



An
Bord
Pleanála

Inspector's Report PL28.248867

Development	Change of use of an existing retail unit on ground floor to restaurant use with ancillary takeaway and alterations to front elevations including signage.
Location	16 Homeville Place, Gaol Cross, Western Road, Cork.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	17/37395
Applicant(s)	Nora Flynn
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	First Party v. Conditions
Observer(s)	None.
Date of Site Inspection	6 th October, 2017
Inspector	Robert Speer

1.0 Introduction

This is an appeal by the applicant against the inclusion of Condition No. 3 in the notification of the decision to grant permission.

2.0 Site Location and Description

The proposed development site is located at Homeville Place on the corner of Gaol Cross with Western Road in the vicinity of University College Cork, approximately 1.0km west of Cork City Centre, and whilst the immediate site surrounds are primarily residential in character, the wider area includes a variety of commercial uses (e.g. overnight guest accommodation and a veterinary clinic along Western Road) and educational facilities / services associated with the functioning of the university such as the Quadrangle to the southeast and the Mardyke Sports Ground to the northwest. The site itself has a stated site area of 0.1 hectares, is irregularly shaped and presently comprises the vacant ground floor retail unit of a larger three-storey building. To the immediate east the site adjoins a terrace of two and half storey housing whilst the lands to the south are similarly occupied by two-storey terraced dwelling houses. Further west and beyond the junction of Gaol Cross with Western Road the former housing at Bloomfield Terrace is in use as part of the Centre for Policy Studies associated with UCC whilst the three-storey 'Castlewhite' scheme of student accommodation is located to the immediate rear (south) of same.

3.0 Proposed Development

- 3.1. The proposed development consists of the change of use of an existing ground floor retail unit (floor area 112.5m²) to a restaurant with an ancillary takeaway element in addition to associated alterations to the external elevations, including the erection of fascia signage, lighting and a projecting double-sided sign.

4.0 Planning Authority Decision

4.1. Decision

On 15th June, 2017 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 9 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 – Requires full details of all signage and lighting to be agreed in writing with the Planning Authority prior to the commencement of development. It further stipulates that internally illuminated or plastic signage is prohibited whilst no external or solid roller shutters or canopies are to be erected on the premises.

Condition No. 3 – States that the premises is not to be used as a hot food / fast food takeaway and also details the hours of operation

Condition No. 4 – Requires the separation of all drainage throughout the development.

Condition No. 5 – Refers to surface water runoff.

Condition No. 6 – Requires the submission of a site specific flood risk assessment prior to the commencement of development. This risk assessment is to include proposals to address the risk of flooding of the property (including measures with respect to managing and mitigating flood risk to occupants and users) and should also address egress from the building in the event of a flood together with flood resilience and protection of the building.

Condition No. 7 - Requires any gates / doors to be recessed and / or incapable of opening outwards whilst surface water is also prohibited from flowing onto the public road / footpath.

Condition No. 8 - Refers to the control of noise emissions and working hours during the construction of the proposed development.

Condition No. 9 – Refers to waste management.

4.2. Planning Authority Reports

4.2.1. Planning Reports:

States that the proposed use accords with the relevant land use zoning objective (ZO4: 'Residential, Local Services and Institutional Uses') and that regard has been had to the previously permitted use of the application site as a restaurant. The report proceeds to identify the proposed ancillary takeaway use as the key issue in the determination of the subject application and states that whilst the proposal is not for a 'standalone' takeaway facility, current development plan policy only permits takeaways within district centres, neighbourhood centres and local centres. Accordingly, having regard to the foregoing, and in light of the large range of similar facilities in the wider area and the proximity of residential properties, on balance, it is stated that the proposed takeaway element is not acceptable and thus should be omitted from the proposed development.

4.2.2. Other Technical Reports:

Roads Design: No objection, subject to conditions.

Environment: No objection, subject to conditions.

Drainage: No objection, subject to conditions.

4.3. Prescribed Bodies

Irish Water: No objection, subject to conditions.

4.4. Third Party Observations

A single submission was received from an interested party and the principle grounds of objection contained therein can be summarised as follows:

- The proposed development would be detrimental to the amenity of the surrounding neighbourhood.
- The proposal is contrary to the objectives of the Cork City Development Plan, 2015-2021.
- The surrounding area is already adequately served by a wide range of restaurants, cafes and shops etc.

- There is no parking available to serve the proposed development.
- The proposal fronts onto a major road intersection and a pedestrian crossing facility and thus is an unsuitable form of development at this location.
- Section 16.88 of the Development Plan states that *'it is an objective of the 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'*. Section 16.90 of the Plan subsequently 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'*. It is considered that Gaol Cross cannot be described as a centre in any respect with the closest such area located at Victoria Cross where a number of shops and UCC offices are located.
- The proposed takeaway would have an adverse impact on the residential amenity of the area by reason of noise, hours of operation, littering and the emission of odours.

5.0 Planning History

On Site:

PA Ref. No. TP87/13633. Was granted on 29th October 1987 permitting Flynn N. permission for a change of use retail at Western Road.

PA Ref. No. TP98/22792. Was granted on 22nd March, 1999 permitting David Flynn permission for alterations to existing restaurant and takeaway facilities at 16 Homeville Place, Western Road, Cork.

PA Ref. No. 0225849 / ABP Ref. No. PL28.129438. Was refused on appeal on 16th October, 2002 refusing David Flynn permission for development comprising the demolition of existing single storey shop at 16B Homeville Place and the construction of a three-storey building in its place extending over the single storey portion of 16A Homeville Place, to use the ground floor of both premises as a bar and lounge, to use the first floor area of 16B Homeville Place as a restaurant, change the use of portion of existing first floor of 16A Homeville Place from residential to restaurant

with toilets and storage on the second floor of the new building, maintain existing residential use of part of the first and all of the second floor of 16A Homeville Place, the installation of an ATM machine on the west elevation of 16A Homeville Place and alterations to existing signage all at 16A and 16B Homeville Place, Western Road, Cork.

PA Ref. No. 0326862 / ABP Ref. No. PL28.202774. Was granted on appeal on 29th August, 2003 permitting David Flynn permission for the retention of the operation of an existing prepared food take-away facility including signage at 16B Homeville Place, Western Road, Cork.

PA Ref. No. 0429122. Was refused on 16th February, 2005 refusing Nora Flynn permission for the demolition of the two storey annex to the rear of No. 15 and the single storey rear section to 16b, internal and external alterations to the existing buildings 15 and 16a including minor elevational changes and the construction of a new three storey extension to provide student accommodation consisting of 5 residential units with a total of 21 bed spaces, the application also includes the change of use of the ground floor of 16a from commercial to residential usage, all at 15,16a & b Homeville Place, Gaol Cross, Western Road, Cork.

PA Ref. No. 06/30731. Was granted on 10th July, 2006 permitting Nora Flynn permission for extension of existing ground floor commercial premises at no. 16 into the garden of no. 15 and the change of use of this space to a convenience store. The scope of works is to include the demolition of the two storey annex to the rear of residence no. 15 and single storey commercial unit no. 16b and the erection of a single storey extension (59 sq. m in area) with roof garden over to serve no. 15 and the provision of dormer window to the south (rear) elevation of no. 15. All at 15/16A/16B Homeville Pl., Gaol Cross, Western Rd. Cork.

PA Ref. No. 0732374. Was granted on 28th November, 2007 permitting Ulster Bank Ireland Ltd. permission for the change of use of the ground floor from convenience store to student advice centre and for the re-decoration and erection of signage to the external facade at 16A Homeville Place, Gaol Cross, Western Road, Cork.

PA Ref. No. 07/32501. Was granted on 21st January, 2008 permitting Ulster Bank Ireland permission for development consisting of the change of use from retail use to

a bank/financial service provider at 16A Homeville Place, Goal Cross, Western Road, Cork.

PA Ref. No. 09/34198. Was granted on 3rd March, 2010 permitting Nora Flynn permission for the continuation of the existing bank/financial service use (granted temporary planning permission under city council ref 07/32501) at 16 Homeville Place, Gaol Cross, Western Road, Cork.

On Adjacent Sites:

PA Ref. No. 0832981. Was refused on 20th May, 2008 refusing Nora Flynn permission for a development consisting of the subdivision of the existing dwelling house into a studio type apartment at ground level and a three bed apartment on the upper floor levels at 15 Homeville Place, Western Road, Cork.

6.0 Policy Context

6.1. Development Plan

Cork City Development Plan, 2015-2021:

Land Use Zoning:

The proposed development site is located in an area zoned as *'Residential, Local Services and Institutional Uses'* with the stated land use zoning objective *'To protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3'*.

Explanatory Note:

The provision and protection of residential uses and residential amenity is a central objective of this zoning, which covers much of the land in the suburban area. However other uses, including small scale local services, institutional uses and civic uses and provision of public infrastructure and utilities are permitted, provided they do not detract from residential amenity and do not conflict with the employment use policies in Chapter 3 and related zoning objectives. Small scale 'corner shops' and other local services such as local medical services, will be open for consideration. Schools, third level education institutes, and major established health facilities are located within this zone and appropriate expansion of these facilities will be

acceptable in principle. The employment policies in Chapter 3 designate particular locations for offices, office based industry, major retailing development and these uses are not generally permitted in this zone (Chapter 3: Enterprise and Employment). New local and neighbourhood centres or expansion of same are open for consideration in this zone provided they meet the criteria for such centres set out in Chapter 4.

Other Relevant Sections / Policies:

Chapter 16: Development Management:

Part E: Non-Residential Development:

Section 16.82: Cafés/Restaurants:

The positive contribution of cafés and restaurants and the clusters of such uses to the vitality of the city is recognised. The following (but not limited to) shall be considered in assessing applications for cafés/restaurants:

- The effect of fumes, hours of operation, and general disturbance on nearby amenities and residents;
- Traffic implications resulting from the proposed development including any parking requirements;
- Waste storage facilities;
- Adequate and safe delivery areas;
- Any proposed advertising/lighting is suitable and unobtrusive. Any advertising/signage should be removed on the cessation of operation of the business.

Sections 16.88-16.91: Hot Food Takeaways/ Fast-food Restaurants:

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.

Within the City Centre applications for fast-food takeaway units will be assessed against the criteria below. A concentration of hot food premises will not be permitted within the City Centre Retail Area and Commercial Core Area and historic centre. The loss of prime retail space in the City Centre Commercial Core Area will be resisted.

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.

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.

6.2. **Natural Heritage Designations**

None.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

- The principle of the proposed development accords with the relevant land use zoning objective and is also well established by reference to the planning history of the site whereby a restaurant with an ancillary takeaway previously operated from the property for a 20-year period.
- The Cork City Development Plan, 2015 is strongly supportive of the subject proposal as evidenced by the decision to grant permission issued by the Planning Authority.
- The inclusion of Condition No. 3 in the notification of the decision to grant permission on the basis that the proposed development would have a negative impact on the residential amenity of the surrounding area and as it would intensify the range of such facilities available in the wider area is completely at odds with the planning history of the application site and is also contrary to those other decisions recently issued by the Council in respect of similar development proposals in the vicinity.
- Planning permission was previously granted under PA Ref. Nos. 87/13633 and 98/22732 for a restaurant / takeaway facility on site and a further grant of permission was subsequently issued by the Board for the same use under ABP Ref. No. PL28.202774 and in that instance the reporting inspector confirmed that the principle of a proposed restaurant and ancillary takeaway

use was well established in the area and that the proposal would not seriously injure the amenities of property in the vicinity.

- Cork City Council has previously granted permission for restaurants without an express need to restrict the hours of operation as follows:

- *PA Ref. No. 16/37048:*

Was granted on 4th January, 2017 permitting Felstead Property Company permission for a change of use of video store to restaurant, associated alterations to elevations, signage, connection to existing services and all associated works at Orchards Gardens, Dennehy's Cross, Victoria Cross Road, Magazine Road, Cork. The approved hours of operation were between 07:00 – 23:00 hours.

- *PA Ref. No. 16/36917:*

Was granted on 14th October, 2016 permitting Con & May McCarthy permission for a change of use of from retail to café/restaurant including all alterations to signage and all ancillary site development works at Unit 3, Watercourse Road, Cork. The approved hours of operation were between 07:00 – 23:30 hours.

- *PA Ref. No. 15/36384:*

Was granted on 27th July, 2015 permitting Sharon McCarthy permission for a change of use of retail unit to restaurant/café bar at ground floor, involving new preparation kitchen to rear, new serving/coffee counter, new seating area to front of house, new accessible bathroom, allocated outdoor space for outdoor seating including demountable framed canvas screens, new signage and retractable awning at No. 51 Cornmarket Street, Cork. The approved hours of operation were between 08:00 – 23:00 hours.

Having regard to the foregoing, it is apparent that the Planning Authority has previously granted permission for comparable uses on numerous occasions within similar areas of the city.

- The property in question has been vacant for the last 2 No. years as the owner has been unable to secure a suitable tenant for the premises.

- It is proposed to reinstate the previously successful use of the premises as a restaurant with an ancillary takeaway operation which will open from 07:30-24:00 hours, however, there are concerns that the omission of the proposed takeaway element and the restriction of the opening hours will deter potential tenants from occupying the property.
- The surrounding area is host to a wide variety of cultures given its proximity to University College Cork with its significant concentration of international students. In this respect it is submitted that many of these nationalities eat later in the evening due to cultural differences.
- The closing of any restaurant at 22:00 hours would require last orders to be completed prior to 21:00 hours which is impractical and counter-productive in an area with notable evening trade generated by local residents and students. Therefore, it is submitted that the ramifications of the prescribed hours of operation have not been considered in full by the Planning Authority whilst they will also serve to limit commercial interest in the premises by prejudicing the operational viability of same.
- The proposed takeaway use will be ancillary to the main restaurant as is established practice in the commercial restaurant trade. This is clearly evident from the submitted floor plans which detail a small waiting area only. In this respect the proposed layout compares favourably with the layout previously permitted under ABP Ref. No. PL28.202774 which provided for separate restaurant and takeaway access points to the premises. Critically, in that instance it was determined that the takeaway element was ancillary to the restaurant as follows:

'It is reasonable to extrapolate from the plans accompanying the ground of appeal and from a site inspection that the said takeaway facility is subsidiary to the restaurant use. As such the principle of the use is established in the area.'

In the case of the subject proposal, any takeaway trade will be self-contained and appropriately managed as part of the primary restaurant use thereby eliminating the potential for any adverse impacts on the residential amenity of adjoining properties.

- The proposed development will not have a negative impact on the amenities of the surrounding area by reason of its hours of operation or general disturbance.
- The assessment by the case planner that the proposed development will have a negative impact by reason of the *'large range of such facilities in the wider area and proximity to residential uses'* appears to be based on general opinion as opposed to any specific evidence. In this respect it is reiterated that a takeaway use was previously granted permission at this location on three separate occasions (PA Ref. Nos. 87/13633, 98/22792 & 0326862 / ABP Ref. No. PL28.202774) and was in operation from 1987 to 2006 with opening hours of 07:30 hours until 24:00 hours. Furthermore, no complaints were ever made by local residents as regards the previous takeaway use.
- The proposed hours of operation have not changed from those previously permitted on site and, therefore, the restriction of opening hours to 07:00-24:00 hours on the basis of an unsubstantiated impact on residential amenity is both unfair and unfounded. Accordingly, the Board is requested to omit Condition No. 3.

7.2. Planning Authority Response

No further comments.

7.3. Further Responses

None.

8.0 Assessment

- 8.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issue raised by the appeal relates to the inclusion of Condition No. 3. Furthermore, in accordance with the provisions of Section 139 of the Planning and Development Act, 2000, as amended, I am satisfied that this appeal should relate only to the merits of the

inclusion of the aforementioned condition and thus I propose to assess same accordingly.

8.2. **Condition No. 3:**

This condition states the following:

'The premises shall not be used as a hot food / fast food takeaway.

Hours of operation shall be restricted to 07.30 – 22.00 hours on Monday to Saturday and to 10.30-21.00 hours on Sundays. Activities outside these hours shall require the prior approval of the planning authority.

Reason: In the interests of residential amenity'.

In the grounds of appeal, the applicant has asserted that the aforementioned condition should be omitted in its entirety from the notification of the decision to grant permission for a variety of reasons, however, at the outset of this assessment it is of particular relevance to note that there are two component parts to the condition in question and that it will be necessary to consider these in turn.

With regard to the initial requirement of Condition No. 3 which prohibits any use of the subject premises as a hot food / fast food takeaway, it has been submitted that the property in question formerly operated as a restaurant with an ancillary takeaway component and that permission for same was previously granted on appeal under ABP Ref. No. PL28.202774. Furthermore, the suggestion that the proposed takeaway use will have a negative impact on the residential amenity of the surrounding area either by reason of the *'large range of such facilities in the wider area'* or due to its *'proximity to residential uses'* is rejected given the planning history of the site and as the Planning Authority has offered no specific evidence to support such a proposition.

Having reviewed the available information, whilst I would accept that the subject premises previously operated as a restaurant with an ancillary takeaway and that regard should be had to the planning history of the application site, in my opinion, it is clear that the subject proposal must also be assessed pursuant to current planning policy and in this respect I would refer the Board to Section 16.90 of the Cork City Development Plan, 2015 which specifically 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'. Given that the proposed development site is located outside of any defined district, neighbourhood or local centre and is instead situated in a suburban area on lands zoned as '*Residential, Local Services and Institutional Uses*', I am inclined to concur with the Planning Authority that the subject proposal is in contravention of the foregoing policy provision of the City Development Plan which expressly prohibits the development of fast-food takeaways outside of the identified centres. Whilst I would acknowledge that the applicant has sought to emphasise the planning history of the site as a means of supporting the subject proposal, in my opinion, any suggestion that further weighting should be placed on a grant of permission which has since expired, or the former use of the premises as a restaurant (with an ancillary takeaway element) that seemingly ceased trading in excess of 10 No. years ago, effectively serves to ignore the continued evolution of planning policy over the years and, more importantly, undermines the review of subsequent Development Plans and the public consultation process associated with same.

In relation to the second part of Condition No. 3 which serves to limit the hours of operation of the proposed restaurant to 07.30 – 22.00 hours on Monday to Saturday and to 10.30 - 21.00 hours on Sundays (with activities outside of these hours requiring the prior approval of the planning authority), having conducted a site inspection, and following a review of the submitted information, it is my opinion that whilst the wider area can be described as mixed-use given that it includes a variety of commercial uses in addition to educational facilities / services associated with the functioning of UCC, the immediate site surrounds are primarily residential in character and thus there is a need to preserve the amenity of neighbouring dwelling houses. In this regard I am inclined to suggest that opening hours of 08:00-23:00 hours Monday to Saturday and 10:30-22:00 hours on Sundays would achieve a reasonable balance which would be sufficient to protect the residential amenity of surrounding property.

Appropriate Assessment:

Having regard to the nature and scale of the proposed development, the availability of public services, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to

have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

9.0 Recommendation

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted and based on the reasons and considerations set out below, directs the Council, under sub-section (1) of Section 139 of the Planning and Development Act, 2000 to **AMEND** Condition No. 3 and the reason therefore as follows:

10.0 Reasons and Considerations

Having regard to nature of the location, scale and nature of the development, it is considered that condition number 3 is reasonable in the interests of residential amenity and the proper planning and sustainable development of the area.

11.0 Conditions

3. For the avoidance of doubt, the premises shall be used as a seated restaurant only and not for the sale of hot food for consumption off the premises.

The opening hours of the premises shall be between 09.00 hours and 23.00 hours Monday to Saturday and between 10:30 hours and 22:00 hours on Sundays.

Reason: In the interest of orderly development and to protect the residential amenities of the area.

Robert Speer
Planning Inspector

17th October, 2017