



An
Bord
Pleanála

Inspector's Report PL92.248676

Development	Takeaway element to existing restaurant and retention for existing signage.
Location	Friars Street, Thurles, Co. Tipperary.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	17600291.
Applicants	Freshies Limited.
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party
Appellants	Paul & Roisin Scully
Observers	None.
Date of Site Inspection	7 th November 2017.
Inspector	Philip Davis.

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1.0 Introduction

This appeal is by local residents against the decision of the planning authority to permit a takeaway element to an existing permitted restaurant and the retention of signage on a street at the edge of the town centre of Thurles, Co. Tipperary. The main grounds of appeal relate to amenity.

2.0 Site Location and Description

Thurles, with a population of just under 8,000, is a market town on a crossing point on the River Suir. It centres on the elongated Liberty Square (formerly Main Street) on the western side of the river. Most of the shops, offices and restaurants/bars in the town are located on the Square or on one of the main roads radiating out from it. Friars Street (the R660 Cashel Road) runs due west from Liberty Square. It is a typical transitional secondary street, characterised by 2-3 storey terraced buildings, with a mix of shops, offices, restaurants with some residential. The street leads to the railway station outside of town and there is one small supermarket, a Costcutter, on the western side, about 250 metres from Liberty Square.

The appeal site is on the northern side of Friars Street, about 150 metres west of Liberty Square, and on the corner of Old Baker Street, a small pedestrianised relatively modern lane of shops and cafes linking Friars Street with carparking in backlands to the north. The site is a 2 storey corner flat roofed corner building with a single storey rear, entirely occupied by an 'Apache Pizza' restaurant. It is on a site with an area given as 0.007 hectares, with a gross floor area of 77.8 square metres.

East of the site is a 2-storey commercial building with a laundrette – there is a vacant commercial property beyond this, and a further series of similar 2-storey retail and office buildings along the terrace to Liberty Square. **West** of the site is the narrow pedestrian entrance to Old Baker Street – across this is a more modern 2 storey commercial building with a beauty salon. Another such salon is to the west of this, with beyond it an India Restaurant, with a further terrace of retail and commercial buildings further west. To the rear of the building is a line of relatively modern 2 storey commercial buildings with retail at ground floor. Across the street are a mix of residential buildings and mostly ground floor office/retail uses.

3.0 Proposed Development

The proposed development consists of planning permission for a takeaway element to existing restaurant (restaurant permission ref. no. 98/54/1694) and retention permission for existing signage to both Friar Street and Old Baker Street with associated site works and ancillary works.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to three conditions. Condition 2 states that no illuminated signage shall be used, and condition 3 restricts the hours of opening to 08.00 to 11.00 Monday to Sunday.

4.2. Planning Authority Reports

4.2.1. Planning Reports

- Notes that a 1998 permission for a pizza restaurant restricts (condition 1) the use of 'take-away' from the site.
- A significant number of objections and observations are noted.
- It is noted that restaurants are permitted in principle in town centre zoning uses.
- It is located within a zone of archaeological potential and ACA.
- It is noted that it is policy (ECON 9) to resist further takeaway outlets in Thurles, but they will be considered as part of a sit down restaurant.
- Notes that ACA policy states that signage should be minimal.
- Permission is recommended.

4.2.2. Other Technical Reports

Environment Section: Requested further information relating to grease traps, air conditioning units, waste bins, and details of the daily operational routines.

4.3. Prescribed Bodies

None on file.

4.4. Third Party Observations

A total of 12 submissions were made on the application, all either objecting or referring to issues with the application. All appear to be from local residents, businesses, or property owners.

5.0 Planning History

There only appears to be one permission relating to the site on file – reference 98/54/1694, for permission for the change of use from a video rental store to a pizza restaurant. Condition 1 of this permission restricts the use and does not permit its use as a ‘take-away’ for the consumption of hot food off the premises. The appellant refers to a more recent permission for demolition and a 3-storey development on the site.

6.0 Policy Context

6.1. Development Plan

The current development plan according to the Tipperary County Council website is the 2009 Thurles Town & Environs Development Plan. The site is zoned for ‘town centres’ uses, under which restaurants are permitted in principle and takeaways are ‘open to consideration’. The area is also within a Zone of Archaeological Potential and an Architectural Conservation Area. A number of policies relate to takeaways and signage. In summary, these are to restrict takeaways in the town centre, but to treat applications for takeaway use from sit down restaurants on its own merits. The over-use of signage is to be avoided within the ACA.

Relevant extracts from the town development plan are attached in the appendix to this report.

6.2. Natural Heritage Designations

There are no designated areas within or immediately around Thurles Town, but the Suir River runs through Thurles and downriver is an SAC.

7.0 The Appeal

7.1. Grounds of Appeal

The appellants are residents who live across the street from the appeal site.

- It is argued in some detail that the existing restaurant is unauthorised as it opened after the original permission had expired. It is noted that permission for the demolition of the building and the construction of a 4 storey replacement was granted in 2003 – **03/542053**.
- It is argued (photographs attached) that the site is currently used for takeaway.
- It is submitted that there are a number of irregularities in the application details.
- It is argued that there is a proliferation of takeaways in the area – a plan is attached indicating that there are 13 in the town centre.
- It is argued that it is contrary to the area zoning and policy ECON 9 as it is primarily a takeaway with just an ancillary sit down element.
- It is argued that the painting and signage is inappropriate in an ACA.

7.2. Applicants Response

None received.

7.3. Planning Authority Response

The planning authority states that they are satisfied that the decision to grant was appropriate and considers that all issues raised were fully considered and responded to in the planner's report.

8.0 Assessment

Having inspected the site and reviewed the file documents, I consider that the issues can be addressed under the following broad headings:

- Planning status of the site
- Principle of development
- Pattern of land use
- Amenity considerations
- Conservation and design
- Traffic
- Appropriate assessment
- Other issues

8.1. Planning status of the site

The site was open as a small pizza restaurant at the time of my site visit – it is unclear as to when it opened, but permission was granted in 1998 and undated more recent photos (not least from google street view) indicates that it was vacant for a significant period. While the argument submitted by the appellant that the original permission was never taken up has some merit, there is insufficient information available to indicate that the use as a restaurant is unauthorised, and the planning authority did not appear to consider this to be an issue. On balance, I am satisfied that the restaurant is operating under its permission 98/54/1694, and the conditions on this permission apply. I note that the external signage indicates that orders are taken for direct delivery – arguably this is ‘takeaway’, but the planning authority appear implicitly to consider that this is distinct from customers taking away hot food.

The appellants have argued that the site is currently used for takeaway, with photographs purporting to show customers leaving with pizzas. While not directly relevant to the appeal at hand, I would consider it quite likely given the nature of the restaurant. There is no record on file of the planning authority taking enforcement action.

8.2. Principle of development

The site is in an area zoned for town centre uses. In such areas 'restaurants' are permitted, while 'takeaways' are 'open for consideration'. Econ 9 states that further takeaways will not be permitted in the town centre, but that takeaway provision for existing restaurants will be considered on its merits:

Policy ECON 9: Take-away outlets

It is the policy of the Council to fully resist any further take away outlets in Thurles due to their negative impact on the surrounding environment. Proposal for 'take away' food as part of a sit down restaurant will be considered against the likely impact on local amenity, litter generation and noise. Opening hours of these premises will be strictly controlled.

Other policies of relevance include ECON 6 (strengthening town centre functions), HIST 1 on protecting ACA's and a variety of policies relating to design issues.

I would conclude on this basis that the appeal should be judged on its merits, having regard to the nature of the area and the planning history and use of the site.

8.3. Pattern of land use

Thurles Town has an extensive commercial core which includes Liberty Square and all the main roads entering the town. There is one shopping centre to the south of the town centre, which is only partially functionally connected to the town centre. Friars Street/R660 links the town centre to the train station and two foodstores – a Costcutter about 100 metres from the appeal site, and a Lidl further out of town. It is a typical such secondary commercial street, with a significant intermixing of residential uses, especially on its southern side. I note that while there is a significant number of vacant premises on the street, there are also a number of what seem to be newly occupied commercial and retail uses, so the street is reasonably vibrant and slowly recovering from the recession.

The appeal site is a building of uncertain age and seemingly quite poor construction on a prominent corner. It has no parking and there are double yellow lines all along the street, which is narrow and seemingly congested. The stretch of street includes several commercial premises, including beauty shops, laundrettes, offices and clothes stores. There is an Indian restaurant a number of doors to the west, a Chinese restaurant at the back of Old Bakers Street and a number of fast food outlets/sandwich shops at or close to the junction of Friars Street and Liberty Square

(known as West Gate at the junction). There is a printer's shop, a photo shop, and a large dwelling directly opposite the appeal site.

I consider the sit down restaurant an entirely acceptable use in the vicinity, but I would consider the site is less than optimal for a takeaway, having particular regard to the lack of legal parking in or close to the site and in particular the close proximity of residential uses. Having regard to both the nature of the area and the zoning designation I would consider that restaurants are appropriate and acceptable, but, with particular regard to condition 1 of the original permission and the provisions of policy ECON 9, it is not a suitable site for a use for which takeaway would be a major proportion of its customers. As the restaurant is very small with limited seating, I would consider that if takeaway use was granted, then most likely takeaway/delivery would become the primary use of the premises. I would consider this to be inappropriate in the context of development plan policy objectives and the nature of the area.

8.4. Amenity

The appeal site is within a largely commercial area – so far as I could establish none of the immediately adjoining buildings have upper floor residential use – although it was unclear to me as to whether the upper floor in the Old Bakers Street development are residential or commercial. The buildings directly opposite are in residential use, both ground floor and (apparently) on the upper floor of the photography shop. These are under 10 metres from the front of the appeal site premises.

The potential amenity impacts from a takeaway use are varied, and are of course to some extent dependent on the nature of the premises and its management. I would doubt that the proposed development would result in significant anti-social behaviour over and above what might be expected in a town centre at night. But having regard to the very narrow road and lack of parking, I would consider it likely that frequent congestion from haphazard short term parking and related issues would be significant at this point. Having regard to the zoning designation and policy ECON 9, I would consider that takeaway use, ancillary to existing restaurants, is only really appropriate in the more 'core' town centre area (i.e. Liberty Square) where there are fewer residential users and more direct carparking provision.

8.5. Conservation and design

The site is within the Architectural Conservation Area for the town centre. Within this area, there are a variety of policies focusing on the compatibility of design, colour and finishes, with reference to all external features, including shopfronts. Friars Street at this point is very typical of an Irish country town with most of its fabric dating from the 19th Century and later. Thurles has a medieval core, but there is little fabric remaining from this period. The street is characterised mostly by relatively wide fronted 2 storey terraced mixed use buildings, with no consistent style, but mostly quite plain. The overall streetscape is generally coherent and attractive.

The appeal site is a building of uncertain date – most likely mid-20th Century, and of very simple construction and form. It is not on the NIAH. Older photos indicate that it was in a poor state a few years ago. The building is now brightly coloured in the corporate colour scheme with painted signage. While non-traditional, I would consider the overall appearance of the signage to be appropriate for an ACA so I would recommend that this element be granted permission.

The site is in an archaeologically sensitive area – a former castle and motte were located where Friars Street meets Liberty Square. The proposed development does not involve any ground works so I do not consider that there are any implications for historic remains.

8.6. Traffic

The appeal site does not have carparking and there is no on-street parking in the immediate area. The lane to the side of the site is pedestrian only. There is a large parking area to the north, accessed via Old Baker Street, and extensive parking within Liberty Square. There is also public parking off a cul-de-sac to the west of the site. So while I do not consider that the area is deficient in parking for a sit-down restaurant, there is clearly an issue for ‘set down’ style parking of the type likely to use a takeaway. Having regard to the overall nature of the area I would consider this a serious issue for congestion and amenity impacts.

8.7. Appropriate Assessment

The works are minor in nature and there is no EU designated site within the town. The Suir runs through the eastern side of town, and flows south to an extensive riverine SAC, the Lower River Suir SAC – site code 002137. The closest part is

nearly 3 km south of the site. File information indicates that run-off from the restaurant discharges to the town wastewater treatment plant. Having regard therefore to the nature and scale of the proposed development and its distance from any EU site I conclude that there is no potential for significant effects on the conservation objectives of an EU designated site and as such no NIS is required.

8.8. Other issues

The planners report states that a Section 48 contribution would apply under 'Class 4' of the scheme, but did not apply a contribution condition, I assume on the basis that a contribution was already paid with respect to the restaurant use.

The site is not within a flood zone as indicated on any available sources.

I do not consider that there are any other issues of consequence in this appeal.

9.0 Recommendation

I recommend that the Board issue a split decision – granting permission for the retention of the existing signage, but refusing permission for a takeaway, for the reasons and considerations set out in the schedule below.

10.0 Reasons and Considerations

Having regard to the zoning designation and the nature of the immediate area, with particular regard to the provisions of policy ECON 9 in the Thurles Town Development Plan 2009, and to the proximity of dwellings in a narrow part of the street, it is considered that the proposed takeaway element to the existing restaurant would materially contravene the policy objectives for the town centre and would seriously injure the residential amenities of nearby dwellings. The proposed takeaway element would, therefore, be contrary to the proper planning and sustainable development of the area.

It is considered that subject to the conditions set out below the existing signage to both Friar Street and Old Baker Street does not seriously injure local amenities and is in accordance with the requirements set out in the Thurles Town Development Plan 2009 for Architectural Conservation Areas.

11.0 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. No internally illuminated signage shall be used. No signs, symbols, nameplates or other advertisements shall be erected externally on the buildings, save with the prior written agreement of the Planning Authority or prior to the grant of a planning permission.

Reason: To protect the amenities of the area.

Philip Davis
Planning Inspector

16th November 2017