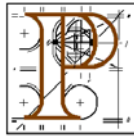


An Bord Pleanála



Inspector's Report

Appeal Reference No:

PL 29N.246239

Development:

Planning permission is sought for the provision of a Pizza Facility within an existing convenience shop in the building on the junction of Dunard Road and Blackhorse Avenue, Dublin 7, which would include a pizza delivery service and pizza take-away service, together with ancillary minor works, comprising purpose-built bin areas and minor changes to the existing ventilation system. The proposed pizza facility will be subsidiary to the retail use of the existing shop.

Planning Application

Planning Authority:	Dublin City Council
Planning Authority Reg. Ref.:	4188/15
Applicant:	Michael Anglim
Planning Authority Decision:	Refuse Permission

Planning Appeal

Appellant(s):	Michael Anglim
Type of Appeal:	First Party - V - Refusal
Observer:	Maureen Kelly
Date of Site Inspection:	24 th May 2016

Inspector:

Tom Rabbette

1.0 SITE LOCATION AND DESCRIPTION

The subject holding is located in Dublin 7 on the north side of Dublin city. The holding is located at the junction of Blackhorse Avenue and Dunard Road in Dublin 7. The application site itself is located towards the centre of the holding. There is a part two-storey/part single-storey structure located on the site. The footprint of the building has 100% site coverage. There is another single-storey structure located on the holding but outside of the application site boundary. This currently accommodates a barber shop. It is attached to the structure on the application site but does not form part of the application. The structure on the application site has commercial and residential uses. However, the main retail unit on the ground floor has not been in use for some time. There is an apartment use at first floor level as well as commercial use.

There is a single storey detached community centre building located on the site adjoining the subject holding to the north. There is a row of two-storey semi-detached dwellings located to the east of the site. There is a public park located across Dunard Road from the subject holding. McKee Barracks is located across Blackhorse Avenue from the holding to the south.

2.0 PROPOSED DEVELOPMENT

The ground floor area of a part two-storey/part single-storey structure on the site is currently unused. It appears that a convenience shop once operated here but is no longer open. The applicant is seeking permission to provide a pizza facility within the existing convenience shop. The pizza facility will include a pizza delivery service and a pizza take-away service. There will also be a waiting area adjacent the pizza preparation area, this waiting area has a stated floor area of 7 sq.m. In addition, there will be a separate seating area to the front of the shop, this seating area has a stated floor area of 12 sq.m. The pizza preparation area has a stated floor area of 26 sq.m. The total shop unit area (including pizza counter, pizza preparation area and seating area) is stated as 182.6 sq.m. The development description states that the pizza facility will be subsidiary to the retail use of the existing shop. The development proposal also includes for a bin storage area.

3.0 PLANNING HISTORY

2044/14: Permission was refused for the following development: *'The incorporation of the existing separate small butchers shop into the adjoining Gala shop by providing a 1.65m wide opening in the existing party wall. The additional space will be used mainly for the sale of hot food for consumption off the premises being ancillary to the main shop use and will include the sale of fish and chips. The works include the provision of a disabled WC and additional ventilation plant on the flat roof. The existing front entrance doors*

to the butchers shop will be closed off for access and will be converted into an alarmed emergency exit.' Permission was refused for two reasons as follows: '1. The development is located in an area zoned Z1. The proposed use of the former Butcher's shop for the sale of hot food for consumption off the premises, is not considered subsidiary to the main use due to the size of the unit. The proposed use is therefore defined as a takeaway and as such is neither permissible nor open for consideration in this zoning and would be contrary to the provisions of the Dublin City Development Plan and to the proper planning and sustainable development of the area. – 2. The externally mounted duct and enclosing security cage at 1st floor level is not integrated into the design of the building and would significantly impact on the visual amenities of the area. The location of the food waste bins in proximity to the adjoining residence would be injurious to the residential amenities of that property. The proposed change of use would therefore be contrary to the requirements of Par.17.26 of the Dublin City Development Plan and to the proper planning and sustainable development of the area.

2964/11: *Permission was refused for the following development: 'Planning permission is sought for the change of use of a small butchers shop to use as a take away. The changes include the provision of a new door at the rear and additional ventilation wall louvres at high level on the side elevations.'* Permission was refused for two reasons: '1. The development is located in an area zoned Z1. The proposed use is for the sale of food solely for consumption off the premises. The proposed use is therefore defined as a takeaway and as such is neither permissible nor open for consideration in this zoning and would be contrary to the provisions of the Dublin City Development Plan and to the proper planning and sustainable development of the area. – 2. Having regard to the proximity of the proposed development to adjoining residences and to the predominantly residential nature of the surrounding area, it is considered that the proposed takeaway is likely to create a nuisance by reason of noise, general disturbance and night-time activity and that this would be injurious to the residential amenities of the adjoining property and of property in the vicinity. The proposed change of use to Takeaway would therefore be contrary to the requirements of Paragraph 17.26 of the Development Plan and would be contrary to zoning objective for the site and to the proper planning and sustainable development of the area.'

0633/92: *Permission was granted in 1992 for the following development: 'Amendments to the previously approved neighbourhood shops consisting of (A) Change of use and amendments of first floor area from offices and surgery to hairdresser surgery and residential unit (B) Provision of additional shop unit at ground floor level.'* The decision was subject to a number of conditions, condition nos. 6 & 7 read as follows: No. 6: 'No part of the premises shall be used for any of the following purposes: (a) as a fried fish shop or a shop for the sale of hot food for consumption off the premises. (b) as a shop for the sale or display for sale of motor vehicles other than

bicycles. REASON: To protect the amenities of the area.' No. 7: 'The use of the retail part of the premises shall not extend beyond 11 p.m. nightly. REASON: To protect the amenities of residential properties in the vicinity.'

4079/99: Permission granted for change of use of existing hair-dressing salon at first floor to a two bed apartment and relocation of shop entrance at ground floor from Dunard Road to Black Horse Avenue.

1407/97: Permission granted for single storey extension to the front of the existing butchers shop.

0519/91: Permission granted for the construction of 2 storey shop/newsagency offices and surgery development.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

Planner's Report dated 10/02/16:

- Refusal recommended.

Engineering Department - Drainage Division Report dated 21/01/16:

- No objection subject to conditions.

Observations/objections: An observation on file addressed to the p.a. makes reference to the following: existing anti-social behaviour; previous deli use lead to litter issues, and impact on property value.

4.2 Planning Authority Decision

By Order dated 11/02/2016 the planning authority decided to refuse permission for the proposed development for two reasons as follows:

- 1. The development is located in an area zoned Z1 where the objective is 'to protect, provide and improve residential amenities'. It is considered that the proposed use of part of an existing shop (circa 30% floor space) for the sale of hot food for consumption on and off the premises, would constitute a significant element in the use of the shop premises which in turn would result in a material change of use of the shop premises to shop / pizzeria / takeaway use. The proposed use, which includes a delivery service, is neither permissible nor open for consideration under the land use zoning objective pertaining to the area and therefore is contrary to the provisions of the Dublin City Development Plan and to the proper planning and sustainable development of the area.*
- 2. The proposed development, by virtue of its close proximity to residential development would impact adversely on the day time and night-time*

residential amenities of said residential property by reason of noise and disturbance. The proposed development would therefore be contrary to Section 17.26 of the 2011 City Development Plan which sets out development standards for Takeaway uses. In this regard, the proposed location for a pizza delivery / takeaway use in this small neighbourhood shop is inappropriate and would diminish the residential amenities of nearby dwellings. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

5.0 GROUNDS OF APPEAL

Michael Anglim, Glendoher Avenue, Rathfarnham, Dublin 16.

The contents of the first party's grounds of appeal can be summarised as follows:

- The location of the development is at the existing shop premises, which closed in 2015 due to insufficient turnover, at the junction of Dunard Road and Blackhorse Avenue.
- A once viable local shop is being stymied from moving with the times.
- It was forced to close because it is prevented from selling and delivering pizzas, as a subsidiary part of its overall shop operation, due to an out-of-date planning condition imposed in 1992 which prevents the selling of hot food for consumption off the premises.
- The purpose-built shop, without the pizza operation, cannot compete with the new Tesco superstore about 500 m up the road.
- The closed-up shop is a blight on the urban landscape located within 2 miles of the city centre.
- It is a purpose built shop with a purpose built car park.
- It should be given a chance to survive.
- The proposed subsidiary pizza use is a non-material change.
- Appropriate regard to the subsidiary nature of the proposal relative to the main retail use of the shop was not given by the p.a.
- Delivery of food has become the norm for the majority of restaurants and cafes, generally with planning permission neither being sought nor granted.
- Almost universally today, Spar, Centra, Londis and similar shops serve hot food for consumption off the premises for the convenience of their customers and to ensure the continued viability of their premises.
- The proposal is for a modest sized pizza facility as a subsidiary use.
- It is minor in scale, nature and character.
- The shop had a hot deli counter and seating area and had been operational from 1991 to 2015.
- No material change of use is proposed.
- The existing 'shop' premises will continue to be a 'shop' since it will continue to satisfy the requirements of the definition of 'shop' as per

the P & D Regs. after the implementation of the proposed development.

- The only reason permission was applied for at all was because in the original permission in 1992 a condition was imposed requiring that no part of the premises be used as a fried fish shop or a shop for the sale of hot food for consumption off the premises.
- The continued existence of a closed shop is not in the interests of the common good or the visual and residential amenities of property in the vicinity.
- The pizza use will be subsidiary to the main retail use of the existing shop, which will reopen when the pizza use commences.
- The proposed pizza facility will occupy 14% (26 sq.m.) of the total shop area (182 sq.m.) or 17% of the area of retail sales (153 sq.m.).
- Pizza provision facilities in a purpose-built neighbourhood shop are good neighbours.
- The proposed subsidiary use will not cause undue noise or disturbance and will be in harmony with the objective of protecting the amenities of residents in the area.
- The proposed development includes the provision of a new purpose-built bin storage facility to be located between the shop premises and the adjoining barber/nail salon, this will help to ensure that there will be no adverse impact on residential amenities of property in the area.
- The Board is requested to grant permission for the proposed minor development.
- The submission includes a letter from Mervyn Feely & Associates, Chartered Surveyors, Estate Agents & Valuers, addressed to the applicant.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority response

There is no response on file from the p.a. at time of writing.

6.2 Observations on grounds of appeal

Mrs Maureen Kelly, Blackhorse Downs, Blackhorse Avenue, Dublin 7.

The contents of the observer submission from the above can be summarised as follows:

- Opposed to the pizza facility being opened.
- When the shop was open the observer was constantly having to clean up litter that was thrown into her front garden.
- She has had her windows smashed on numerous occasions by gangs who would hang around outside the shop.
- Refers to anti-social behaviour around the shop that existed previously.

- Another fast food facility is not needed in the area, McDonalds is located just 5 minute walk away.
- The observer refers to other food outlets in the area.
- A pizza facility would devalue her property.
- The pizza facility should be rejected.

7.0 POLICY CONTEXT

The operative plan for the area is the Dublin City Development Plan 2011-2017. The application site and holding is zoned Objective Z1 – ‘*To protect, provide and improve amenities*’ as indicated on Map E of the CDP. Lands adjoining to the north and east are also zoned Objective Z1. The park to the west across Dunard Road is zoned Objective Z9 – ‘*To preserve, provide and improve recreational amenity and open space & green networks*’. Other sections of the CDP that are directly relevant are:

- S.15.4 ‘Permissible And Non Permissible Uses
- S.15.10.1 ‘Sustainable Residential Neighbourhoods – Zone 1’
- S.17.26 ‘Takeaways’
- Appendix 29 – ‘Land-Use Definitions’

Copies of above extracts are in the attached appendix for ease of reference for the Board.

8.0 ASSESSMENT

- 8.1 There is a standalone, part two-storey, part single-storey structure on the site that accommodates commercial, retail and residential uses. It appears that the ground floor area of the subject building was used as a convenience shop but ceased trading. It is stated on file that a supermarket development located to the north of the site adversely impacted on the economic viability of the shop. The applicant is now seeking permission to incorporate a pizza sales facility along with the retail use in the currently unused ground floor retail unit. It is proposed to sell pizzas for consumption off the premises through both a delivery service and a takeaway service. The submitted drawings indicate both a waiting area and separate seating area in the retail unit. It is reasonable to assume that the seating area indicated on the proposed floor plan is to facilitate the consumption of pizzas on the premises also.
- 8.2 It is repeatedly stated by the applicant that the proposed pizza facility will be subsidiary to the retail use of the existing shop. This is justified by reference to the percentage of the overall floor area of the retail unit that will be occupied by the pizza facility proposed. The pizza sales facility is referred to as minor in nature, scale and character. The applicant states that the proposed development is essential to the ongoing viability of the shop. The applicant also argues that no material change of use is being proposed, the existing ‘shop’ premises will continue to be a ‘shop’, it will continue to satisfy

the requirements of the definition of a 'shop' as held in Article 5(1)(d) of the P. & D. Regs.

- 8.3 It is stated in a letter from the applicant's agent to the p.a. (from Douglas Hyde & Associates, dated 14/07/15) that the local shop "has a hot food deli counter and seating area and had been operational from 1991 until about five months ago."
- 8.4 Under 0633/92 permission was granted in 1992 for change-of-use and amendments to part of the first floor. That permission also related to an additional shop unit at ground floor level. That decision was subject to a number of conditions one of which prohibited the sale of hot food for consumption off the premises. Under 2964/11 permission was refused for a change-of-use of a butchers shop for use as a takeaway. The takeaway in that application was to be accessed directly off the car park forecourt area. The p.a. cited, *inter alia*, the land use zoning objective and residential amenity in the reasons for refusal. Under 2044/14 permission was refused for the incorporation of a unit into the adjoining main shop unit and to use this incorporated unit for the sale of hot food for consumption off the premises, including the sale of fish and chips. This new use was to be accessed via the existing shop unit. The p.a. cited, *inter alia*, the land use zoning objective and residential amenity in the reasons for refusal. In both 2964/11 and 2044/14 the unit that was to be used for the sale of hot food is located on the north side of the current application site, it is currently used as a barbers shop and is not subject of the current application. The pizza areas subject of this current application are located within the main retail unit.
- 8.5 Notwithstanding the applicant's submission, I do consider that the proposed pizza facility does constitute a 'takeaway' as defined in Appendix 29 'Land-Use Definition' of the CDP (p. 407) as the development description clearly refers to both a pizza delivery service and takeaway service, thus facilitating 'the sale of hot food for consumption off the premises'. I note with reference to the CDP that there are a number of land use zoning objectives where 'takeaways' are 'permissible in principle' or 'open for consideration' e.g. Z3, Z4, Z5, Z7, Z10 and Z14. However, Z1 is not one such land use zoning objective where a 'takeaway' is 'permissible in principle' or 'open for consideration'. In section 15.4 'Permissible and Non Permissible Uses' of the CDP it states "*Uses not listed under the permissible or open for consideration categories in zones Z1, Z2, Z8, Z9, Z11 and Z15 are deemed not to be permissible in principle.*" The site is located on Z1 zoned land, the land use zoning objective is 'to protect, provide and improve residential amenities'. A 'takeaway' is not a permissible use nor is it open for consideration on such a zoning. I therefore consider that the proposed development would be contrary to that land use zoning objective.
- 8.6 Nor do I accept the applicant's argument that the pizza facility would be 'subsidiary' to the retail use of the existing shop. It may be subsidiary in terms

of floor area but there is no evidence on file to indicate that it would be subsidiary in terms of trade. The fact that the applicant's submission states that the shop is not viable with the current range of products and that it needs some form of takeaway and delivery service to survive, would suggest the pizza facility would need to be more than subsidiary.

- 8.7 (Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, I consider that 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.)

9.0 CONCLUSIONS AND RECOMMENDATION

I am of the opinion that both sections 15.4 and 15.10.1 of the CDP are clear, 'takeaways' are neither permitted uses or open for consideration on Z1 zoned lands. This is not an oversight but a deliberate and conscience planning objective adopted by the authority. As the land use zoning objective is reasonable in my opinion, the planning objective should be upheld. I recommend permission be refused for one reason as indicated below.

REASONS AND CONSIDERATIONS

The application site is located within an area where the land-use zoning objective is Z1 – 'to protect, provide and improve residential amenities', as indicated on Map E of the Dublin City Development Plan 2011-2017, this objective is considered reasonable. The proposed development includes for a 'takeaway' use as defined in Appendix 29 of the Development Plan. Such a land-use is neither a permissible use nor an open for consideration use on Z1 zoned lands as indicated in section 15.10.1 of the said Plan. The proposed development would be thus contrary to the land use zoning objective and would, therefore, be contrary to the proper planning and sustainable development of the area.

Tom Rabbette
Senior Planning Inspector
24th May 2016