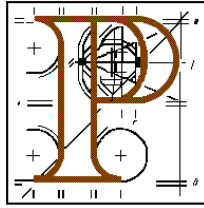


# An Bord Pleanála



## Inspector's Report

PL29N. 246682

**DEVELOPMENT:** Extend permitted opening hours of restaurant

**ADDRESS:** East Wall Road/Church Road, Dublin 3

### PLANNING APPLICATION

**Planning Authority:** Dublin City Council

**Planning Authority Reg. No.:** 2644/16

**Applicant:** McDonald's Restaurants of Ireland Ltd.

**Application Type:** Permission

**Planning Authority Decision:** Refuse permission

### APPEAL

**Appellant:** McDonald's Restaurants of Ireland Ltd.

**Type of Appeal:** 1<sup>st</sup> party vs refusal

**Observers:** None

**DATE OF SITE INSPECTION:** 3<sup>rd</sup> August 2016

**INSPECTOR:** Stephen J. O'Sullivan

## **1.0 INTRODUCTION**

- 1.1 This report deals with first party appeal by McDonalds against a decision by Dublin City Council to refuse permission for an extension to the opening hours of one of their restaurants.

## **2.0 HISTORY**

- 2.1 PL29N. 242804, Reg. Ref. 2555/13 – the planning authority granted permission for a development on the site of the former Cahill's Printworks that would provide a supermarket and a drive through restaurant in two blocks, each with other commercial uses on the upper floors.

Condition no 12 of the permission restricted the operating hours of the development to 0700-2300 from Monday to Friday, and to 0800-2200 on Saturdays, Sundays and public holidays. The stated reason was to protect the residential amenities of the area.

The applicant appealed certain conditions of the planning authority's decision to the board, but not no. 12. The board decided not to consider the application as if it had been made to it in the first place.

- 2.2 PL29N. 246681, Reg. Ref. 2645/16 – the planning authority granted permission on 6<sup>th</sup> July 2016 for signage for the authorised drive-through restaurant, after a first party appeal had been withdrawn.

## **3.0 SITE**

- 3.1 The site is on a main road in an inner suburban area c2km north of Dublin's city centre in an area with a mix of industrial, commercial and residential uses. It has a stated area of 9,006m<sup>2</sup>. At the time of inspection the larger part of the development authorised under PL29N. 242804 had been built with vehicular access from Church Road and pedestrian access from East Wall Road. The supermarket was open, The structure of the other building was complete and it was being fitted out. The applicant's signage had already been erected upon it. The latter building is in the north-eastern corner of the site, and is close to its boundary with the curtilage of houses, including those at 138 East Wall Road and Nos. 52 and 53 Bargy Road.

## **4.0 PROPOSAL**

- 4.1 It is proposed to open the McDonald's restaurant from 0700 to 2300 every day.

## **5.0 POLICY**

- 5.1 The Dublin City Development Plan 2011-2017 applies. The site is zoned under objective Z14, which is to seek the social, economic and physical development with mixed use of which residential and "Z6" would be the predominant use.

The adjoining land to the east is zone Z1 – residential. Section 15.9 of the plan says that regard should be had for the more sensitive zone when dealing with proposals in transitional areas. Section 17.26 states that the provision of take-aways will be strictly controlled with regard to the effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents.

## **6.0 DECISION**

6.1 The planning authority decided to refuse permission for one reason which stated that the extended opening hours of the drive-through restaurant adjoining residential development would seriously injure the residential amenity of residential property due to increased disturbance and activity from an unacceptably early time in the mornings and late in the evenings.

## **7.0 REPORTS TO THE PLANNING AUTHORITY**

7.1 Submissions – A resident of 138 East Wall road made a submission stating that the works on the site had not been carried out in accordance with the permission that was granted.

7.2 Planner's report – . The site is surrounded by residential and commercial uses and so is a transitional zone as per section 15.9 of the development plan. Having regard to this sensitive location and the take-away and drive-through services offered by the restaurant, the opening times specified in the existing permission are considered appropriate. An extension of opening times would seriously detract from the residential amenities of the area. In particular the drive-through would generate noise from queuing cars with running engines and outdoor ordering stations. It was recommended that permission be refused

## **8.0 GROUNDS OF APPEAL**

8.1 The grounds of appeal can be summarised as follows-

- The applicant agreed to become the operator of the authorised restaurant after the grant of permission had been made. It appears illogical to have different opening hours on different days of the week. The applicant operates numerous other restaurants. It has a standard that sets minimum opening hours of 0700-2300.
- Serving breakfast from 7am is an important part of the applicant's business, particularly at weekends to families. With regard to opening until 11pm, night time uses play an important role in the economy of a city. Restaurants that do not serve alcohol provide a diversity of choice of recreational/restaurant amenity in any city. The longer opening hours are particularly important for shift worker and taxi drivers..

- None of the applicant's restaurants have such limited opening hours. The board allowed the one at Artane to operate between 0700 and 0030 hours Sunday to Wednesday and between 0700 and 0300 hours Thursday to Saturday under PL29N. 244148. The one at Hebron Road, Kilkenny is close to homes and operates on a 24 hour basis because the board granted it without any restriction on opening hours under PL10. 241263. The one on the Gort Road in Ennis is close to homes and was authorised under PL58. 211183 without a restriction on opening hours. The board allowed the one at Musgrave Park Cork to operate until 2300 under PL28. 244280 when the planning authority had determined a closing time of 2200.

## **9.0 RESPONSES**

9.1 The planning authority did not respond to the appeal.

## **10.0 ASSESSMENT**

10.1 The revised opening hours sought by the applicant would not constitute a substantial intensification in the use of the site. It would not be likely to have a significant negative impact on the residential amenities of property in the vicinity. It would be reasonable for the applicant's restaurant to have consistent opening hours across the week, and in particular to be able to serve breakfast from 7am to cater for those who work at weekends. This would not be more likely to cause a nuisance to neighbours than the authorised arrangements. Furthermore, it would not be common for people to retire earlier at the weekend compared to the working week. So a requirement upon the applicant to close earlier on Saturdays, Sundays and holidays than other nights would not be warranted by a need to protect amenity. The various prior decisions by the board cited by the applicant concerned cases with similar circumstances to the current one. It is therefore concluded that the proposed development would be in keeping with the proper planning and sustainable development of the area.

10.2 The current application should not be determined with regard to matters regarding the implementation of conditions on the previous permission on the site that would be more appropriately addressed through the enforcement procedures set out in part VIII of the planning act.

## **11.0 RECOMMENDATION**

11.1 I recommend that permission be granted subject to the conditions set out below.

## REASONS AND CONSIDERATIONS

The proposed development would not give rise to a significant intensification in the authorised use of the site and would not be likely to have a negative effect on the residential amenities of property in the vicinity. It would therefore be in keeping with the proper planning and sustainable development of the area.

### CONDITION

1. The hours of operation of the restaurant authorised under PL29N. 242804, Reg. Ref. 2555/13 shall be between 0700 hours and 2300 hours only.

**Reason:** In the interest of the residential amenities of property in the vicinity.

2. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

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

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Stephen J. O'Sullivan  
4<sup>th</sup> August 2016