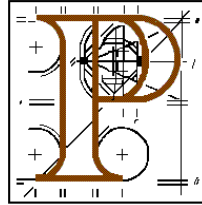


**An Bord Pleanála**



**Inspectors Report**

**Development:** Retention of change of use from cafe to takeaway restaurant use 70sq.m. with new signage to shop front and side gable wall and all associated works, at Unit 4, Coolmine Business Park, Coolmine, Dublin 15.

**Planning Application**

Planning Authority: Fingal County Council  
Planning Authority Reg. Ref. FW16A/0018  
Applicant: Chef Thai and Chinese Takeaway Ltd.,  
Type of Application: Retention Permission  
Planning Authority Decision: Refuse

**Planning Appeal**

Appellant(s): Chef Thai and Chinese Takeaway Ltd.,

Observers: None

Type of Appeal: First Party

Date of Site Inspection: 05/08/2016

**Inspector:** Gillian Kane

## **1.0.0 SITE LOCATION AND DESCRIPTION**

- 1.0.1 The subject site is located in the Coolmine Business Park, to the south of Blanchardstown in west Dublin. The subject site is located at the north-western side of a block that comprises a line of single storey units and a larger two storey block. The subject unit is one of the four single storey units on the northern side of the two storey block. The other uses are a carpet shop, a barber shop, and a grocery shop. The two storey block houses a home furnishing store, a mortgage / insurance financial services office, other office units and a print shop. Surface car parking surrounds on the block to the north, west and south.
- 1.0.2 Units to the east of the subject site include a tyre store and a glassware manufacturer. The wider area provides uses such as beauty / health services, home fittings, bakery, grocery store, off-licence, convenience retailing, office and small light industrial uses. Neither the Coolmine Business Park nor the Coolmine Industrial Estate function as a traditional business park or industrial estate, providing a large range of disparate uses. To the south of the Business Park is the St Mochtas residential estate.
- 1.0.3 Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

## **2.0.0 PROPOSED DEVELOPMENT**

- 2.0.1 Permission was sought for the retention of a change of use from a café to a takeaway use 70sq.m., with new signage to shop front and side gable wall.
- 2.0.2 The application was accompanied by a letter of consent to the making of the application.
- 2.0.0 One objection to the proposed development was submitted to the Council.
- 2.1.0 Reports on File following submission of application**
- 2.1.1 **Environmental Health:** Proposed development is acceptable subject to 10 no. conditions.
- 2.1.2 **Transportation Planning:** 1 no. car space required, unit located in area with 33 no. spaces. No intensification of use and no additional parking demand. No objection to proposed development.
- 2.1.3 **Planning Report:** Proposed development to be retained is not acceptable in GE zones as the subject development is not in

keeping with the vision or the zoning objective for the area. Proposed development is not permitted in principle in GE zones and would result in the diversion of a unit from industrial use. In order to maintain the industrial nature of the industrial estate, permission should be refused.

### **3.0.0 PLANNING AUTHORITY DECISION**

3.0.1 By order dated 30/03/16 a notification of decision to **REFUSE** permission for the following reasons:

1 The subject development is located within an area which has the zoning objective GE i.e. General Employment i.e. to provide opportunities for general enterprise and employment' in the Fingal Development Plan 2011-2017. Having regard to the nature of the use to be retained which does not serve the local working population, the development for retention is considered to materially contravene the 'GE' land use zoning objective, sets an undesirable precedent for similar type development and as such is contrary to the proper planning and sustainable development of the area.

2. Having regard to the nature of the use and its location, it is considered that development for retention represents sporadic and disorderly development, represents an incompatible land use, compromises the existing adjoining industrial uses and future expansion or changes to same and is therefore considered contrary to the proper planning and sustainable development of the area.

### **4.0.0 PLANNING HISTORY**

4.0.1 Planning Authority Reg. Ref. **F00A/0992**: Permission was granted for the change of use and retention of existing offices.

### **5.0.0 LOCAL POLICY**

#### **5.1.0 Fingal County Development Plan 2011-2017**

5.1.1 The adopted development plan for the subject area and therefore for the proposed development is the Fingal County Development Plan 2011 -2017. Within the development plan (**Map no. 13**), the subject site is zoned "GE – General Employment", which has the stated objective "to provide opportunities for general enterprise and employment". The vision for GE areas is to facilitate opportunities for compatible industry and general employment uses, logistics and warehousing activity in a good quality physical environment. General employment areas should be highly accessible, well

designed, permeable and legible”. Local Objective 561 also pertains to the Coolmine Industrial Estate. It seeks to “Formulate a programme of environmental improvements for Coolmine Industrial Estate and ensure new development provides a high quality visual appearance”.

5.1.2 Uses permitted in principle in GE’s zones include restaurant / café to serve the working population only. Take-Away / Fast food outlet use is not included in the zoning matrix for GE zones. A note in the plan states that uses that are neither permitted in principal nor ‘not permitted’ (such as the proposed take-away) will be assessed in terms of their contribution towards the achievement of the Zoning objective and vision and their compliance and consistency with the policies and objectives of the development plan.

5.1.3 Chapter 4 and Chapter 7 provide detailed site development standards.

## **6.0.0 GROUNDS OF APPEAL**

6.0.1 A first party appeal has been lodged by an Agent on behalf of the first party Chef Thai and Chinese Takeaway. The appeal is accompanied by a petition with 54 no. signatures, in support of the proposed development, a notification of registration of a Food Business Establishment with HSE, a copy of an Irish Water Discharge Licence and a letter from the applicants legal agents noting that the third party objector was a defendant in court proceedings against the applicant.

6.0.2 The grounds of the appeal can be summarised as follows:

- The proposed use is acceptable as the lands are zoned for commercial use GE, lands to the south are zoned LC. The proposed development is a restaurant and is permitted in principle in GE zones.
- The proposed use which replaces a café which had been in operation until 2011 without any adverse impact on adjoining properties. The subject site operated as a take-away from 2011 to 2015 and was then leased by the applicant. The adjoining properties are in food, retail and office use with no industrial use. The subject unit is small in size and has little scope for industrial use. The suggestion that the proposed development is a diversion of industrial use is rejected. The proposed development is appropriate as it provides employment to the local area.

- The subject business is fully registered with the HSE and with Irish Water.
- The subject unit at 70sq.m. is best suited to a take-away as there is insufficient room for public seating, toilet facilities etc.
- The restaurant serves both the working and residential population. The Board is requested to consider the signed petition.
- The proposed development will not set an undesirable precedent as there are a number of similar type food business in the area, 9 no. named units in Coolmine Industrial Park and Coolmine Business Park.
- 33 no. car spaces and bicycle parking are available to the subject unit. There shall be no adverse traffic impact from the proposed development.
- The proposed development has no impact on adjoining commercial or residential properties.
- No litter or anti-social behaviour arises from the development which provides employment to 9 no. people.
- The Board is requested to grant permission.

## **7.0.0 OBSERVATIONS**

7.1.0 None on file.

## **8.0.0 RESPONSES**

### **8.1.0 Planning Authority Response**

8.1.1 The response of the Planning Authority to the appeal can be summarised as follows:

- the subject development as a ‘take-away’ restaurant is contrary to the zoning objective of the area
- a take-away restaurant which serves more than the immediate industrial area is not a use class which is permitted in principle in an GE zone. Restaurant / café use is permitted in GE zones ‘to serve the working population only’
- Fingal County Council is well provided with areas in which such uses are permitted in principle – Local centre, Major Town Centre and Town and District Centre.
- The board is requested to refuse permission.

## 9.0.0 ASSESSMENT

9.0.1 On reading of all documentation submitted with the appeal, I consider the issues to be:

- Principle of the Proposed Development
- Signage
- Appropriate Assessment

### 9.1.0 Principle of the Proposed Development

9.1.1 The subject site is located in an area zoned for general employment which has the stated objective “to provide opportunities for general enterprise and employment”.

9.1.2 As noted in section 5 above, the proposed take-away / fast food outlet to be retained is not a use that is ‘permitted in principle’ or ‘not permitted’ in such zones. Restaurant / café use is permitted in principle in GE zones where it serves the local working population. The Appellant states that the subject use can be considered to be a restaurant / café. The commonly accepted difference between a take-away / fast food outlet and a café / restaurant is the provision of facilities to consume the prepared produce on site in a café / restaurant whereas food purchased in a take-away is consumed off-site. The current development plan does not have technical guidance notes nor does it provide a glossary of use classes. Objective Z02 of the development plan states that technical guidance notes on use classes will be prepared within 3 months of the adoption of the development plan but this does not appear to have been implemented. I note Appendix 4 of the 2017-2023 Draft Fingal County Development Plan which provides the following definitions: **Fast Food Outlet/Take-Away** The use of a building, or part thereof, for the sale of hot food that is served and prepared quickly for consumption on or off the premises. **Restaurant/Café:** A building or part thereof where the primary function is the sale of meals and/or refreshments for consumption on the premises. The subject unit has a narrow tall counter which is not suitable for nor is intended for in-site consumption of produce. The name of the unit in question “Chef Thai and Chinese *Take-Away*” also indicates that food is to be consumed off site. I do not accept the appellants argument that the subject development can be considered to be a café / restaurant use.

9.1.3 Should the Board disagree, I note that restaurant / café use is permitted in principle in GE zones where it serves the local working population only. The Planning Authority submit that the subject

development does not serve the local working population as evidenced by the addresses of the petition submitted with the appeal. The Board must note that the address of the signatories to the petition appear to be home addresses and that no information is given regarding their places of employment. One cannot infer that the signatories do not form part of the local working population in the industrial estate. No evidence has been submitted that the local working population do not use the take-away.

9.1.4 Where uses are neither permitted in principle nor 'not permitted', they will be assessed in terms of their contribution towards the achievement of the Zoning objective and vision and their compliance and consistency with the policies and objectives of the development plan. GE zones have the stated objective "to provide opportunities for general enterprise and employment". The vision for such areas is "to facilitate opportunities for compatible industry and general employment uses, logistics and warehousing activity in a good quality physical environment". The subject development which provides employment for 9 no. persons can be considered to be in accordance with the zoning objective, being a use which provides for employment. The small scale of the unit at 70sq.m. means it is unlikely to be a large scale employer, nor in use as a warehouse or industrial use. The subject use as a fast food outlet is compatible with the surrounding uses, in that it provides a service to the working population of the wider industrial and business park. I am satisfied that the proposed use to be retained is in accordance with both the zoning objective and the vision for the area.

9.1.5 I do not accept the argument that the proposed use to be retained is incompatible with the wider pattern of development in the area or compromises the existing adjoining industrial uses. As is noted in section 1 above and as can be seen on the appended site photographs, the uses in the immediate area vary from financial services, beauty services, bakery, carpet sales, yoga, barber services, vegetable shop, fast food, home furnishings, print shop. In the wider area more traditional light industrial uses are scattered throughout the estate. Likewise I do not accept the argument that the proposed use is a diversion of a unit from industrial use. The subject unit at only 70sq.m. is unlikely to be viable as an industrial unit.

9.1.6 Coolmine Business Park is not an industrial estate nor does the zoning objective or the vision for the area seek to provide such an estate. I am satisfied that the proposed use to be retained is in

accordance with the general employment zoning objective and vision for the area in that it provides employment, albeit on a small scale and is in keeping with the pattern of development in the wider area.

9.1.7 In accordance with section 37(2)(b) of the Planning and Development Acts, where a Planning Authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in certain circumstances. As noted above, I am satisfied that the proposed development is in accordance with the zoning objective for GE areas and is in keeping with the wider pattern of development in the area. I am satisfied that the Board, in this instance, need not invoke section 37(2)(b) of the Act.

## **9.2.0 Signage**

9.2.1 Permission is sought to retain signage on the northern and western elevation. No dimensions are given nor is any detail of the subject signage provided to the Board. Appendix 4 of the development plan provides design guidance for signage in business parks and industrial areas. The predominant objective of the design guide is to provide signage of an appropriate design, compatible with the character of the area.

9.2.2 The existing signage on the subject unit is not illuminated or animated, nor does it project from the elevations. The proliferation of advertising signage in the business park and the wider area does little to achieve the good quality physical environment sought by the vision for the area, however the subject signs to be retained are small in scale and largely in keeping with the design guide and the wider pattern of advertising in the area.

## **9.3.0 Appropriate Assessment**

9.3.1 Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and or proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

## **10.0.0 RECOMMENDATION**

10.0.1 I have read the submissions on file, visited the site, and have had due regard to the provisions of the Fingal County Development



Plan 2011 -2017, the site history and the planning history of the wider area. Having regard to the GE zoning of the site in the current Development Plan, the pattern of development in the area and the scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would, therefore, be in accordance with proper planning and sustainable development. I recommend permission be GRANTED subject to the following conditions:

1. The development to be retained, 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. 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.
3. The premises shall be closed to the public between 2400 hours and 0900 hours on Monday to Saturday and between 2300 hours on Sunday and 0900 hours on Monday.  
**Reason:** In the interest of the amenities of the area.
4. 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 commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.  
**Reason:** In the interest of visual amenity.
5. The developer shall control odour emissions, including extract ducting and ventilation, from the premises in accordance with

measures which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

6. No music or other sound can be broadcast or amplified externally from the premises.

**Reason:** In the interest of the amenities of the area.

7. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations, 2001, as amended, shall be displayed or erected on the building or within the curtilage of the site without the agreement of the planning authority.

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

8. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**Gillian Kane**  
**Planning Inspector**  
**08/08/16**