



An
Bord
Pleanála

Inspector's Report PL28.247956

Development	Change of use from vacant retail unit to restaurant with hot food takeaway and provision of hardstanding area in yard
Location	No. 5 Pearse Square, Ballyphehane, Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	16/37146
Applicant(s)	Gillabbey Taverns Ltd
Type of Application	Permission
Planning Authority Decision	Grant subject to Conditions
Type of Appeal	Third Party
Appellant(s)	1) William O'Sullivan 2) Lorraine O'Sullivan 3) Diarmuid O'Donovan
Observer(s)	Bart & Tracey Kavanagh
Date of Site Inspection	11 th May 2017
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site is located in Pearse Square, a local pedestrianised commercial centre located on the south-western side of Pearse Road in Ballyphehane to the south side of Cork City. The square is enclosed by two storey buildings on three sides while the fourth side opens onto Pearse Road. Ground floors are in commercial use whilst there are some first floor residential uses. A slip road provides vehicular access from Pearse Road to on street parking along the northern frontage of the square. The appeal premises which was previously occupied by an off license is to the south-eastern side of the square comprises the ground floor of a two storey terraced building. The appeal premises are presently vacant. It was previously occupied by an off license.
- 1.2. Pearse Square Local Centre provides for a mixed of uses including a pharmacy, beauty salon, an Asian food take-away, convenience shop, traditional chipper take-away, two hairdressing salons and a bookmaker. There is a recently vacated pub within the centre too. The surrounding area is an established residential area. There are some schools and ecclesiastical buildings in the vicinity. Approximately 600 metres to the west is Togher Neighbourhood Centre.
- 1.3. The site area measures approximately 0.02 hectares. The ground floor unit measures approximately 86 square metres. There is a yard at the rear of the unit that has access to the laneway to the south-east (laneway off Fr. Dominic Road). The first floor unit is commercial and has independent access to the south of the subject site. It is in use as storage/back office by the adjacent pharmacy
- 1.4. A set of photographs of the site and its environs taken during the course of the site inspection is attached. I would also refer the Board to the photographs available to view throughout the appeal file

2.0 Proposed Development

- 2.1. The proposed development is for the change of use from existing and vacant off-licence retail unit to use as a restaurant with hot food take-away services. Internally it is proposed to provide tables and counters to the front of the premises with seating for approximately 20 customers. The remainder of the premises will be for the

preparation of food, storage, staff facilities and appliances like ovens and refrigeration.

- 2.2. It is estimated there would be three no. employees working inside the restaurant and two no. delivery drivers. Provisions have been made for staff changing and lockers, please refer to accompanying Ground Floor Plan for full details.
- 2.3. **Note:** The application was accompanied by a detailed cover letter, letter form the owner of No 5 Pearse Square granting permission to the applicant to apply for permission,

3.0 **Planning Authority Decision**

3.1. **Decision**

- 3.1.1. Cork City Council granted permission subject to 14 generally standard conditions.

3.2. **Planning Authority Reports**

- 3.2.1. Planning Reports
- 3.2.2. The **Assistant Planner** recommended that permission be granted subject to conditions. The **Senior Executive Planner** agreed with this recommendation and also recommended that permission be granted subject to conditions. The notification of decision to grant planning permission issued by Cork City Council reflects this recommendation.
- 3.2.3. Other Technical Reports
- 3.2.4. The **Environment Section** has no stated objection to the development subject to conditions relating to waste management and noise as set out in their report.
- 3.2.5. The **Drainage Division** has no stated objection subject to conditions relating to drainage and storm runoff as set out in their report.
- 3.2.6. The **Roads Design Section** has no comment in relation to roads subject to conditions relating to the application of a Section 48 Development Contribution as set out in their report

3.3. Prescribed Bodies

3.3.1. **Irish Water** has no objection to the development

3.4. Third Party Observations

3.4.1. There are 5 no observations recorded on the appeal file from (1) Lorraine O'Sullivan, (2) Residents of Father Dominic Road, (3) Bart & Tracey Kavanagh, (4) Diarmuid O'Donovan and (5) Father Dominic Place and Pearse Place residents.

3.4.2. The issues raised relate to the area already being adequately served by takeaways shops / restaurants, odours / fumes, ventilation / ducting noise, general disturbance and anti-social behaviour, litter and noise, noise from delivery vehicles, neighbourhood disturbance, extinguish right of way, traffic, parking and access, insufficient consent to submit the planning application, alternative uses not considered and the company is in the process of being struck off.

4.0 Planning History

4.1.1. There is no evidence of any previous appeal on this site. However, there was an appeal on the adjoining property that can be summarised as follows:

PL.28.239381 (Reg Ref 11/34766) – Cork City Council granted permission for the change of use from butcher's shop to Chinese Takeaway at No 2 Pearse Square, Ballyphehane, Cork. This decision was appealed by a third party. The Board granted permission subject to 8 no generally standard conditions.

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative plan for the area is the **Cork City Development Plan 2015 – 2021**. The site is zoned **ZO 10 Local Centre** where the objective is *to protect, provide for and/or improve the retail function of local centres and provide a focus for local centres*.

5.1.2. Objective 4.7 Local Centres and Corner Shops sets out the following:

- a) *To support, promote and protect local centres and corner shops which provide an important retail service at a local level;*
- b) *To support and facilitate the development of and the expansion of existing local centres and corner shops as appropriate where significant population growth is planned or where a demonstrable gap in existing provision is identified, subject to the protection of residential amenities of the surrounding area. Proposals should provide a mix of uses and services suitable to the scale of the centre and demonstrate the appropriateness of the location.*

5.1.3. **Chapter 16** Development Management of the Development Plan deals with *Hot Food Takeaways/ Fast-food Restaurants*. **Section 16.88** states that *in order to maintain an appropriate mix of uses and protect night-time amenities in a particular area, it is the objective of Cork City Council to prevent new takeaways in inappropriate locations, to prevent an excessive concentration of takeaways and to ensure that the intensity of any proposed takeaway is in keeping with both the scale of the building and the pattern of development in the area. Hot Food takeaways and fast-food restaurants can also have an adverse economic impact by affecting the commercial viability of areas by affecting status and consequently rental levels, and also the attractiveness of upper floor occupation for other uses.*

5.1.4. **Section 16.90** states that *in order to protect residential amenity in suburban areas fast-food takeaway units will only be permitted in district centres, neighbourhood centres and local centres and will be subject to the criteria below. These locations provide the focus for social and commercial activity in any area.*

5.1.5. **Section 16.91** states that *the provision of hot food takeaways/fast-food restaurants will be strictly controlled having regard to the following:*

- *Land use zoning and specific objectives contained in the plan (for example Objective 13.4:*
- *Protection of Prime and Key Secondary Retail Frontage);*
- *The potential impacts on buildings on the RPS, NIAH or in Architectural Conservation Areas;*
- *The impact on the economic viability of streets;*

- *The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses;*
- *The number/frequency of such facilities in the area;*
- *The effect of fumes, hours of operation, and general disturbance on nearby amenities and residents.*
- *The need for adequate ventilation systems which are to be integrated into the design of the building;*
- *Design of the unit in particular the shopfront and the need to avoid dead frontage onto the street;*
- *Any proposed advertising/lighting is suitable and unobtrusive. Any advertising/signage should be removed on the cessation of operation of the business;*
- *Traffic implications resulting from the proposed development including the need to service the business and provide for the parking needs of customers.*

The Planning Authority may impose restrictions on opening hours of hot food premises where deemed necessary.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within any designated Natura 2000 site. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058) which are located to the north and east of the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. There are three third party appeals from (1) William O'Sullivan, (2) Lorraine O'Sullivan and (3) Diarmuid O'Donovan. The issues raised may be summarised as follows:
- 6.1.2. **Excessive Uses** - The vitality and viability of local centres is affected by the balance of uses in that centre. The overall proportion of hot food takeaways within the centre

should be managed as there is a concentration of fast food outlets in the area. Currently the number of food outlets in the shopping centre accounts for 30% of the units. In addition, the surrounding area has six other established fast food outlets. The development will result in an excessive proliferation of takeaway uses in this area and will have a detrimental impact on the retail function of the local centre and in particular on the viability of the existing takeaways.

6.1.3. **Parking & Access** - Parking in the area is problematic for residents as is access for refuse collection vehicles and delivery vehicles. Extra vehicular activity would pose a danger to pedestrians. The square is not very attractive for the community at night and is now trending towards low footfall because youths loitering outside fast food takeaways.

6.1.4. **Potential for anti-social behaviour** - The area has a long history of anti-social behaviour to the rear of the property and to this end the Traders & Residents were successful with a recent petition to have the public right of way extinguished and a gated entrance erected on the laneway to the rear of the appeal property to which interested stakeholders have access. Access to the rear of the property cannot be achieved without opening and closing the padlocked gate. Having completed the prolonged legal, administrative and statutory procedures necessary to extinguish right of way in this laneway, key holders (including traders and residents) are justifiably concerned, that their new found and hard won security, privacy and restriction of the public from entry will now be jeopardised and put at risk once more by the continued opening and closing of the gates and coming and going through the padlocked gate.

6.2. Applicant Response

6.2.1. The first party response to the appeal was prepared and submitted by Cunnane Stratton Reynolds on behalf of the applicant Gillabbey Taverns Ltd and may be summarised as follows:

6.2.2. The proposed development of restaurant with hot food take-away is a compatible use at this local centre that will add to the vitality and viability of the centre.

6.2.3. The Planning Authority has undertaken a robust assessment of the proposed development. The assessment takes account of the zoning objective, as well as

other relevant Development Plan policies and objectives, which is in accordance with legislative requirements.

- 6.2.4. There are a number of fast food provisions/take-aways locally but there are a limited number in the overall catchment.
- 6.2.5. The hours of operation are considered to be acceptable in terms of protecting residential amenity. There will always be some level of noise associated with any commercial development. The provision of the delivery service will result in a certain level of noise, however it is considered that the level of noise should not cause undue disturbance to local residents. The closing time of 11pm is considered to be a reasonable hour to remain open until. It is comparable with the hours of operation of similar type premises in a suburban setting. The Planner considers the proposed scooter delivery service could be a nuisance at late hours and that is why she established a closing time of 11pm as a precaution.
- 6.2.6. With regards to the gate and the extinguished right of way, the applicant is entitled to access to the rear of the property, like the other landowners at this section of the square. The gates can be operated so that any access and services will close and lock the gate after use. Indeed, the issue with respect to the introduction of the gates in the first instance appears to be a concern over anti-social behaviour, rather than use or noise per se. The use of the common access by our client will indeed introduce a degree of activity after and use that will lead to active surveillance.
- 6.2.7. There is a sufficient level of car parking provided at the local centre without the need for the provision of additional spaces. The proposed development will serve a local catchment and deliveries will be made by the scooter delivery drivers. Therefore, there will not be a large parking demand associated with the proposed development. In addition, the hours of use of the car park by patrons of the restaurant will be different to that of the hairdressers and other retail units.
- 6.2.8. The proposed development will add to the variety of dining establishments available in this local area.
- 6.2.9. The appeal considers that the use of scooter for delivery service will cause a noise disturbance. The restriction on opening hours will ensure there is no noise emanating from the premises after 11pm, which is a standard closure time for this type of development.

- 6.2.10. The use of the laneway will be strictly controlled and staff will ensure the gate is closed and locked after each use.
- 6.2.11. The proposed development is located in an area identified as Local Centre in the land use zoning map. The Planning Authority has conducted their assessment of the proposed development, taking account of Development Plan policy and objectives.
- 6.2.12. Having regard to the context and scale of the Square and to the nature of the existing uses, it is not considered that the proposed development would result in an excessive proliferation of take-away uses in this area or that it would have a detrimental impact on the retail function of the local centre.
- 6.2.13. The appellant has conducted a survey of existing hot food take-aways in the general vicinity. There are a few factors to consider when examining these other hot food take-aways. It is submitted that there is not an excessive proliferation of hot food take-aways in the catchment area. The 2011 census for the relevant electoral divisions reveals that there is a catchment population of 11,342 in this area which is more than enough to support the identified provisions.
- 6.2.14. With regards to ventilation, the proposed development includes ventilation ducting that will ensure for the safe removal of fumes and odour. This is in accordance with standard practice for this type of development.
- 6.2.15. **Note:** The submission was accompanied by a list of signatures of resident's in support of the proposal and images of local takeaways.

6.3. **Planning Authority Response**

- 6.3.1. Cork City council states that they have no further comment to make.

6.4. **Observations**

- 6.4.1. There is one observation on file from Bart & Tracey Kavanagh, Barties Traditional Takeaway & Pizzeria, 9 Pearce Square, Ballyphehane who state that the applicants company is in the process of being struck off, and raise concerns regarding legal interest, significant focus on delivery service, excessive concentration of takeaways in Pearce Square, undue noise and unsociable hours, high volumes of delivery vehicles, traffic safety, anti-social behaviour and precedents

6.5. Further Responses

6.5.1. There are no further responses recorded on the appeal file.

7.0 Assessment

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application, the planning history pertaining to the site and to my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings:

- Principle / Policy Considerations
- Residential Amenity
- Traffic
- Development Contribution(s)
- Screening for Appropriate Assessment

7.2. Principle / Policy Considerations

7.2.1. The applicant is seeking permission for the change of use from vacant retail unit to restaurant with hot food takeaway and delivery with provision of hardstanding area in yard. The appeal site is wholly contained within an area zoned **Local Centre** in the Cork City Development Plan 2015 – 2021 where the objective is *to protect, provide for and/or improve the retail function of local centres and provide a focus for local centres*. Section 16.91 states that the provision of hot food takeaways/fast-food restaurants will be strictly controlled having regard to a number of criteria. Having regard to the relevant criteria and other policy objectives I would set out the following:

- The appeal site is located within a Local Centre and is therefore in compliance with Section 16.90 of the Development Plan where it states that *in order to protect residential amenity in suburban areas fast-food takeaway units will only be permitted in district centres, neighbourhood centres and local centres*.

- The appeal premises is located within the local centre and notably is presently vacant. I consider that the proposed use as restaurant / takeaway is entirely appropriate at this location and will not threaten the predominant retail use.
- The proposed use will not impact on any prime or key secondary retail frontage and will not impact on any buildings on the RPS, NIAH or in Architectural Conservation Areas;
- While it is accepted that there are is a concentration of fast food outlets in the area I agree with the Case Planner that the restaurant element of this scheme distinguishes this scheme form just that of a take away and that it will add to the vitality and mix of uses in this area and
- The effect of fumes, hours of operation, and general disturbance on nearby amenities and residents is discussed separately below.
- I am satisfied that the need for adequate ventilation systems to be integrated into the design of the building can be dealt with by means of a suitably worded condition.
- As regards the detailed design of the elevational treatment I consider that the proposals are appropriate and in keeping with the pattern of development in the vicinity subject to a specific condition pertaining to signage, lighting and the use of shutters to ensure that the proposed shopfront avoids dead frontage onto the square
- Traffic implications resulting from the proposed development including the need to service the business and provide for the parking needs of customers is discussed separately below.

7.2.2. As is evident the proposed development does not seek to expand the function of this local centre rather it seeks to introduce a new use into a vacant property within the centre and thereby adding to the mix of uses at this location. Accordingly, I am satisfied that the principle of the development to be acceptable at this location subject to the acceptance or otherwise of site specifics / other policies within the development plan and government guidance.

7.3. Residential Amenities

- 7.3.1. The applicant proposes opening hours of between 15.00 and 23.00. The area in which the proposal is located is a large and predominantly residential area where a modest restaurant and ancillary take away such as that proposed is acceptable. However, I note the particular concerns raised by the appellants regarding potential anti-social behaviour. The fact that the area is primarily residential where noise levels at night time are likely to be low I consider that a closing hour of all commercial activity in the building of 11 pm, would be a reasonable requirement to minimise disturbance cause by normal noise associated with people leaving the premises and proposed delivery runs. It is submitted that the amended 11.00 pm closing time would also be in advance of local pub closing times and would mitigate against significant anti-social behaviour. Accordingly, I consider that the approach of the planning authority in Condition No 2 whereby the proposed scheme is required to operate between 1200 and 2300 to be reasonable.
- 7.3.2. As is evident from the file the appeal is centred on issues relating to the impact of the proposed change of use on the adjoining residential properties by reason of noise, general disturbance and night time activity. I have considered the appeal and while I recognise the concerns regarding the possible impacts to the residential amenities in the immediate vicinity I also acknowledge that this is a designated local centre where a takeaway / restaurant use is permissible. However, to enable the effect of the development on residential amenities of the area to be reviewed having regard to the circumstances then prevailing it is recommended that should the Board be minded to grant permission that the overall permission be granted for 3 years. I am satisfied that subject to strict conditions pertaining to hours of operation and litter control the proposal would not adversely affect the amenities of residential premises in the vicinity.
- 7.3.3. It is stated that the rear of the premises opens into an overgrown yard area with a shed that accesses the rear lane. This lane is currently enclosed by a palisade fence (site photos refer). It is proposed to clear the yard area and provide a hardstanding area with parking spaces for delivery vehicles only. It is stated that delivery vehicles in this yard will be restricted to scooters and that access to this area will be strictly by authorised personnel and that it will not be accessible by the public.

It is also envisioned that this area will be used for loading of vehicles for deliveries and to provide a parking area for delivery vehicles that are not in use.

- 7.3.4. The matter of access to the rear of the appeal property is not queried however substantial concern has been raised that the recent reduction in anti-social behaviour and vandalism in the area as a direct result of this right of way being extinguished and a gated entrance being provided will be now be jeopardised by the continued opening and closing of the gates by delivery vehicles. I share the concerns raised by the appellants in this regard. It is recommended that should the Board be minded to grant permission that a condition be attached that no delivery vehicles (scooters or otherwise) access the rear of the property save for overnight parking and delivery of goods to the premises.

7.4. **Traffic & Car Parking**

- 7.4.1. Pearse Square adjoins a relatively busy road and it was noted on day of site inspection that there is considerable and frequent usage of existing car parking associated with the local centre together with short term parking on adjoining footpaths in the immediate area of the local centre. However, having regard to the nature of the proposed development I consider that the restaurant / takeaway use and associated delivery service will not add significantly to the current situation as it is likely to be in most demand when other premises are less busy or closed. On that basis I have no objection to the proposed development on traffic or car parking grounds.

7.5. **Development Contribution(s)**

- 7.5.1. **Section 48 Development Contribution** – Cork City Council has adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended) and is in place since 14th October 2013. A Section 48 Development Contribution condition was attached to the notification of decision to grant permission issued by Cork County Council. This condition has not been appealed. It is recommended that a Section 48 Condition be attached to any grant of permission.

7.5.2. **Section 49 Supplementary Development Contribution** - In relation to the Section 49 Supplementary Development Contribution Schemes (re-opening of an operation of suburban rail services on the Cork to Middleton line; provision of new rail services between Blarney and Cork and the upgrading of rolling stock and frequency on the Cobh rail line as demand increases) it is noted that the subject site is located outside the catchment area of these projects (1km corridor) and therefore the Section 49 scheme is not applicable in this case.

7.6. **Screening for Appropriate Assessment**

7.6.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest European site (Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058)), it is reasonable to conclude on the basis of the information available, that the proposed development, individually and in combination with other plans or projects would not be likely to have a significant effect on any European site. An appropriate assessment (and submission of a NIS) is not therefore required.

8.0 **Recommendation**

8.1. Arising from my assessment above, I consider the proposed development to be generally in accordance with the proper planning and sustainable development of the area and I therefore recommend that planning permission be **GRANTED** for the proposed development subject to conditions set out below.

9.0 **Reasons and Considerations**

9.1.1. Having regard to the zoning objectives for the area and the pattern of land use in the vicinity it is considered that, subject to the conditions set out below, the proposed development will not seriously injure the amenities of the area or property in the vicinity. The proposed development 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, 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. The use of the premises as a hot food takeaway shall cease on or before the expiration of a period of 3 years from the date of this order.

Reason: To enable the effect of the development on the residential amenities of the area to be reviewed having regard to the circumstances then prevailing

3. No delivery vehicles (scooters or otherwise) shall access the rear of the property save for overnight parking and delivery of goods to the premises.

Reason: In the interest of residential amenity.

4. The hours of operation of the takeaway and delivery service shall be restricted to between 12.00 and 23.00 Monday to Sunday.

Reason: In the interest of residential amenity

5. The proposed shopfront shall be in accordance with the following requirements

(a) The proposed signs shall be restricted to a single fascia sign as per the plans lodged with the application and shall use sign writing or comprising either hand-painted lettering or individually mounted lettering,

(b) lighting shall be by means of concealed neon tubing or by rear illumination,

(c) no awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission,

(d) neither internal nor external roller shutters shall not be erected,

(e) no adhesive material shall be affixed to the windows or the shopfront,

(f) no structures / storage areas shall be erected inside the shop front windows

Reason: In the interest of visual amenity.

6. 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 within 4 weeks of the date of this decision

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

7. 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. Grease traps shall be fitted on all kitchen drains.

Reason: In the interest of public health and environmental protection.

8. A waste management plan including the provision for the storage, separation and collection of all waste, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the permitted use.

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

9. 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.

Mary Crowley

Senior Planning Inspector

15th May 2017