



An
Bord
Pleanála

Inspector's Report PL29N.247136

Development	Change of use of ground floor unit from retail to café/takeaway including alterations of shopfront and new signage at Unit 7, Edenmore Avenue, Edenmore Shopping Centre, Raheny, Dublin 5
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3047/16
Applicant(s)	Paul Dactu
Type of Application	Permission
Planning Authority Decision	Grant
Appellant(s)	Paul Dactu
Observer(s)	1. Mary Mulligan 2. Teresa Lingi
Date of Site Inspection	01/12/2016
Inspector	Lorraine Dockery

1.0 Site Location and Description

- 1.1. The subject site, which has a stated area of 88.5 square metres comprises an existing ground floor retail unit within the Edenmore Shopping Centre, Raheny, Dublin 5. This element of the shopping centre is in need of some modernisation and upgrade.
- 1.2. The first floor level of the subject premises would appear to be in residential use. Parking is available in front of the premises.

2.0 Proposed Development

- 2.1. The proposed development, as described in the submitted public notices, comprises
 - Change of use of the ground floor unit from retail to café/takeaway including alterations of the shopfront and new signage
- 2.2 Appellant currently operates a “Mizzoni” pizza take-away from a smaller unit in Edenmore Shopping Centre and wishes to relocate to this subject premises, which is a bigger unit. It is planned to operate the premises as a pizza restaurant with pizza take-away also.
- 2.3 There is an apartment at first floor level, with separate entrance and stairway from gable end of building and the same landlord controls both ground and first floors. Landlord has consented to extraction duct work discharging above parapet roof level at the rear of the unit so that odours do not impact on the residential unit.
- 2.4 The proposed opening hours are
 - Mon-Wednesday 8am to 1am;
 - Thursday 8am to 2am;
 - Friday and Saturday 8am to 4am and
 - Sunday 8am to 2 am

3.0 Planning Authority Decision

3.1. Decision

Permission GRANTED subject to 9 no. conditions

Condition No. 2 states that 'The proposed takeaway use operate only within the opening hours (Hours premises are open to the public) of the proposed café use. The proposed café shall operate (open to the public) between the hours of 08.00 hours (8am) to 24.00 hours (midnight) Monday to Wednesday inclusive and from 08.00 hours (8am) to 01.00 hours (1am) Thursday, Friday, Saturday and Sunday and bank holidays only

Reason: In the interests of residential amenity

3.2. Planning Authority Reports

The report of the area planner reflects the decision of the planning authority

3.3. Other Technical Reports

Engineering Department: No objections, subject to condition- second report outlines no change on foot of further information response

Environmental Health Report: Conditions attached

4.0 Planning History

None

5.0 Development Plan

5.1. The Dublin City Development Plan 2016-2022 is the operative County Development Plan for the area.

Zoning

'Z4'- which seeks to 'provide for and improve mixed-service facilities'

Take-away is a permissible use under this zoning objective

Section 16.24 Take-Aways

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of appeal can be summarised as follows:

- Appeal against Condition No. 2
- Restriction in trading hours is unwarranted as existing take-away has been operating for over 10 years with trading until 4am on Friday and Saturday only
- Proposal will not have a significant impact on adjacent properties, in terms of noise nuisance
- Any anti-social behaviour is a wider issue rather than anything to do with proposed site
- Proposal will maintain vitality in an ageing shopping centre
- Precedent for late opening in the city- questions fairness on applicant

6.2. **Planning Authority Response**

None

6.3. **Other Party Responses**

6.4. None

6.5. Observations

6.6. Two observations were received which may be summarised as follows:

- Concerns regarding increased anti-social behaviour
- Number of such premises in the general area
- Impacts on amenity
- Petition from local residents submitted to planning authority against proposed development
- Concerns regarding increased competition

7.0 Assessment

7.1. This is an appeal against Condition No. 2 of the decision to grant permission which issued from the planning authority under Reg. Ref. 3047/16. In this regard, I consider it is appropriate that the appeal should be confined to Condition No. 2 only and I am satisfied that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted and that it would be appropriate to use the provisions of Section 139 of the 2000 Act in this case.

Condition No. 2 as highlighted above states:

'The proposed takeaway use will operate only within the opening hours (hours premises are open to the public) of the proposed café use. The proposed café shall operate (open to the public) between the hours of 08.00 hours (8am) to 24.00 hours (midnight) Monday to Wednesday inclusive and from 08.00 hours (8am) to 01.00 hours (1am) Thursday, Friday, Saturday and Sunday and bank holidays only

Reason: In the interests of residential amenity' (my italics).

- 7.2. The appellant in his submission states that the reduced opening hours are unwarranted as the existing take-away premises, which this current proposal is replacing, has operated until 4am on Fridays and Saturdays for the past 10 years. No details are attached as to whether there was a grant of permission for these said opening hours. The appellant is seeking opening hours until 1am on Monday to Wednesday inclusive; until 2am on Thursdays and Sundays; until 4am on Fridays and Saturdays.
- 7.3. I note the contents of the appellant's submission with regards to operating times of other outlets namely McDonalds drive-thrus. However, I consider the circumstances in those cases are very different to those of this current appeal. They are often stand- alone units, very often without residential units immediately above and opposite the subject premises. I note the appellant's argument that his existing premises within the shopping centre opens until 4am on certain days. I saw this unit at the time of my site visit and noted that it was an internal unit located within the shopping centre complex. I also have no information before me as to whether this opening time until 4am is authorised by a grant of planning permission. This subject premises is located on the exterior of the block, fronting onto the public roadway and onto numerous residential properties. While the site itself is zoned for mixed use facilities, it is noted that the immediately surrounding area is residentially zoned and comprises family type properties. With regards to the issue of potential noise and anti-social behaviour, I would concur with the opinion of the planning authority. I concur that noise disturbance and hours of operation go hand in hand. I consider that the proposed opening hours are excessive and inappropriate considering the location of the site surrounded by mature residential properties. I consider that such opening hours could lead to noise disturbance in the immediate area and result in negative impacts on the residential amenity. I therefore consider that the condition as attached by the planning authority is appropriate and should be upheld without modification.

7.4 Appropriate Assessment

7.5 The subject site is located in an established residential area and is not located adjacent to nor in close proximity to any European sites, as defined in Section 177R of the Habitats Directive. Having regard to the nature and scale of the proposed development and/or the nature of the receiving environment and/or proximity to the nearest European site, 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

8.1. Having regard to the nature of the conditions the subject of the appeal and based on the reasons and considerations set out below, I am satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and recommend that the said Council be directed under subsection (1) of section 139 of the Planning and Development Act, 2000 to ATTACH Condition No. 2 without amendment so that it shall be as follows for the reason and considerations set out:

9.0 Reasons and Considerations

Having regard to the provisions of the provisions of the Dublin City Development Plan 2016-2022 and to the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not adversely affect the residential amenities of the area, would integrate well with other properties in the vicinity and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

2. The proposed takeaway use will operate only within the opening hours (hours premises are open to the public) of the proposed café use. The proposed café shall operate (open to the public) between the hours of 08.00 hours (8am) to 24.00 hours (midnight) Monday to Wednesday inclusive and from 08.00 hours (8am) to 01.00 hours (1am) Thursday, Friday, Saturday and Sunday and bank holidays only

Reason: In the interests of residential amenity

Lorraine Dockery
Planning Inspector

01st December 2016