



An  
Bord  
Pleanála

## Inspector's Report PL.06S.248724

### Development

Change of use of existing tanning salon to Thai take-away, with 2 offices and storage on the first floor and associated refurbishment works within the curtilage of a protected structure (RPS 105).

### Location

Unit 4 Ballyowen Castle Shopping Centre, Lucan, Co. Dublin.

### Planning Authority

South Dublin County Council.

### Planning Authority Reg. Ref.

SD17A/0107.

### Applicant(s)

Guo Heng.

### Type of Application

Permission.

### Planning Authority Decision

Refusal

### Type of Appeal

First Party

### Appellant(s)

Guo Heng

### Observer(s)

None

### Date of Site Inspection

30<sup>th</sup> August 2017

### Inspector

Susan McHugh,

## 1.0 Site Location and Description

- 1.1. The appeal site, is located within the Ballyowen Shopping Centre, which is approximately 1.5km from the N4 in South Dublin. The shopping centre is accessed via the Ballyowen Road (R136) off the N4 and then entry to the shopping centre is from the Castle Road.
- 1.2. The general area is characterised by low rise development. There are two storey residential dwellings to the north and east (Colthurst residential area) and there are commercial uses to the west. Commercial uses include Lidl, a public house, restaurant/takeaway, and gym. There is a medical centre to the north west.
- 1.3. The existing commercial unit No. 4 has a stated area of 107 sq.m. and is currently vacant. It is one of a number of units which form part of the Ballyowen shopping centre the anchor tenant of which is Eurospar. There is a medical centre and restaurant with takeaway adjoining the shopping centre to the south. The other units comprise a pharmacy, barbers, two takeaways, coffee shop, hairdressers and vacant unit formerly a party shop. There is also a post office, florist and café inside the entrance to the Eurospar.
- 1.4. I note that the existing stone structure within the grounds of Ballyowen shopping centre, is a protected structure (RPS Ref. 105) referred to in the documentation as Ballyowen Castle. There is an existing solicitor's office within this former fortified castle/house. The appeal site does not encroach on this structure.
- 1.5. There is a large public car park that serves the Ballyowen shopping centre to the south.

## 2.0 Proposed Development

- 2.1. Permission is sought for change of use of a tanning salon to Thai-takeaway. It is also proposed to provide two offices and storage on the first floor with associated refurbishment works.

## 3.0 Planning Authority Decision

### 3.1. Decision

The decision to refuse permission was for three reasons. They can be summarised as follows;

1. Materially contravenes Policy R10, Objective 1; which seeks to prevent an excessive concentration of fast food outlets/ takeaways’.
2. Insufficient information submitted in order to assess the proposal in relation to Section 11.3.6 (iii) ‘Fast Food / Take Away Outlets’ of the County Development Plan.
3. Undesirable precedent, and contrary to the proper planning and development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report (dated 25/05/2017)

Basis for planning authority decision include:

- There are 12 units in the overall shopping centre, 4 units in total are either currently in use or permitted for use as a fast food /takeaway outlet.
- The provision of another fast food / takeaway outlet would result in 50% of the number of units in the overall centre having permission for/being in use as fast food/takeaway outlets.
- Proposed use would represent a proliferation of takeaways within the shopping centre, would contravene Policy R10 Objective 1 of the County Development Plan and should be refused.
- Applicant failed to provide any of the required details set out under Section 11.3.6 (iii) ‘Fast Food / Take Away Outlets’ of the County Development Plan.
- No details submitted in relation to opening hours and therefore the impact of the proposed use on the existing car park facilities cannot be assessed, and recommends that permission be refused.

### 3.2.2. Other Technical Reports

- **Roads Department:** recommends no objection.
- **Surface Water Drainage:** no objection subject to standard requirements.

### 3.3. Prescribed Bodies

- **Irish Water:** recommends no objection.

### 3.4. Third Party Observations

A number of letters of objection were received by South Dublin County Council. The issues raised can be summarised as follows;

- Anti-social behaviour
- Proliferation of Take Aways
- Not in accordance with the County Development Plan
- Proximity to schools.

## 4.0 Planning History

### Appeal Site

**PA Reg. Ref. SD06A/0935**      Permission **granted** 05/02/2007 for retention of first floor office accommodation and associated toilet and boiler room, two roof windows to south roof elevation and one roof window to north roof elevation.

### Overall Shopping Centre

**PA Reg. Ref. SD08A/0397**      Unit 9 - Permission **granted** 14/10/2008 for internal and external alterations to existing shop and change of use from floor shop to café/deli.

**PA Reg.Ref.SD05A/0487** Protected Structure – Permission **granted** 28/09/2005 for change of use from (estate agents) to restaurant/takeaway on the ground floor only with internal change to layout. No proposed changes to the exterior of the building apart from change of use to signage.

**PA Reg. Ref. SD03A/0306** Unit 2 – Permission **granted** 02/09/2003 for change of use from a restaurant to a restaurant and takeaway.

## 5.0 Policy Context

### 5.1. Development Plan

#### 5.1.1. South Dublin County Development Plan 2016-2022

The site is zoned '**LC: To protect, improve and provide for the future development of Local Centres**'. Within such areas restaurant /café are uses permitted in principle within this zoning objective.

#### 5.1.2. Chapter 5 refers to Urban Centres and Retailing.

**Section 5.8** outlines the strategy for Fast Food Outlets/Takeaways.

Retail (R) Policy 10- It is the policy of the Council to manage the provision of fast food outlets and takeaways.

**R10 Objective 1:** To prevent an excessive concentration of fast food outlets/takeaways and ensure that the intensity of any proposed use is in keeping with both the scale of the relevant buildings and the pattern of development in the area.

**R10 Objective 2:** To restrict the opening of new fast food/takeaway outlets in close proximity to schools so as to protect the health and wellbeing of school-going children.

#### 5.1.3. Chapter 9 refers to Heritage Conservation and Landscapes

##### **Section 9.1.2 Protected Structures**

HCL Policy 3 - It is the policy of the Council to conserve and protect buildings, structures and sites contained in the Record of Protected Structures and to carefully consider any proposals for development that would affect the special character or appearance of a Protected Structure including its historic curtilage, both directly and indirectly.

The appeal site is identified within the curtilage of a protected structure (RPS No.105) Fortfield house and Building Site (RM). (see attachments).

5.1.4. Chapter 11 refers to Implementation.

**Section 11.3.6 (ii) Restrictions on Uses;**

The Planning Authority will seek to ensure that the quantum of amusement and gaming arcades, bookmakers, public house, off licences and fast food outlets is not disproportionate to the overall size and character of the area.

**Section 11.3.6 (iii) Fast Food/Takeaway Outlets;**

Fast food outlets have the potential to cause disturbance, nuisance and detract from the amenities of an area and as such, proposals for new or extended outlets will be carefully considered. Development proposals for fast food/takeaway outlets will be strictly controlled and all such proposals are required to address the following:

- The potential effect and the proximity of fast food outlets or takeaway outlets to vulnerable uses, such as schools or parks.
- The cumulative effect of fast food outlets on the amenities of an area.
- The effect of the proposed development to the existing mix of land uses and activities in an area.
- Opening/operational hours of the facility.
- The location of vents and other external services and their impact on adjoining amenities in terms of noise/smell/visual impact.

## 5.2. Natural Heritage Designations

There are no natural heritage designations in the vicinity of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appeal is lodged by AKM Design on behalf the applicant. The main issues raised are as follows;

- The land is zoned for commercial development (Local Centre) and the proposed use is acceptable for the zoning objective and compatible with existing uses.
- The proposed takeaway does not have an adverse impact on schools or other vulnerable uses. It is located within a commercial area and is located 1km from the closest school and as it will operate outside of school times between 5pm and 11pm Monday to Sunday. It is in compliance with section 11.3.6 of the development plan.
- Some of the vacant units were previously food businesses that have recently closed down and the planning authority did not take this into account. Vacancy rates in this shopping centre is a problem.
- There are similar type food businesses and restaurants operating in the area, and a local centre is an appropriate location for such use. The proposal will not set an undesirable precedent for the area.
- The premises will be provided with natural and mechanical ventilation to ensure compliance with the building regulations.

### 6.2. Planning Authority Response

The planning authority confirmed its decision and considered that the issues raised in the appeal have been considered in the planner's report.

### 6.3. **Observations**

There are no observations with reference to the appeal.

## 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. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings;

- Principle of the proposed development/ planning policy
- Precedent
- Appropriate Assessment

### 7.2. **Principle of the proposed development / planning policy**

- 7.2.1. The subject site is located within an existing shopping centre which is zoned Local Centre and restaurant / café are uses which are generally permitted within such zoned lands. While I note that fast food / takeaway use is not listed as a use in the use classes identified in the zoning matrix, it is defined in the development plan as 'a premises used for the sale of hot food for consumption off the premises'. In this regard, I consider that the principle of the proposed development can be considered as being acceptable and if permitted, would be in accordance with the requirements of the County Development Plan as it relates to Local Centre developments.
- 7.2.2. The first reason for refusal notes that the development would be contrary to Policy R10 Objective 1 which seeks to prevent an excessive concentration of fast food outlets/takeaways and ensure that the intensity of any proposed use is in keeping with both the scale of the relevant buildings and the pattern of development in the area.
- 7.2.3. Following my site visit to the Ballyowen Shopping Centre, I note that there are a number of similar takeaway/ fast food outlets within the immediate vicinity of the site, and the predominant use in this area is commercial. There is a large Chinese restaurant and takeaway on the southern end of the shopping centre facing onto the



surface car park. An Italian Fish and Chip takeaway in Unit 8 and Coffee Shop in Unit 7 are located within the parade of retail commercial units on the eastern side of the shopping centre. There is also a café which forms part of the Eurospar anchor unit. There is an Italian Pizza takeaway in another unit No. 2 to the west of the appeal site. This takeaway is currently closed.

- 7.2.4. I also noted a number of vacant units including unit No. 4 the subject of this appeal and unit No. 1 at the western end of the shopping centre formerly a party shop.
- 7.2.5. In my opinion the assessment by the planning authority in determining that 50% of the number of units in the overall centre have permission for/being in use as fast food/takeaway outlets is overstated. From my assessment there are currently three fast food outlets, the Chinese restaurant and takeaway, the Fish and Chip takeaway and the Italian Pizza takeaway which is currently closed. I do however consider that given the relatively small scale of the shopping centre that this number of fast food/takeaway outlets is significant.
- 7.2.6. I do not concur with the applicant's contention that the proposed food use is acceptable given that some of the previously permitted units have gone out of business. They also suggest that it is likely that the now vacant (permitted food use) premises may not be used as a food use and will revert back to retail or other uses. Notwithstanding this contention the unit is permitted as a fast food outlet.
- 7.2.7. In terms of the above, I have considered the mix of existing uses within the shopping centre and the number of fast food / takeaway outlets and consider that the proposed take away would indeed result in an excessive concentration of fast food outlets at this location in a local centre. As such the proposed development would be contrary to Policy R10, Objective 1 and would fail to maintain a suitable mix of retail uses in the shopping centre.
- 7.2.8. The second reason for refusal notes that insufficient information was submitted in order to allow the application to be assessed in relation to Section 11.3.6 (iii) 'Fast Food/Takeaway Outlets'. In this regard, while I note the applicant has provided further details in relation to the proximity to adjoining schools and hours of operation I consider that these details are not the substantive issue in this case. Nonetheless, I concur with the applicant in that the proposed development would not impact on the

closest school which is the Lucan Educate Together national school located approximately 1.1km to the norther west of the appeal site.

- 7.2.9. The applicant has further clarified the hours of opening, between the hours of 5.pm and 11pm, and I would also agree with the applicant that this would not impact on schools in the area.
- 7.2.10. The details in relation to the location of vents and other external services were not submitted. I would agree with the planning authority that given the location of residential properties further to the north this information should have formed part of the application.
- 7.2.11. In summary I am satisfied that the change of use in this instance would be contrary to the Policy R10, Objective 1 of the County Development Plan and should be refused.

### **7.3. Precedent**

- 7.3.1. The third reason for refusal notes that the development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively, be harmful to the residential amenities of the area. In this regard, I would note that each application is assessed on its own merits. In this case while noting that the unit is currently vacant, and while it is more desirable that the unit be occupied, I would concur with the planning authority that to permit another fast food takeaway within this shopping centre would set an undesirable precedent.
- 7.3.2. I am satisfied that the change of use in this instance would set an undesirable precedent.

### **7.4. Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development, being a change of use in an established urban area and the proximity to the nearest European site, no appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. I recommend that permission be **refused** for the following reasons and considerations.

## 9.0 Reasons and Considerations

Having regard to the number of similar takeaway / fast food outlets within the local centre, and notwithstanding the zoning objective affecting the subject site, it is considered that the proposed development would result in an unacceptable proliferation of takeaway / fast food outlets, would fail to maintain a suitable mix of retail uses and other uses in the shopping centre and set an undesirable precedent for other similar developments. The proposed development would materially contravene Policy R10 Objective 1 of the South Dublin County Development Plan, 2016-2022, and would, therefore, be contrary to the proper planning and sustainable development of the area.

---

Susan McHugh  
Planning Inspectorate

25th September 2017