

An Bord Pleanála



Inspector's Report

PL 06F 246306

Development

Change of use from retail to restaurant with associated works & signage.

Unit 2, Kingsford Cross, Strand Road, Portmarnock, County Dublin.

Planning Application

Planning Authority: Fingal County Council

Planning Authority Reg. Ref.: F15A/0583

Applicant: Drumboe Restaurants Ltd.

Type of Application: Planning permission.

Planning Authority Decision: Grant permission

Planning Appeal

Appellant(s): Patrick and Marion Lawlor

Type of Appeal: Third v grant

Observers: None

Date of Site Inspection: 8th June 2016

Inspector: Karla Mc Bride.

1.0 INTRODUCTION

1.1 Site and location

The appeal site is located in Portmarnock in N County Dublin and the surrounding area is characterised by a mix of residential, commercial and educational uses. The appeal premises occupies a ground floor unit in a recently constructed 3-4-storey mixed use development which comprises retail, medical and office units with apartments over. Several of the ground floor units are vacant. The building fronts onto Strand Road and it is located opposite a primary school. The site forms part of the commercial heart of Portmarnock which is characterised by several small retail and commercial developments located on both sides of Strand Road.

Photographs and maps in Appendix 1 describe the site and location in detail.

1.2 Proposed Development

Planning permission is being sought to change the use of an existing vacant ground floor retail unit to a restaurant:

- The c.236sq.m. “T” shaped unit would comprise a dining area (145sq.m) kitchen (52sq.m), toilet (20sq.m) and office (18sq.m.).
- The new illuminated signage would comprise back lit individual stainless steel letters.
- The rear elevation would be amended by the addition of 3 windows (900mm x 900mm) with obscure glass and 2 small air vents.
- The side elevation would be amended by the addition of 4 high level ventilation grilles (900mm x 600mm).
- All associated site works.

1.3 Planning Authority's Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 13 standard conditions.

- Condition no.2 required compliance with the conditions attached to F06A/0787 for the overall development.

This decision reflects the report of the County Planning Officer.

The Transportation Department had no objection as there would be no additional car parking requirement over that already allocated for retail use.

The Water Services Engineer had no objection.

The EHO had no objection subject to conditions.

Irish Water had no objection subject to compliance with conditions

Public submissions: Two submissions received (one of which was signed by 16 residents) which raised concerns in relation to:- proximity to residential units; location of kitchen, fire safety, vermin and smoking area; hours of operation; inadequate car parking; and property devaluation

1.4 Planning history

There is an extensive planning history on the site and the most relevant cases are summarised below:

Reg. Ref. F06A/0787: Permission granted by the Council for a mixed use residential and commercial development including retail units and a coffee shop. Decision upheld by ABP following a Third Party appeal subject to 18 conditions. Condition no.7 required signage to be agreed with the PA.

Reg. Ref.09A/0599: Permission granted for modifications to the above permission including change of use of residential space to retail use (34sq.m.) and office use (289sq.m.), and change of use of second floor residential use to restaurant use (221sq.m). The following relevant condition was attached:

That the proposed Retail Units Nos. 1 to 9 inclusive and Nos. 11 and 12; and the Anchor Store shall be restricted to that use identified in Class 1, Part 4 of the Exempted Development Regulations 2001, no other use shall take place without the prior grant of permission by the Planning Authority or An Bord Pleanála on appeal and shall not be used as:

- a) a fried fish shop or a shop for the sale of hot food for consumption off the premises;*
- b) a shop for the sale of pet animals or birds;*
- c) a shop for the sale or display for sale of motor vehicles other than bicycles.*

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

Reg. Ref.F15A/0507: Permission granted for the change of use of part of the ground, first and second floors to medical use.

Pre-planning: No pre-planning meetings took place.

2.0 DEVELOPMENT PLAN

Zoning objective: The site is located within an area zoned with the objective “TC” in the Fingal County Development Plan 2011-2017 which seeks “Protect and enhance the special physical and social character of town and district centres and/or improve urban facilities.”

Car parking: Table 30Tb requires:

- 1 space per 20sq.m. GFA for retail use
- 1 space per 10sq.m dining area for restaurant use.

Heritage: No natural or built heritage features in the vicinity.

3.0 APPEAL

3.1 Third Party appeal

- No objection to ground floor retail use but the restaurant will adversely affect the residential amenities of the overhead apartment at no.16.
- The three ground level windows in the rear elevation are located within 1.5m of the communal access walkway and should be omitted.
- Having regard to the windy coastal location, the four high level vents in the side elevation would give rise to kitchen odours traveling up to the upper floors to no.16.
- No spare capacity in the communal refuse area to facilitate the restaurant and the applicant has not submitted a waste disposal plan.
- The basement car parking spaces are allocated to various uses within the development, the security shutter at the entrance is operated by swipe cards or a key pad, the car park is often used by people not associated with the scheme and it is proposed to close the shutters at 6pm, the applicant has no indicated how diners will access the spaces, and a proper car park management plan is required.
- The unmarked set down area to the front is used by for everyday car parking and deliveries to the restaurant would cause problems, and there are conflicts with existing communal space, walkways and residential fire escape door to the rear.
- Restaurant operating hours are required.

- The entrance to no.16 is directly above the kitchen/delivery door to the rear and as no lobby is indicated odours would travel up to no.16 in warm weather when the door is left open.

3.2 First party response submission

The First Party response submission is summarised below:

- Proposed development complies with planning policy for the area and is in keeping with the terms and conditions of the parent permission.
- The restaurant will be fitted with the necessary equipment to mitigate concerns about odours, waste disposal, and residential disturbance.
- The three rear windows will provide light to the unit with no adverse effects on residential amenity.
- The applicant will work with the management company to ensure that the use of the car parking spaces will be carefully controlled with no disturbance to residents, in line with planning requirements
- The number of deliveries will be small when compared to the retail use.

3.3 Planning Authority response

The PA response to the Third Party appeal raised no new issues.

3.4 Prescribed Bodies

The appeal was not circulated to the any Prescribed Bodies.

4.0 REVIEW OF ISSUES AND ASSESSMENT

The main issues arising in this case are:

1. Principle of development
2. Residential amenity
3. Car parking
4. Other issues

4.1 Principle of development

The proposed development would be located within an area zoned “TC” in the Fingal County Development Plan 2011-2017 which seeks “Protect and enhance the special physical and social character of town and district centres and/or improve urban facilities” and the proposed change of use from retail to restaurant is compatible with this objective.

4.2 Residential amenity

The proposed development would be located in the NE section of the commercial heart of Portmarnock which comprises a number of distinct blocks along both sides of Strand Road. Each of the blocks offers range of retail and commercial uses and almost all of the blocks contains at least one restaurant or take-away unit. The area to the NE and SW is predominantly residential in character and there is a primary school located opposite the appeal premises.

The proposed restaurant would occupy a ground floor unit (No.2) in a recently constructed mixed use development which includes residential, office, medical and retail uses. The ground floor of this scheme comprises several vacant and operational retail units, and Unit no. 2 is located in between a Chemist shop and Hairdressers. The ground floor unit is c. 237sq.m. in floor area, it extends to the full depth of the building and it backs onto the communal open space area for the apartments that are located overhead.

The c.21m long central section of the “T” shaped unit would comprise a c.145sq.m. dining area whilst the kitchen, toilets and office would be located to the rear on either side of the dining area. The Appellants, who occupy the overhead apartment unit at no.16, have raised concerns in relation to the impact of the proposed development on their residential amenities particularly with regard to odours and general disturbance.

The proposed kitchen area would be located in the rear SW section of the unit and it is proposed to install 4 high level vents (900mm x 600mm) along the side wall which forms a boundary with the pedestrian entrance to the

basement car park. Having regard to the enclosed nature of the car park entrance which is located beside Unit no.2 and below the apartment units, it is unlikely that any odours would travel out and then up towards no.16 from this location. It is also proposed to install three high level windows (900mm x 900mm) in the rear elevation of the unit which would be fitted with obscure glass and could not be opened. These windows would provide additional daylight to the c.21m long dining area and they would have no impact on the residential amenities of the overhead apartments or the communal area of open space to the rear. It is noted that there is no lobby between the kitchen and the back door, and it is possible that odours could travel up to the apartments overhead if the door was left open in warm weather. This concern could be addressed by way of a planning condition.

The use of the basement car park by delivery vehicles to serve the proposed restaurant would have no additional adverse impacts on residential amenity, the use of the communal open space area, or residents entering and leaving the car park, over and above the existing permitted retail use of the Unit no.2.

Notwithstanding all of the above, the restaurant should not open before 9am or operate after 11pm; deliveries should not be permitted between 9pm and 7am; no seating or smoking should be permitted to the rear of the unit; no seating should be permitted to the front of the building without a prior grant of planning permission; and no music or amplified sound should emanate from the unit. These concerns could be addressed by way of a planning condition.

4.3 Car parking

The Development Plan requires 1 car parking space per 20sq.m. for retail use (GFA) and 1 space per 10sq.m. of dining space in a restaurant. The existing c.273sq.m. vacant retail unit has a car parking allocation of 11 spaces within the overall development which provides 73 basement car parking spaces. The proposed c.145sq.m. dining area would require 14.5 car parking spaces which is less than the number proposed.

The Council's Transportation Department was satisfied that adequate car parking would be provided based on 75% usage of the dining floorspace for tables, which would see the useable floor area reduced to c.110sq.m. with 11 car parking spaces required. The basis for this calculation is unclear, however Note 3 of Table TO3b states that in mixed use developments, the car parking requirement will take account of different uses having peak parking demands at different times of the day and week. Having regard to this synergy, I am satisfied that the proposed restaurant would provide for an adequate level of street car parking spaces.

The applicant should be required to identify the location of the car parking spaces within the basement car park and the loading and delivery arrangements by way of a planning condition, and the existing residential car parking spaces should not be compromised by the proposed development.

The concerns raised by the appellant in relation to access to, and the use of, the car park by persons not associated with the development are noted. However this is a matter for the management company to resolve, within the terms and conditions of the relevant planning permissions for the site.

4.4 Other issues

Signage and shutters: The developer shall submit full details of the proposed signage along with details for any shutter boxes or security grilles at the front of the unit, for the prior written agreement of the planning authority.

Environmental services: The arrangements are considered acceptable subject to compliance with the requirements of Irish Water and the County Council.

Waste management: The arrangements are considered acceptable subject to compliance with the requirements of the Environmental Health Officer.

Appropriate assessment: The proposed development would not have an adverse effect on any European Sites.

Financial contribution: Not required for the proposed change of use.

5.0 RECOMMENDATION

Arising from my assessment of the appeal case I recommend that planning permission should be granted for the proposed development for the reasons and considerations set down below and subject to compliance with the attached conditions.

REASONS AND CONSIDERATIONS

Having regard to the provisions of the current Development Plan and to the nature and scale of the proposed development and to the pattern of development in the area, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity or give rise to a traffic hazard. 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, 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 development shall comply with terms and conditions attached to the planning permissions granted under PL06F.220950 and Reg. Ref.09A/0599 for the overall development of the site, except as amended by any of the following conditions.

Reason: In the interest of clarity

3. The following management requirements shall be complied with Monday to Sunday:

- a. The restaurant shall not open before 9am or operate after 11pm.
- b. Deliveries shall not be permitted between 9pm and 7am.
- c. No seating or smoking shall be permitted to the rear of Unit no.2.
- d. No seating shall be permitted to the front of Unit no.2 without a prior grant of planning permission.
- e. No music or amplified sound should emanate from Unit no.2.

Reason: In the interest of residential amenity.

4. The following car parking and delivery requirements shall be complied:
 - a. The developer shall submit details of the car parking and loading spaces that will serve the restaurant to the planning authority for written approval before development commences.
 - b. No residential spaces within the basement car park shall be used to meet the parking requirements of the proposed restaurant.

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

5. The following design and layout requirements shall be complied:
- a. The developer shall submit details of the signage and any shutter boxes or shutter grilles to the planning authority for written approval before development commences.
 - b. No additional advertising sign or structure shall be erected, except for those which are exempt development, without a prior grant of planning permission.
 - c. No adhesive material shall be affixed to the windows of the unit, unless otherwise agreed in writing with the planning authority.
 - d. A lobby shall be provided between the kitchen and back door.

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

6. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of Irish Water and the planning authority for such works and services as appropriate.

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

7. The site development and construction works shall be carried out such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

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

8. The site works and building works required to implement the development shall only be carried out between 7.00 hours and 18.00 hours, Monday to Friday and between 08.00hours and 14.00 hours on Saturdays and not at all on Sundays or Bank Holidays.

Reason: To safeguard the residential amenities of adjacent dwellings.

Karla Mc Bride

Senior Inspector

20th June 2016