounds of Appeal**

It is stated that the appellant is the owner/occupier of the Spice of India Restaurant and Take-away which is located in close proximity to the subject site (No. 5 Weavers Row, Clonsilla – less than 100m away). It is suggested that the grounds of appeal are motivated by commercial interests.

In relation to the description in the site notices, it is stated that Fingal County Council, being the competent planning authority determined that the site notice, newspaper notice and planning application details were fully in accordance with the requirements set out in the Regulations. The proposal will give rise to approximately 10 jobs and will be a welcome addition to the village of Clonsilla. The proposed café/restaurant will not result in anti-social behaviour, litter, noise or smells. Appropriate management of the restaurant will ensure that these issues do not arise and these are set out in the response submission.

The previous application (FW15A/0057) was not withdrawn due to the opposition to the proposal, but rather because an operator for a café/restaurant facility as opposed to a take-away facility was identified. While the applicant in this instance made reference to two Italian type restaurants in the city centre it is stated that there are many examples of similar facilities in towns and villages similar to Clonsilla where sit down cafes and restaurants are provided. There are large residential areas in the vicinity of Clonsilla which would benefit from a café/restaurant.

The appellant's assertion that the proposed development is too small to be financially viable is completely unfounded and inaccurate.

While the applicant argues that there is oversupply of restaurants/take-away premises in the immediate vicinity, it is suggested that the current proposal provides an alternative use to the predominantly take-away uses in the surrounding area.

The argument that the proposed development constitutes a severe traffic hazard is over exaggerated and there is no evidence to support this contention. While the site is located in the vicinity of a junction it is a controlled junction with pedestrian crossings. The proposal provides two surface car parking spaces in accordance with the requirements of the Development Plan. In terms of deliveries it is noted that there would only be 1 to 2 deliveries a week. With the removal of bollards outside the front of the premises there have been no accidents reported and the Transportation Department has no concerns in respect of traffic.

## **7.2 Planning Authority's Response to the Grounds of Appeal**

It is stated that the proposed development is clearly a sit down style café/restaurant. A large public area for seating is provided. The take-away sales area is restricted to a small area of the counter to the rear of the café/restaurant area. The provision of toilets on site further facilitates the use of the proposed development as a sit down restaurant. The proposal is significantly different than that applied for in the first instance. The proposed take-away element is considered to be entirely ancillary and incidental to the proposed restaurant on site.

The proposed development is fully in accordance with the "TC" zoning objective for the site. The development of the proposed café at this location will contribute positively to the area, thereby protecting and



improving the character and the facilities of the village. The impact of the proposed development on the amenities of the area is adequately addressed by conditions which limit hours of opening, deliveries, noise emissions associated with the development.

In terms of traffic there is no intensification of use and therefore there is no requirement for further parking provision in accordance with the requirements of the Development Plan.

### **7.3 Further Submission from the Appellant**

It states that there was no malice on behalf of the appellant in lodging the appeal in question. The applicant is fully aware that an appeal cannot be formulated on competition grounds. The response goes on to outline the applicant's involvement in the Indian restaurant No. 5 Weavers Row. It states there have been no complaints about this premises in terms of planning. The original appeal submission to An Bord Pleanála should be taken on its merits and the points set out in the original submission are reiterated.

### **8.0 DEVELOPMENT PLAN PROVISION**

The site is governed by the policies and provisions contained in the Fingal County Development Plan 2011-2017. The subject site is zoned TC (Town Centre) with the objective to "*protect and enhance the special physical and social character of the town and district centres and to provide and/or improve urban facilities*". A café/restaurant use is permitted in principle under this zoning objective.

In terms of the Clonsilla Urban Centre Strategy, this strategy was adopted by Fingal County Council in 2008 and it seeks to create an identifiable village core which will provide a suitable location for appropriate mixed use retail/office/residential/service development. The Urban Centre Strategy notes that there is an opportunity for consolidation of the existing village core in developing pockets of undeveloped land.

In terms of car parking, the standards set out in Table TO3B for café/restaurant is one space per 10 square metres of dining area.

## **9.0 PLANNING ASSESSMENT**

I have read the entire contents of the file and have had particular regard to the issues raised in the grounds of appeal and I consider the critical issues before the Board in determining the application and appeal before it are as follow:

- Motivation of Appeal
- Zoning Provisions
- The Nature of the Proposed Use – Restaurant or Take-away
- Impact on Surrounding Amenity
- Traffic Considerations

### **9.1 Motivation of Appeal**

The applicant's response to the grounds of appeal suggest that the motivation behind the objection is solely based on commercial competition. The Board is not in a position to determine whether or not the motivation behind the appeal in question specifically relates to restricting the competition for such uses in the area. The appellant in the grounds of appeal has raised planning issues such as the appropriateness of the proposed use to the subject site, potential adverse impact on surrounding amenity by virtue of noise, anti-social behaviour etc., and potential adverse impacts in terms of traffic. Therefore and notwithstanding the fact that the appellant in this instance is a proprietor of a take-away facility in the vicinity of the subject site, the appeal has nevertheless raised pertinent planning issues in respect of the proposed application before the Board. As such I consider the appeal to be valid.

### **9.2 Zoning Provisions**

The zoning relating to the site is in my view a very pertinent consideration in determining the application and appeal. The subject site is zoned for town centre land uses. The zoning objective seeks to protect and enhance the special physical and social character of the town and district centres and provide and/or improve urban facilities". Key to the vision for this area is to build upon the accessibility, vitality and viability of the urban centre. The land use zoning objective seeks to "consolidate town centres with an appropriate mix of commercial, recreational, cultural, leisure and residential uses". It is noted that café/restaurant are uses which are permitted in principle under the

zoning objectives. It is therefore apparent that the development plan seeks to specifically accommodate café and restaurant uses under this land use zoning provision.

The Board should also bear in mind that while a change of use is sought under the current planning application, it is from one commercial type activity to another. It is clear therefore that a commercial use has already been established on the subject site and the site has accommodated a number of retail uses, the most recent of which was that of an estate agent. A precedent therefore has been set in respect of commercial uses on the subject site.

### **9.3 Nature of Proposed Use, Restaurant or Cafe**

A major issue raised in the grounds of appeal is to whether or not the proposed use in question amounts to a sit down café/restaurant use or whether or not the proposal constitutes a hot food take-away facility. There are a number of existing fast food/take-away facilities in the immediate vicinity including the appellant's Indian take-away, a Chinese take-away and a more traditional Fish and Chip shop within the village centre of Clonsilla. The original drawings submitted with the application indicated the proposed use in this instance was more akin to a take-away facility as opposed to a sit down restaurant. This is borne out by the layout of the original proposal whereby the majority of the ground floor was given over to food preparation while limited amounts of sit-in seating was available. Under the revised application however the internal configuration of premises was altered whereby a significant portion of the premises was given over to sit down facilities. Approximately 30 square metres or 50% of the ground floor has been given over to a sit down area which can accommodate a minimum of 16 patrons.

While take-away services are also facilitated within a restaurant, it appears from the layout that such services are very much ancillary to the overall use proposed. It is not unusual or inappropriate that a restaurant facility would have a take-away element associated with it. The fact that customer toilets are also provided within the layout would also support the conclusion that the main element of the proposed incorporates a sit down restaurant.

Finally I note that Condition No. 3 of Fingal County Council issue notification to grant planning permission states that the proposed café/restaurant and ancillary take-away shall not open outside the hours

of 8 a.m. to 10.30 p.m. Monday to Friday and 10 a.m. to 10.30 p.m. Saturday and Sunday. Again the opening hours stipulated in the planning permission would not lend itself to a fast food take-away as such facilities tend to incorporate opening times to extend beyond those associated with public houses.

I am therefore satisfied that the nature of the proposed use is that of a restaurant with an ancillary take-away element as opposed to vice versa. I consider that such a use would be appropriate for a town centre zoning.

#### **9.4 Impact on Surrounding Amenity**

Having regard to the nature of the opening hours and the fact that the proposed development constitutes a sit-down restaurant facility, as opposed to a fast food take-away, I consider that this will lessen the potential to adversely impact on residential amenities of the area. While I note that the buildings to the immediate east of the subject site accommodate residential dwellings, I reiterate that the subject site is zoned for town centre use which can include commercial restaurant facilities. I further note that existing commercial uses are located in the vicinity of the site and these include a Centra, a post office, an existing restaurant and a hardware outlet to the rear of these uses. Commercial uses and the traffic associated with these uses have therefore been firmly established in the vicinity of the site. I reiterate that the site already has the benefit of an extant permission for commercial and retail uses on site.

Having regard to the nature of uses proposed, together with the opening time restrictions, I do not consider that the proposed development would give rise to excessive amenity issues in terms of noise and anti-social behaviour. It should be noted that the Clonsilla Road is a busy regional and distributor route serving large areas of residential, commercial and institutional uses both to the north and south of the route. The area surrounding the subject site is characterised by a busy road with high traffic volumes together with high ambient noise levels associated commercial activities. I do not consider that the proposed use at this location will significantly add to noise levels in the vicinity.

The nature of the proposed use, being a restaurant as opposed to a take-away, will not in my opinion give rise to any potential for anti-social behaviour. The litter issues that may arise in respect of a take-away development are also not strictly pertinent to the current application

before the Board in my opinion. Potential adverse impacts in terms of litter can be adequately addressed by appropriate management measures in providing and emptying litter bins etc. in the vicinity of the subject site.

Finally in relation to the issue of odour, the applicant has submitted details of ventilation and it is proposed to incorporate a new extraction duct on the western elevation of the premises and this should adequately address any issues in respect of odour. I am therefore satisfied that the proposed development will not give rise to any significant or material impact on residential amenity in the area.

## **9.5 Traffic Considerations**

Concerns is expressed that the proposed development is located adjacent to a busy junction at the Clonsilla Road and Shelerin Road. The Board will note that the proposed restaurant use generates the requirement for 3 car parking spaces which can be accommodated on the subject site. The traffic generated by the proposed restaurant use will be negligible in terms of overall traffic volumes on the Clonsilla Road. Furthermore the subject site is located within the village centre and it could be reasonably expected that many of the trips to the restaurant would be made on foot. As already stated there are a number of commercial land uses in the vicinity of the site and car parking is available to facilitate these uses. This results in a situation where vehicles are turning on and off the Clonsilla Road in the vicinity of the site. The fact that the site is located in a 50 kilometre area speed zone and the fact that there are pedestrian facilities in the immediate vicinity of this subject site would in my view assist controlled and systematic pedestrian vehicular segregation which would be appropriate from a road safety perspective.

Finally in relation to traffic I note that sightlines in both directions for traffic egressing from the subject site are adequate. I reiterate that the subject site is zoned for commercial development and commercial developments by their nature will give rise to increased trip generation. However I am satisfied in this instance that any trip generation associated with the proposed development would be acceptable having regard to the location of the site in the context of the surrounding road network. I therefore do not consider that planning permission should be refused on traffic grounds.

## **11.0 Appropriate Assessment**

Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity of the nearest European 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 and projects on a European site.

## **12.0 DECISION**

Arising from my assessment above I consider the proposed development to be acceptable on the subject site and in accordance with the zoning provisions associated with the site. I therefore recommend that the decision of Fingal County Council be upheld in this instance and that planning permission be granted for the proposed development.

### **REASONS AND CONSIDERATIONS**

Having regard to the town centre zoning objective it is considered that the proposed change of use of ground floor from retail use to café/restaurant use subject to conditions set out below would not seriously injure the amenities of the area or of property in the vicinity, 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 and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 1st of December 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 proposed principle use shall be a sit down café/restaurant. Any take-away element shall be ancillary only to the permitted main use of café/restaurant.

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

3. The café/restaurant shall only open between 0800 hours to 2230 hours Monday to Friday and 1000 hours to 2230 hours on Saturday and Sunday.

**Reason:** In the interest of residential amenity and orderly development.

4. No deliveries shall be taken at or dispatched from the premises outside the hours of 0730 to 2000 hours Monday to Friday, 0800 to 2000 hours on Saturday and 0900 hours to 2000 hours on Sunday.

**Reason:** To protect the amenities of the area and in the interest of the proper planning and sustainable development of the area.

5. The noise level shall not exceed 55 dB(A) rated sound level, as measured at any point along the boundary of the site. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

6. No external amplified music shall play within the curtilage of the site.

**Reason:** To protect the amenities of the area.

7. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the

'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

8. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

9. All discharge from the food preparation area within the kitchen shall be through a suitable grease interceptor.

**Reason:** In the interest of public health.

10. Water supply and drainage arrangements, including the attenuation and 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.

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**Paul Caprani,  
Senior Planning Inspector.**

**26<sup>th</sup> May, 2016.**

**sg**