



An  
Bord  
Pleanála

## Inspector's Report PL06S.247099.

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<b>Development</b>	Retention of change of use from Taxi Office to Pizzeria/Italian takeaway.
<b>Location</b>	Unit 4, Block 6, Tallaght Retail Centre, High Street, Tallaght, Dublin 24.
<b>Planning Authority</b>	South Dublin County Council.
<b>Planning Authority Reg. Ref.</b>	SD16A/0181.
<b>Applicant</b>	Mr. William Shaw.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Grant subject to conditions.
<b>Type of Appeal</b>	Third party vs. grant.
<b>Appellant</b>	Tallaght Community Council.
<b>Observer</b>	None.
<b>Date of Site Inspection</b>	18 <sup>th</sup> November 2016.
<b>Inspector</b>	Ciara Kellett.

## **1.0 Site Location and Description**

- 1.1. The appeal site is located on the southern side of High Street, Tallaght. High Street is located to the east of The Square Shopping Centre and is linked via a pedestrian access. Vehicular access is provided to the east from the Main Street/Old Bawn Road. The Abberley Court Hotel is located to the south-west of the High Street.
- 1.2. Unit 4 is located in Block 6 and is one of 8 identical units. The units are all 2.5 storey with a pitched roof. They comprise retail type activities at ground floor level. The current mix of units includes salons, estate agents, restaurant/takeaways. A large Smyth's Toystore forms part of the block on the opposite side of the street as well as revenue offices and work placement offices.
- 1.3. Appendix A includes maps and photos of the site.

## **2.0 Proposed Development**

- 2.1. The proposed development is for retention of a change of use of the premises from a taxi office to a pizzeria/Italian takeaway.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to grant permission subject to 8 standard conditions.

### **3.2. Planning Authority Reports**

- 3.2.1. The Planner's Report is the basis for the Planning Authority decision. It includes:
  - Considers retention of change of use is broadly in accordance with national guidelines.
  - Notes that 'takeaways' are not specified in the zoning matrix but considers it would be compatible with the Town Centre zoning objective "To protect, improve and provide for the future development of the County town of Tallaght".

- Council policy is to promote Tallaght Town Centre as the primary urban centre, and the proposed use and design of this development would be generally consistent with the policies and objectives of the County Plan, as well as the Tallaght Town Centre Local Area Plan 2006.
- Refers to the recent refusal by the Board for permission for the subject development in December 2015. Considers that the Board referred to a county wide planning policy to conclude that the existing number of takeaways and restaurants would represent an unacceptable proliferation, but did not quantify at what point proliferation would adversely impact the vitality of the town centre. Considers the possibility that the Board did not take full account of other planning policies which support the provision of restaurant/takeaway uses, specifically UC2 Obj.1. Considers that the Board's reason for refusal is not sufficiently evidenced based and does not correctly take into account the nature of the town centre location which acts as a focal point for a concentration of a variety of uses. Considers that permission should be granted despite the Board's previous refusal.
- Notes that objections contend that there are 13 takeaways in the vicinity. Planner states that there are approximately 22 units on High Street of which 6 are restaurant/takeaway units. Considers that there is not an over concentration at this location.
- Considers that the proposal would be compatible with the amenities of the locality and recommends a grant of permission subject to conditions.
- The decision was in accordance with the Planner's recommendations.

### 3.2.2. Other Technical Reports

The application was referred to:

- Environmental Services Department/Irish Water – request additional information – Planner considered this information could be submitted by the applicant as a condition of permission.
- Environmental Health Officer – No objection subject to conditions.
- Roads Department – no objection.

### 3.3. Third Party Observations

A number of submissions were made.

Senator Devine, Deputy Zappone, Deputy Brophy, Councillor Duffy and Councillor O'Donovan submitted letters of objection to the Council.

One submission was received from Tallaght Community Council. The main planning points raised by the objector include:

- Reference to planning history and recent ABP decision to refuse.
- Contravenes both the 2010 – 2016 and the 2016 – 2022 Plan.
- Vitality of the street is affected – there are 12 food outlets in the vicinity.
- Reference to childhood obesity.
- Impediment to creating a cultural and tourist centre in the village.
- Considers planning notice confusing.

Five submissions were received in support of the proposal.

### 4.0 Planning History

SD15A/0148, ABP Ref. PL06S.245368– Change of use from taxi office to pizza takeaway was refused permission by the Board in December 2015. Following an appeal by Tallaght Community Council against the Planning Authority's decision to grant permission, the Board refused permission for the following reasons and considerations:

- Having regard to the pattern of development in the vicinity of the site, including the extent of similar uses in the area, and having regard to the provisions of the current development plan for the area, and in particular policy S16, which seeks to strictly control takeaway uses in order, inter alia, to safeguard the vitality and viability of shopping areas and to maintain a suitable mix of retail uses, it is considered that the proposed development would represent an unacceptable proliferation of takeaway uses that would adversely impact on the vitality of this street, would fail to maintain a suitable mix of retail uses in this town centre area and would consequently contravene

this policy, which policy is considered to be reasonable. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Enforcement File S7695 – This is a live file for a change of use of the property from a taxi office to use as a pizza takeaway without the benefit of planning permission.

## 5.0 Policy Context

### 5.1. Development Plan

The site is subject to the policies and objectives of the South Dublin County Council Development Plan 2016 – 2022, as well as Tallaght Town Centre Local Area Plan 2006 (renewed in 2011).

#### 5.1.1. South Dublin Development Plan 2016 - 2022

Chapter 5 refers to Urban Centres and Retailing and chapter 11 refers to Implementation.

Chapter 5 states in *Urban Centres (UC) Policy 2 Town Centre* that it is the policy of the Council to reinforce the role of Tallaght as the County Town. UC2 Objective 1 states:

*To promote Tallaght Town Centre as the primary urban centre in the County by directing higher order retail, retail services, residential, cultural, leisure, financial, public administration, restaurants/bars, entertainment and civic uses into and adjoining the Core Retail Area of this centre.*

With respect to retailing, the Plan notes that Tallaght is a Level 2 centre. Retail (R) Policy 3 Tallaght Town Centre includes R3 Objective 2 which states:

*To facilitate the provision of the highest level and broadest range of retailing in the County in the Core Retail Area of Tallaght Town Centre, along with a broad range of services and functions in the wider Town Centre and Village Centre zonings.*

R3 Objective 3 states:

*To promote the intensification of the Core Retail Area of Tallaght.*

Section 5.8.0 specifically refers to Fast Food Outlets/Takeaways. Retail (R) Policy 10 states that it is the policy of the Council to manage the provision of fast food outlets and takeaways. R10 Objective 1 states:

*To prevent an excessive concentration of fast food outlets/takeaways and ensure that the intensity of any proposed use is in keeping with both the scale of the relevant building and the pattern of development in the area.*

R10 Objective 2:

*To restrict the opening of new fast food/takeaway outlets in close proximity to schools so as to protect the health and wellbeing of school-going children.*

Chapter 11 notes that the Town Centre zoning is *To protect, improve and provide for the future development of Town Centres*. There is no specific reference to takeaways but restaurants/cafes are permitted in principle within this zoning.

Section 11.3.6 refers to Retail Development. Section (ii) refers to Restrictions on Uses. It is stated:

*An over-concentration of certain uses will be discouraged in urban centres, due to an overriding need to maintain the integrity, quality and vibrancy of centres.*

*The Planning Authority will seek to ensure that the quantum of amusement and gaming arcades, bookmakers, public houses, off-licences and fast food outlets is not disproportionate to the overall size and character of the area.*

Section (iii) specifically refers to Fast Food/Takeaway Outlets.

*Fast food outlets have the potential to cause disturbance, nuisance and detract from the amenities of an area and as such, proposals for new or extended outlets will be carefully considered. Development proposals for fast food/takeaway outlets will be strictly controlled and all such proposals are required to address the following: The potential effect and the proximity of fast food outlets or take away outlets to vulnerable uses, such as schools or parks; The cumulative effect of fast food outlets on the amenities of an area; The effect of the proposed development on the existing mix of land uses and activities in an area; Opening/operational hours of the facility; The location of*

*vents and other external services and their impact on adjoining amenities in terms of noise/smell/visual impact.*

#### 5.1.2. Tallaght Town Centre Local Area Plan 2006

Chapter 4 of the Tallaght Plan identifies the Core Area which includes the subject site. The area of High Street is identified as having a Retail/Service land use. Section 4.9.3 refers to Future Land Use. It states (inter alia):

*Night-time entertainment and leisure uses should be clustered in the areas to the north and north-west of the Square, adjacent to high frequency public transport and taxi services.*

*A proliferation of take-away uses should not be permitted within the Core Precinct.*

#### 5.2. **Natural Heritage Designations**

The site is located approximately 3km north of the Glenasmole Valley SAC (Site Code 001209).

### 6.0 **The Appeal**

A third party appeal against the decision to grant permission has been lodged by Tallaght Community Council (TCC), Pineview Avenue, Aylesbury, Dublin 24.

#### 6.1. **Grounds of Appeal**

The appeal includes:

- **Planning Precedence:** An Bord Pleanála refused the same case 11 months previously and TCC are of the opinion that the rationale for first refusal still holds true. Reference made to other similar proposals refused by the Board in the area.
- TCC strive for balanced development and a diverse mix of retail outlets in the historic village area and adjoining streets to boost long term business in the area.

- There is an excess of fast food outlets in this area which is on the outskirts of the town centre. There are 13 takeaway outlets/restaurants within three short streets. There are 22 food outlets in the condensed village area. Figures are provided to demonstrate the location and density of the takeaways.
- Contravenes County Development Plan 2016 – 2022.
- Unreasoned rationale cited by SDCC in the Planner’s Report and Manager’s Order and a reasoned rationale is not presented to reject the previous ruling of the Board.
- The street is not very active and is trending towards low footfall land uses – a list of retail use ‘gaps’ is provided such as shoe shop, clothes boutique, travel shop.
- Planning Report by applicant citing reviews of Pizza Mór are irrelevant.
- There are schools and colleges within 1km of the site – childhood obesity issues referred to.
- High Street is adjacent to the historic Tallaght village area which is an Architectural Conservation Area. This tourism potential could be seriously undermined.

## 6.2. Applicant Response

The applicant’s response includes:

- Reference to other applications in the area is misleading and request the Board to disregard them.
- SDCC granted permission twice for the proposal – in 2015 and the current proposal. The Board’s Inspector recommended a grant of permission in 2015, which was not accepted by the Board. The applicant’s response to the current appeal includes numerous quotes from the original Inspector’s Report and the Planning Officer’s Report supporting the proposal.
- The proposal is fully in line with the qualitative and quantitative standards of the planning authority.



- A petition to keep the facility open is attached to the response with over 350 signatures.
- Applicant has invested a significant sum to carry out works to the unit on foot of the receipt of permission from SDCC in July 2015, unaware of the third party appeal of that permission.
- The applicant addresses the Board's reasons for refusal by stating that an assessment of the number of takeaway facilities has been carried out. There are only 4 specific takeaway outlets in the vicinity of the site compared to the 12 listed in the appeal. The facilities do not supply the same type of food as the subject establishment. On foot of the refusal by the Board and the fact that a number of takeaways listed in the appeal document do not supply the same type of food the applicant decided to re-submit a revised planning application to seek retention and amend the operating hours to 12pm – 1.30am.
- The development will not be a typical fast food restaurant which serves unhealthy convenience food and will not remain shutter closed throughout the normal high street trading hours.
- Applicant is willing to accept a condition limiting the use to three years, allowing the use to be reassessed after that time.

### **6.3. Planning Authority Response**

No response to the appeal has been received from the Planning Authority.

### **6.4. Further Responses**

A further response was received from the appellant. In summary, the main planning points include:

- There are no changes proposed since the Board's previous refusal with the exception of a minor extension of opening hours after midnight.
- Consider the Board's decision on the case in December 2015 still stands unchallenged.

- TCC are a firm supporter of the Tallaght village and ACA and monitor all planning applications in and around the village.
- TCC believe there is a clear role for local authorities and planning laws and market forces only cannot be left to guide development.

## 7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The Board refused permission for the same development in 2015 and it is appropriate to determine if there has been any material change in circumstances that could result in a different decision. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Material change in circumstances
- Appropriate Assessment

### 7.2. Principle of Development

The appeal site is located in the 'Core Area' of Tallaght and is subject to the policies of the Tallaght Town Centre Local Area Plan, as well as the South Dublin County Development Plan 2016 - 2022. The area is zoned Town Centre *To protect, improve and provide for the future development of Town Centres*. The County Development Plan includes very specific policies to manage the provision of fast food outlets and takeaways, to prevent an excessive concentration of such outlets.

During my site visit I noted that there were 7<sup>1</sup> no. takeaways/restaurants along High Street not including the Hotel. Within Block 6, the location of the subject site, there are two other takeaways amongst the 9 shop units. I consider 3 out of 9 to be a high

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<sup>1</sup> Kurdan Tandori, Leaf Chinese restaurant and takeaway, Che Thai takeaway, Pizza Mor, Tip Top Chinese takeaway, Chinese and Thai takeaway, Choices Chinese takeaway and restaurant on corner of High Street and Main Street.

percentage. Whilst I agree that it can be difficult to quantify at what point proliferation of such uses would adversely impact on the vitality of the area, I am of the opinion that 3 out of 9 units, or 7 out of the 22 units along High Street, is disproportionate to the overall size and character of the area, not including the two units<sup>2</sup> just around the corner facing the R113 and the three units on Old Bawn Road/Main Street<sup>3</sup>.

Retail Policy 3 Objective 2 seeks to facilitate the '*highest level and broadest range of retailing*' in the Core Retail Area. The addition of another takeaway does not facilitate the broadest range of retailing in the Core Area.

*Restrictions on Uses* are detailed in the Development Management Standards of the Plan. It is stated that an over concentration of certain uses will be discouraged in urban centres to maintain the integrity, quality and vibrancy of centres, and all proposals are required to address the cumulative effect on the amenities of the area. I note that the applicant states that the opening hours will be 12 noon until 1.30am. I am of the opinion that a concentration of uses that are closed until afternoon will not add to the vibrancy of centres. My site visit occurred in the morning (10.30am) and I observed that most of the food outlets were closed and two were shuttered closed along High Street which directly impacts on the vibrancy and amenities of the area. The street is currently used as a means of accessing the Square Shopping Centre rather than as a shopping destination in its own right, contrary to the policies for the Core Retail area.

Furthermore, the Tallaght Town Centre Plan states that a proliferation of takeaway uses should not be permitted in the Core Precinct.

In conclusion, I am satisfied that the addition of another takeaway will not be in accordance with the policies and objectives of both the recently adopted County Development Plan and the Tallaght Town Centre Plan. Another takeaway is disproportionate to the overall size and character of the area and does not add to the vibrancy of the area and will not provide the broadest range of uses as required for the Core Area.

### 7.3. **Material change in circumstances**

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<sup>2</sup> Milano's and Subway

<sup>3</sup> Village Café, Macari's and Camilles.

The subject proposal was refused permission by the Board in December 2015 for reasons as detailed in section 4 above. That application was determined with respect to compliance with the County Development Plan 2010 – 2016, as well as the Tallaght Town Centre Plan.

Clearly the main material change in circumstances that has occurred is the adoption of the new Development Plan. I have considered the application for compliance with that new Plan (see above) and have concluded that it does not accord with the policies of the new Plan. The new Plan is far more prescriptive than the older Plan with respect to fast food/takeaways.

#### **7.4. Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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.

#### **8.0 Recommendation**

I recommend that planning permission should be refused, for the reasons and considerations as set out below.

#### **9.0 Reasons and Considerations**

Having regard to the policies and objectives of the County Development Plan 2016-2022, which seek to prevent an excessive concentration of fast food outlets/takeaways and to facilitate the provision of the highest level and broadest range of retailing in the Core Retail Area of Tallaght Town Centre, and which policies/objectives are considered reasonable, it is considered that the proposed development of a further takeaway in this location would result in a proliferation of such uses, which would be disproportionate to the overall size and character of the area, and would therefore, be contrary to the proper planning and sustainable development of the area.

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Ciara Kellett  
Senior Planning Inspector

21<sup>st</sup> November 2016