



An
Bord
Pleanála

Inspector's Report PL91.247356

Development	Extension to the existing deli area for a takeaway facility and change of business hours.
Location	Unit 4, Springfield Centre, Bloodmill Road, Singland, Limerick.
Planning Authority	Limerick City and County Council.
Planning Authority Reg. Ref.	15/769.
Applicant(s)	Itfaaq Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant permission.
Type of Appeal	Third party versus decision.
Appellant(s)	(1) Justin Murray, (2) Joseph and Mary Murphy
Observer(s)	Niall Collins.
Date of Site Inspection	3 January 2016.
Inspector	Stephen Rhys Thomas.

1.0 Site Location and Description

- 1.1. The appeal site comprises unit 4, a small supermarket in a neighbourhood shopping centre, known as the Springfield Centre, located at Bloodmill Road, Singland, Limerick City. The supermarket incorporates a small delicatessen counter to the rear of the shop. The neighbourhood centre is located off Childers Road (R509) and serves the Glenwood, Oakwood and Castletroy View housing estates. Playing pitches are located across Bloodmill Road. The centre is a modern structure, based around an L-plan, with ground floor units facing onto a surface car park. There are a small number of vacant units. Operating units include, a crèche, traditional fish and chip type takeaway, small supermarket, barbers and a bookmakers.
- 1.2. The wider area is characterised by semi-detached and terraced housing to the north, east and south. A large retail warehouse complex (Childers Road Retail Park) is located immediately to the west of the appeal site. The Parkway Shopping Centre and Parkway Retail Park are located close by to the north.
- 1.3. The public realm in the vicinity of the neighbourhood centre is generally good. There are however, a number of areas where litter is prominent beyond the boundary of the centre. Broken glass from the boarded up vacant units remains on the footpath and surface car park of the centre. On the day of my site visit I noted a regular through put of patrons availing of the goods and services of the supermarket, bookmakers and takeaway.

2.0 Proposed Development

- 2.1. Permission is sought for:
 - An extension to the existing deli area for the purposes of a takeaway facility, comprising a 2 sq.m. delicatessen counter extension. No external changes to the appearance of the unit.
 - A change to the business opening hours to 07.00 to 23.00, Monday to Sunday.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 4 conditions, relevant conditions are summarised below:

- Condition 2. The serving of hot food from the delicatessen shall be ancillary to the main retail use and shall not be sub-let or franchised.
- Condition 3. No additional signage on the unit frontage.
- Condition 4. The proposed use shall cease at 11.00pm seven days a week.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Basis for the planning authority decision. Report includes:

- The initial Planner's Report required further information with regards to the type and scale of takeaway uses proposed, details of the ventilation/extraction equipment and to address third party concerns with regard to the takeaway development. The proposal was screened for AA, no significant impact to an SAC or SPA.
- The second Planner's Report required clarification of further information with regard to the air extraction system and any odour counteracting or neutralising systems.
- The final Planner's Report considers that the response received to the clarification of further information request is adequate and recommended a grant of permission subject to conditions. The Planning Authority's decision was in accordance with the Planner's recommendations.

3.2.2. Other Technical Reports

Environment Section. The further information submitted is acceptable.

3.3. Prescribed Bodies

Irish Water Report. Recommends the attachment of standard technical conditions.

3.4. Third Party Observations

Third party submissions from local business owners, a resident and a resident's association with regards to antisocial behaviour, littering and proliferation of takeaway uses.

4.0 Planning History

Appeal site (Unit 4)

Planning authority register reference 14/59, permission refused for the permanent change of use from retail to off licence. July 2014.

Planning authority register reference 10770048, permission granted for the change of use of part of the retail unit to off licences retail. Condition 6 restricts time period to two years. May 2010.

Planning authority register reference 03/435 (03770435), permission granted for a mixed use scheme comprising residential units, retail units, public house, restaurant and crèche. January 2005.

Adjacent units

Planning authority register reference 14/872, permission refused for a change of use from beauticians to Chinese takeaway. October 2014.

Planning authority register reference 12770113, permission granted for change of use from retail to takeaway. May 2013.

Planning authority register reference 06770245, permission granted for change of use from retail to betting office. October 2006.

5.0 Policy Context

5.1. Development Plan

Limerick City Development Plan 2010-2016

Land Use Zoning Map 1 - Zoned 5C Neighbourhood Centres, also Map 1B: Retail/Commercial. A Takeaway is permitted in principle.

Objective ZO.5 (C) Neighbourhood Centres

To protect, provide for and/or improve the retail function of neighbourhood centres and provide a focus for local services.

The primary purpose of these centres is to fulfil a local shopping function, providing a mix of convenience shopping, lower order comparison shopping, and local services to residential and employment areas. Some of these centres need to be enhanced significantly in terms of their retail offering, mix of uses, public realm, and overall viability and vitality. Limited retail offices will be acceptable in these centres to serve local needs and are subject to restrictions on size and extent including a cap of 100m² per unit. Residential uses are also acceptable within this zone.

Takeaway/Off license/Amusement Centre/Gaming Zone

In order to maintain an appropriate mix of uses and protect night time amenities in a particular area, it is the objective of Limerick City Council to prevent an excessive concentration of takeaways, off-licenses, amusement centres or gaming zones and to ensure that the intensity of any proposed use is in keeping with both the scale of the building and the pattern of development in the area.

The provision of such facilities will be strictly controlled, having regard to the following, where considered appropriate:

- The effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents.
- The need to safeguard the vitality and viability of shopping areas in the City and to maintain a suitable mix of retail uses.
- Traffic considerations.

- The number of such facilities in the area.
- Litter control measures.
- With regard to takeaways the need to integrate the design of ventilation systems into the design of the building.

5.2. Natural Heritage Designations

The appeal site is located 1.2 kilometres from the Lower River Shannon SAC (site code 002165) and 2.7 kilometres from the River Shannon and River Fergus Estuaries SPA (site code 004077).

6.0 The Appeal

6.1. Grounds of Appeal

Two separate third party appeals have been lodged by Justin Murray, Joseph and Mary Murphy against Limerick City Council's notification of decision to grant permission. The grounds of appeal can be summarised as follows:

Justin Murray (Joe's Takeaway, Unit 2)

- Under the terms of their permission (12/113), opening hours were limited to 12.00 to 22.00 daily. Objects to the different and more generous opening hours given to the appeal unit.
- The appellant was limited to a two year permission in order to assess the impact of a takeaway, no similar condition was attached to the appeal site.
- The applicant's contention that they sell products that will not compete with other units nor attract a noise, litter and gatherings of youths is not plausible.
- The appellant cites an example of a nearby Costcutter branch with a similar takeaway element which has now become the dominant use.

- The proposed takeaway constitutes a proliferation and excessive concentration of takeaways. The appellant notes a recent refusal of permission for a takeaway (14/872), based upon proliferation and over concentration of takeaway uses.
- The reduction of the retail function of the existing Costcutter shop will impact on the viability of the overall neighbourhood centre and go against Council policy to enhance retail offering.

Joseph and Mary Murphy (a director of the management company for the overall centre).

- The planning application is invalid, as the applicant did not have a clear consent from the landowner to make a planning application.
- The proposed development would contravene the terms of a lease.
- As hot food for takeaway is already being sold on the premises, the planning application should have been for retention, the application is therefore invalid.
- The nature of the use is disingenuous, as the proposal is clearly a full takeaway unit within the supermarket. The appellant cites an example of a nearby Costcutter branch with a similar takeaway element which has now become the dominant use
- The appellant states that granting a further takeaway unit in this centre materially contravenes the Limerick City Development Plan with regard to proliferation of takeaway uses. Out of the seven ground floor units, two will now be takeaways. The appellant notes a recent refusal of permission for a takeaway (14/872).
- A second takeaway facility will impact upon the neighbourhood centre by way of noise, litter, late night noise and general disturbance. This is as a result of the extended opening hours which have been permitted by the Council.
- The appellant is concerned about the inconsistency of approach to takeaways at this Neighbourhood Centre, in terms of refusing some takeaway proposals, not limiting opening hours and not giving a time limit to permissions.

6.2. Applicant Response

None.

6.3. Planning Authority Response

None.

6.4. Observations

Deputy Niall Collins requests to be informed of the outcome of this appeal.

Residents of all areas of Castletroy View, their observations can be summarised as follows:

- Antisocial behaviour occurred at the shopping centre as evidenced by hoarding to protect vacant units. The reason for less antisocial behaviour now, is as a result of earlier closing times for retail units.
- The existing shopping centre is not well maintained and the additional litter that will result from the proposed development will further diminish the attractiveness of the area.
- There is an overabundance of takeaway and food outlets in the area.

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 issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Proliferation of Takeaways
- Opening Hours
- Procedural Issues
- Appropriate Assessment

7.2. Proliferation of Takeaways

- 7.2.1. The applicant has described the development as an extension to an existing delicatessen area to provide a takeaway facility. The term takeaway has not been used in the description of development in the Notification to Grant Permission and conditions attached restrict the use and advertising associated with the development.
- 7.2.2. Hot and cold food delicatessens are a feature of most supermarkets. In this instance the proposed delicatessen extension shouldn't be compared with the myriad of traditional takeaway offerings in the wider area. Nearby Childers Road Retail Park is home to a variety of large stores and includes a Pizza Hut, KFC and Costa Coffee. The nearby Parkway Retail Park offers a Camille Restaurant and Costa Coffee. The Parkway Shopping Centre provides a Planters Restaurant, Insomnia Coffee, Canteen Asian Cuisine, Burger King and Quigley's Café. An appellant requested that the inspector should visit a similar retail unit at Greenpark Centre at the southern end of Childers Road. I found a standard 'Costcutter' retail unit, with a minimal floor area dedicated to delicatessen space with an associated branded hot food takeaway element. It did not occur to me that the retail function of that unit was diminished by the delicatessen offering. Takeaway units are found throughout the immediate and wider area; the question is whether or not the proposed development is comparable to a traditional format takeaway.
- 7.2.3. At present the delicatessen area retails hot and cold food for consumption off the premises and is located to the rear of the shop. The delicatessen area is branded as 'Costcutter Deli'. The intention is to extend the delicatessen area from 6 sq.m to 8 sq.m of net retail area. The net retail area associated with the existing premises is 157 sq.m. Therefore, the overall delicatessen area will amount to 5% of the total net retail floor space. This is a marginal amount of floor space dedicated to the sale of hot or cold food for consumption off the premises and I consider it to be subsidiary to the main retail use. I have no figures in order to assess what this new area would turnover in terms of overall sales. However, given the small increase in delicatessen area and the habits of customers during my site visit (none of which availed of the delicatessen), I do not envisage that the overall nature of the retail business will change to any great degree. I do not consider that the viability of the entire

neighbourhood centre rests on the nature and scale of the proposed extended delicatessen area. In addition, the supermarket will continue to provide a local shopping function in accordance with the land use zoning objective for the area.

- 7.2.4. I do not consider that the proposed use is comparable to a traditional takeaway unit. This is as a result of its location to the rear of the retail unit and its small floor area dedicated to delicatessen uses. I note the Council's cautious approach with regard to the attachment of conditions to ensure the proposed use remains ancillary to the main retail use and advertising signage. Such conditions are intended to ensure that the primary retail use of the unit will be preserved and that any hot or cold food takeaway element will not overtake convenience shopping uses. I suggest that any issues to do with a material change of use to a predominantly takeaway facility would be a matter for enforcement procedures taken by the planning authority if warranted.
- 7.2.5. Comparisons drawn by the appellants between the current planning application and a recent refusal of planning permission (register reference 14/872) are misplaced. Register reference 14/872 was for the change of use of an entire retail unit to a takeaway facility and was refused permission based upon over concentration of such uses. In this instance the applicant has applied for the extension of an existing delicatessen area to the rear of the shop and which will remain as a subsidiary use. I see no reason to draw comparisons or consider precedent in relation to the subject appeal which does not change the use of the entire unit.
- 7.2.6. Given the foregoing, I consider that the proposed development should be assessed as an extension to an existing delicatessen offering and not as a conventional takeaway. County Development Plan policy with regard to excessive concentration of takeaways is not relevant in this instance. In addition, the grounds of appeal which relate to change of use to takeaway are not relevant. The existing supermarket will continue to fulfil its role as a local shop providing a convenience retail offering in accordance with Development Plan objectives for the neighbourhood centre. Any matter to do with the sale of hot food for consumption off the premises becoming no longer a subsidiary use is a matter for the planning authority and enforcement procedures if appropriate.

7.3. Opening Hours

7.3.1. The applicant has applied for permission to extend the opening hours of the retail unit - 7am to 11pm. I am unable to view the original planning permission, so cannot determine if a condition was attached to the original development regarding opening hours. I do note that a recent permission to change the use of a nearby unit (register reference 12770113) was restricted both in duration of permission and opening hours. In that case, the change of use from retail to a takeaway was restricted to the hours of noon to 10pm daily. This is a condition specifically designed to preserve residential amenity with respect to a development described as a takeaway. This is in accordance with Council Policy with regards to takeaways and addresses issues of appropriate mix of uses and to protect night time amenities in a particular area, with specific reference to:

- The effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents.
- With regard to takeaways the need to integrate the design of ventilation systems into the design of the building.

7.3.2. In this instance, I see no reason to curtail opening hours of the overall convenience supermarket to align with a neighbouring unit which is operating as quite a different entity. Furthermore, I see no logic in curtailing the proposed extended delicatessen use hours, in the same way as the Council sought to do. This is because I consider that the proposed delicatessen extension and provision of a takeaway facility is not comparable to a traditional takeaway offering. The proposed opening hours of 7am to 11pm for the existing delicatessen counter and overall retail unit are considered acceptable.

7.4. Procedural Issues

7.4.1. An appellant has raised concern that the applicant did not have the adequate legal consent to make the planning application. That conditions of the lease have been broken. The description of development is incorrect as the applicant is already selling hot food for consumption off the premises.

7.4.2. I note that the applicant has completed the planning application form and indicated that the legal owner of the premises is Mangan Retail Properties Ltd. A letter of

consent from Terence Mangan accompanies the planning application, however, it refers to modifications to a pizza oven rather than specific consent to apply for planning permission. I note that no other third parties asserted that they were the owner of the land or structure in question, or cast doubt on the bona fides of the application. As a result, the planning authority did not inquire further into the matter.

7.4.3. I consider that the thrust and intent of the letter provided by the legal owner of the premises was to allow the tenant to make changes that would comply with any planning permission for the unit. In this respect the applicant proposes to retain the principal use, in this case convenience retail, and extend an existing delicatessen use for consumption of hot or cold food off the premises. This proposal would remain subsidiary to the main retail use. There was not sufficient doubt to refuse permission and the planning authority were right to grant permission subject to the provisions of section 34(13) of the Planning and Development Act 2000 (as amended), in that the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission. I consider the planning application to be valid with respect to legal consent and I have no substantive doubts concerning the applicant's bona fides.

7.4.4. The matter of breaking the terms of a lease is a legal matter between parties and one which does not concern the appeal. I will therefore not assess any issues to do with leases.

7.4.5. I note that the description of development in the public notices and the planning application form, refer to 'the extension of an existing deli area to provide for a takeaway facility'. As already discussed in section 7.2 and in tandem with the drawings submitted with the planning application, the proposed development is an extension to an existing delicatessen area and does not represent a standalone takeaway facility in the traditional sense. I consider the delicatessen extension to be subsidiary to the main retail use. I believe that the applicant may have been too liberal with their use of the term 'takeaway' without fully understanding its inference in planning terms. In the interests of clarity, the proposal is for an extended delicatessen area of 2 sq.m. for the preparation of hot or cold food for consumption off the premises and extended opening hours.

7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the development that is proposed within an established urban environment, 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. I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the established retail use on the appeal site and the pattern of development in the area and the limited extent 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 the property in the vicinity, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 25 day of January 2016 and by the further plans and particulars received on the 15 day of August, 2016, 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. This permission is for the preparation and serving of hot and cold food for consumption off the premises subsidiary to the main retail use as shown on plans as an extended delicatessen area and opening hours of 7am to 11pm daily for entire retail unit.

Reason: In the interest of clarity.

3. The developer shall control odour emissions from the premises in accordance with measures including extract duct details 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.

4. 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.

Stephen Rhys Thomas
Planning Inspector

5 January 2017