



An  
Bord  
Pleanála

## Inspector's Report PL.06D.248677

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<b>Development</b>	Change of use of existing retail premises from fruit shop to fast food take away outlet with associated site works.
<b>Location</b>	95D Sallynoggin Road Upper, Sallynoggin, Co. Dublin.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council.
<b>Planning Authority Reg. Ref.</b>	D17A/0272.
<b>Applicant</b>	John Swords.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with Conditions.
<b>Type of Appeal</b>	Third Party.
<b>Appellant</b>	Thomas O'Reilly.
<b>Observers</b>	Naip Memshi, Georgian Banu & Harry Deep.
<b>Date of Site Inspection</b>	8 <sup>th</sup> September 2017
<b>Inspector</b>	Dáire McDevitt.

## **1.0 Site Location and Description**

- 1.1 The appeal site is located in Sallynoggin on the north western side of Sallynoggin Road Upper, which runs between Glenageary Road Upper (R829), to the north east, and Rochestown Avenue (R828), to the south west.
- 1.2 The site forms part of a “L” shaped retail/commercial terrace of two storey buildings, which enclose the northern corner of the junction between Sallynoggin Road, O’Rourke Park, and Pearse Street. The immediate area has a mixture of retail and residential uses. Opposite the site is an Aldi store and to the northeast along Sallynoggin Road Upper there are a number of retail warehouses. The nearest residential developments are the older residential areas of O’Reilly Park to the west, Honey Park to the northeast and Pearse Park to the south.
- 1.3 No. 95D Sallynoggin Road Upper is a vacant corner unit and was last used as a fruit and vegetable shop. It is part of a terrace of six units which includes two takeaways. The unit immediately to the east is Pescegrande Takeaway. To the north, the site is bounded by a vacant unit which is being refurbished at present. This unit forms part of a semi-detached structure consisting of three units. Further north the remainder of the neighbourhood centre consists of a terrace of four units, which includes two takeaways.
- 1.4 There is an area of public parking located along O’Reilly Park bounding the open space serving this residential development. There is parallel parking in front of the site along Sallynoggin Road Upper with additional parking further east along this road.
- 1.5 Maps, Photographs and aerial images in file pouch.

## **2.0 Proposed Development**

- 2.1. Permission for change of use of existing c. 56.4sq.m retail unit to a takeaway. The proposal includes alterations to the external façade including new signage and shopfront on a site with a stated area of c.77sq.m.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission granted subject to 8 standard conditions.

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

#### **3.2.1. Planning Reports**

This formed the basis of the Planning Authorities' decision, the main issues dealt with the principle of the development, residential amenities and visual impact.

#### **3.2.2. Other Technical Reports**

**Transportation Planning** No objection subject to conditions.

**Drainage Division.** No objection subject to conditions.

**Environmental Health Officer.** Noted that the proposal does not support the development of an environment that makes healthy food choices the easy choice. Recommendations set out in relation to drainage, food hygiene regulation and tobacco regulations.

### **3.3. Prescribed Bodies**

Irish Water. No objection subject to conditions.

### **3.4. Third Party Observations**

Two submissions were received by the Planning Authority, including one from the current appellant which generally reflects the grounds of appeal and shall be dealt with in more detail in the relevant section of this report.

The main issues can be summarised as follows:

- There is an issue with illegal parking in the area.
- Too many takeaways concentrated in the one area.

- The Billboard along the side elevation is not shown in the drawings and query if this is to be removed along with the existing external lighting and canopies.
- No vents shown on drawings.
- Concerns noted regarding opening hours, traffic, rubbish, odours.
- The hours of operation result in the units being closed during the day, shutters down and the area has a general appearance of being rundown which detracts from the streetscape.
- The proposal will detract from the amenities of the area and would be contrary to the required mix of uses for the neighbourhood centre as set out in the Development Plan.

#### 4.0 Planning History

There are no details on the Councils Online Planning Registrar for the parent permission for the neighbourhood centre.

**Planning Authority Reference No. D02A/0799** refers to a 2002 grant of permission for the change of use of a ground floor laundry to a takeaway at No. 95 Sallynoggin Road Upper.

#### 5.0 Policy Context

##### 5.1. Dún Laoghaire- Rathdown County Development Plan 2016-2022.

###### Land Use Zoning Objective:

- The site is located on lands zoned under Land Use Objective **NC** to *protect, provide for and/or improve mixed use neighbourhood centre facilities.*
- Takeaway is neither a 'permissible' nor an 'open for consideration' use under this zoning objectives as set out in table 8.3.6.

- **Section 8.3.7** refers to other uses not specifically mentioned in the use tables and that these will be considered on a case-by-case basis in relation to the general policies of the Plan and the zoning objectives for the area in question.

The Planners report refers to the location of the site within the boundary of the proposed Sallynoggin Local Area Plan. There is no Local Area Plan or proposed Local Area Plan available for viewing on the Council's website.

**Section 3.2.2.6. RET6 Neighbourhood Centres** refers to the provision of an appropriate mix, range and type of uses – including retail and retail services – in areas zoned under land use objective NC subject to the protection of the residential amenities of the surrounding area.

**Section 3.2.2.7. RET7 Convenience Shops** refers to the provision to provide local shops in neighbourhood centres where there is a clear deficiency of retail provision.

**Section 3.2.2.9 Non-Retail Uses** refers to the need to control the provision of non-retail uses at ground floor level within the shopping parade of mixed-use neighbourhood centres.

**Section 8.2.6.5 Fast Food Outlets/Takeways** this refers to the criteria for the assessment of fast food/takeaway outlets, including drive through. The criteria include amongst other things:

- The requirement to retain the retail mix, overall variety and multi-use function of the area.
- The effect of the proposed development on the existing mix of land uses and activities in the area.

- Careful consideration of the location of fast food outlets in the vicinity of schools and parks.

The proliferation or oversupply of certain premises that cause or are likely to cause disturbance or nuisance, detract from amenities or seriously detract from an area generally in terms of use and services mix may be resisted.

## **5.2. Natural Heritage Designations**

None of relevance

## **6.0 The Appeal**

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

A third party appeal was lodged by Thomas O'Reilly, 8 Beechwood Lawn, Killiney, Co. Dublin and can be summarised as follows:

- The original neighbourhood centre, consisting of 12 retail units and 6 residential units, has seen an exodus of retail uses over the years.
- The County Development Plan makes reference to Sallynoggin Neighbourhood Centre and the desire to have mixed street level retail outlets. However, there are presently 13 units in the block and if permitted, this would be the 6<sup>th</sup> takeaway. These are closed during the day with the shutters down giving the appearance of desertion to the area.
- The opening of another takeaway here would mean that 50% of the units would be closed during the day time.
- The site is located close to schools which would have a negative impact on promoting healthy eating habits
- There is an oversupply, 12 takeaway units with a 1 sq.km radius, and there is no need for another unsuitable use in the heart of a residential, educational and sporting environment.

- The proposal does not comply with RET6, RET7, Section 8.2.6.1, 8.2.6.5 (take away) of the Development Plan.

## **6.2. Applicant Response**

None.

## **6.3. Planning Authority Response**

The Board is directed to the original Planner's Report as it is considered that the grounds of appeal do not raise any new matters which would justify a change in attitude to the proposed development.

## **6.4. Observations**

Observations received from Naip Memshi (No. 95C Sallynoggin Road Upper), Georgian Banu (No. 95A Sallynoggin Road Upper) and Harry Deep (No. 1 O'Rourke Park, Thomastown, Sallynoggin). The Observations mirror each other and can be summarised as follows:

- The observers are operators of a chip shop, an Indian takeaway, and a pizza takeaway respectively within the Sallynoggin neighbourhood centre and are concerned that the addition of another takeaway at this location would result in 50% of the traders operating similar services/businesses which would not comply with the required mix of uses.
- The application did not include details of the fast food/takeaways in the area or consideration of its proximity to 3 schools. The proposal has not addressed the issue of 'no fry zones' being established in vulnerable areas. To grant permission here would go against the general consensus to educate and address the national obesity concerns by adding yet another takeaway within sight of schools and recreational areas.
- No retail impact statement as set out in section 8.2.6.1 of the Development Plan has been submitted.

- Section 3.2.2.6 requires a mix of uses to be provided.

## **7.0 Assessment**

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:

- Principle of development
- Amenities.
- Other Issues.
- Appropriate Assessment

### **7.1 Principle of Development**

7.1.1 The appellant has raised concerns that the addition of another takeaway at this location would result in over 50% of the units being used for the same purposes contrary to policy RET6 of the Development Plan which requires an appropriate mix, range and type of uses.

7.1.2 The neighbourhood centre includes thirteen units at ground floor level consisting of a chemist, four takeaways, hair salon, beauty salon, a delicatessen, a euro saver shop, pet shop, a neighbourhood shop/post office, a unit undergoing refurbishments and the application site (former fruit & vegetable shop). At first floor level there is a gym, cartridge refill/computer service, Doctors surgery and what appears to be residential uses.

7.1.3 To comply with the mixed-use objectives for the site, a balance of uses is required. In this instance the provision of a fifth takeaway at this location, while not ideal from a unit mix, complies with the overall requirement for a mix and range of uses at this location as set out in policy RET6 of the Development Plan.



- 7.1.4 Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, the site is located on lands under land use objective NC, “To protect, provide for and/or improve mixed-use neighbourhood centre facilities”. Takeaway is not listed in table 8.3.6 as either a ‘permissible’ or an ‘open for consideration’ use under this zoning objective. Section 8.3.7 of the Development Plan refers to the consideration of other uses, not included in the land use table, on a case by case basis as set out in section 5.1 of this report.
- 7.1.5 Section 8.2.6.5 of the Development Plan sets out the criteria for the assessment of takeaways. This includes the requirement to retain the retail mix and the need to protect from an oversupply of such uses if it would detract from the area in terms of use and services mix. Careful consideration is also required when assessing proposals in the vicinity of schools and parks.
- 7.1.6 The appellant and observers have raised concerns that the provision of another takeaway at this location would result in a proliferation of similar uses within close proximity of educational and recreational facilities. I note that there are no parks or education facilities immediately adjacent to the appeal site. The closest schools are Holy Child Community School, c. 0.3Km to the south of the site off Pearse Street, Sallynoggin School of Further Education, c. 0.5km to the south accessed off Pearse Street, Rathdown Junior School, located along Gleanageary Road Upper c 0.9km to the east of the site and Woodpark School c. 1.3km to the north accessed off Rochestown Avenue. The Development Plan does not prescribe a minimum required separation distance from schools and there are no identified ‘no fry zones.’
- 7.1.7 While I note that concerns have been raised by the observers relating to the issue a national obesity and healthy eating habits and the requirement for ‘no fry zones’ in vulnerable areas, it is my view that this is a matter that is beyond the scope of an assessment of an individual planning application. As noted in section 7.1.6 above ‘no fry zones’ have not been identified in the County Development Plan 2016-2022.

7.1.8 I do not consider that the proposal for an additional takeaway within a vacant unit at this location would result in a proliferation of such uses, such that it would detract from the vitality and viability of the neighbourhood centre or be contrary to the zoning objective for the site or the proper planning and sustainable development of the area.

## **7.2 Amenities**

7.2.1 The appellant noted that the existing premises are closed during the day with the shutters down which gives a rundown appearance to the area. I am satisfied that the use of external shutters can be dealt with by condition if the Board is of a mind to grant permission.

7.2.2 The site, located within a purpose built neighbourhood centre which is removed from the nearby residential development, would not have a detrimental impact on the residential amenities of these properties. A takeaway at this location is considered an appropriate use for a vacant unit and the proposal would not detract from the residential amenities of the nearby properties. The area is zoned under land use objective NC and adopted policy emphasises that such centres should be maintained and improved where necessary. Given the availability of a vacant unit within the neighbourhood centre, it is my view that the proposal would be a sustainable use of vacant stock and would contribute more to the streetscape than a vacant unit at this location.

## **7.3 Other Issues**

7.3.1 The original submissions to the Planning Authority raised concerns regarding noise, odours and litter generated by the proposed development. Considering the context of the site relative to residential properties, it is my opinion that the proposal would not significantly exacerbate the present situation with regards to noise, odours and litter. There are a number of existing takeaways in the vicinity of the site and it is unlikely that the noise levels generated by the current proposal would exceed the present noise levels generated by same. Taking into consideration the location of the proposal within a neighbourhood centre, I do not consider that nearby residential amenities would be adversely impacted. The proposal would not give rise to any material changes in ambient noise levels. The issue of opening hours can be dealt with by condition. Furthermore,

odour and litter control can also be appropriately addressed by way of condition if the Board is of a mind to grant permission.

## **7.4 Appropriate Assessment**

7.4.1 Having regard to the nature of the proposed development and the location of the site in a fully serviced built up urban area, 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 permission should be granted subject to conditions for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

Having regard to the zoning of the site for 'Neighbourhood Centre' in the Dun Laoghaire Rathdown County Development Plan 2016-2022, to the mix of uses and pattern of development in the area, including the extent of similar facilities, 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 property in the vicinity and would be in accordance with the provisions of the County Development Plan. 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 take-away shall not be operated between 23:00 hours and 17:00 hours on any day.

**Reason:** In the interest of the residential amenities of property in the vicinity.

3. The proposed shopfront shall be in accordance with the following requirements:-

(a) Signs shall be restricted to a single fascia sign using 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) no adhesive material shall be affixed to the windows or the shopfront.

**Reason:** In the interest of visual amenity.

4. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

6. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

**Reason:** In the interest of visual amenity.

7. The developer shall control odour emissions from the premises in accordance with measures, including ducting, details of 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.

8. A plan containing details for the management of waste/recyclable materials within the development, including the provision of facilities for the storage, separation and collection of the waste/recyclable materials including waste oil and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste/recyclable materials in the interest of protecting the environment.

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, 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.

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Dáire McDevitt  
Planning Inspector

19<sup>th</sup> September 2017