



An
Bord
Pleanála

Inspector's Report PL 01.248956

Development	Change of closing times at restaurant
Location	28 Tullow Street, Carlow.
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	17/153
Applicant(s)	Wangs Restaurant
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Wangs Restaurant
Observer(s)	None
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. 'Wangs' takeaway is located in the town centre of Carlow Town, on the south side of Tullow Street west of its junction with Potato Market. It is on the ground floor of a three-storey, terraced unit. Located in the centre of the town, it is flanked by two shop units. There is a wide range of retail, commercial, entertainment and office uses at this town centre location.

2.0 Proposed Development

- 2.1. The proposed development comprises the change of closing times for the existing takeaway restaurant from between 0100 and 0800 to 0300 and 0800.

3.0 Planning Authority Decision

3.1. Decision

The planning authority refused permission for the development for two reasons relating to the proposal being detrimental to town centre amenities and residential amenities and because it would set a precedent that would conflict with Policy DBF P29(B) in the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the site is zoned Town Centre in the Carlow Town Development Plan and is in the traditional town centre / retail core. It was submitted that the Joint Spatial Plan recognises that an over-concentration of uses such as hot food takeaways may be detrimental to the vitality and vibrancy of the town centre and an excessive number of these uses within a town centre may not be permitted and reference is made to Policy DBF P29(B) relating to fast-food takeaways. It was noted that there are nine takeaways in the immediate area. It was stated that the overall hours of operation, with a couple of exceptions, have a closing time conditioned at midnight, 12.30am and 1am and that these hours are in response to anti-social behaviour, litter issues, and impact on residential amenities. It was considered that

the proposed change in closing times would be detrimental to the amenity of the town centre, would exacerbate anti-social and litter issues, and would be detrimental to residential amenities of properties in the area by way of increased noise and general disturbance. It was further considered that the proposed opening hours would set a precedent in conflict with the referenced policy. A refusal of permission was recommended.

4.0 Planning History

ABP Ref. 42.094277 (P.A. Ref. PD3052)

Permission was granted by the Board in 1994 for the change of use of the ground floor of 28 Tullow Street from retail butchers to takeaway restaurant.

Condition 1 of the permission stated:

“1. *The premises shall not be open between 0100 and 0800 hours on any day.*

Reason: *To protect the residential amenities of property in the vicinity.”*

5.0 Policy Context

5.1. Carlow Town Development Plan 2012-2018

Zoning

The site is zoned ‘Town Centre’ with the objective “To protect the vitality and vibrancy of the town centre and provide for town centre activities.”

Takeaways

The policy, as incorporated by way of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018, is as follows:

DBF P29(B) Fast-food Take-Aways

Planning applications for new fast food take-away uses will be considered on their own merits. However, the cumulative impact of a number of take away restaurants in any particular area will be considered in the assessment of any planning application. Stringent controls will be applied with regard to litter collection and façade design. The latter may necessitate the alteration of corporate images in order to assimilate

into the character of the area. Full shop front details will be required at application stage to assess the visual suitability of proposals in the area. The Planning Authorities may impose restrictions on opening hours as a condition of planning permission. The location of a fast food take-away in district or neighbourhood centres, with complementary uses such as the convenience shop, chemist, video/DVD rental unit etc., would cut down on multiple trip generation in an area.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal may be synopsised as follows:

- The Council appear to have dealt with the application as a new development. It is only to extend opening hours.
- There are no seating areas in the facility and people are not allowed to stay on the premises.
- Between the hours of 1am and 3am the facility is not increasing numbers on Tullow Street. It is only facilitating those exiting the nightclub on the street.
- This is the only takeaway on Tullow Street as other facilities on the street have seated areas, open to 3am and cater for larger numbers.
- The management encourages the use of the existing on-site litter storage.
- Since 2004, the residential occupancy is no longer in the town centre as offices and commercial units have now taken over most of the first and second floor properties.
- The proposal is not increasing any pedestrian or vehicle numbers in the area at this time of night.

It is submitted that the additional two hours would not increase anti-social behaviour, create any litter issues, increase noise or be a disturbance to depleted residential amenities on Tullow Street. It is concluded that, with regard to Reason No. 2 of the planning authority's decision and precedent, the Council did not take into

consideration the fact that the development is a long established takeaway granted permission 23 years ago.

6.2. **Planning Authority Response**

I have no record of any response by the planning authority to the appeal.

7.0 **Assessment**

In addressing the principal planning issues relating to the proposed development, I note the second reason of the planning authority's decision firstly. Policy DBF P29(B) of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018, which incorporates the Carlow Town Development Plan, is not relevant to the proposed development. The proposed development is an established, permitted takeaway. The proposal before the Board relates solely to its opening hours. It does not relate to a new takeaway use. Policy DBF P29(B) expressly relates to planning applications for new fast food take-away uses to be considered on their own merits.

With regard to the planning authority's first reason for refusal, my considerations are as follows:

- This is a town centre location, in the very heart of Carlow's town centre. It is a long-established use at this location. It is the type of use that is very common within town centres and it is no surprise that the Council's Planner could reference nine takeaways within a short distance. One would expect a County Town of this size to have several takeaways in its town centre.
- Being an established takeaway, the proposal to extend the opening hours will not increase the concentration of existing fast food/takeaway establishments at this location.
- Being a long-established use in the very heart of the town and a compatible land use with an array of different retail, commercial and entertainment uses in its immediate environs, I do not consider that it is reasonable to conclude that the proposed additional two hours of opening for this takeaway would

significantly impact on the amenity of the town or residential properties. I note that the planning authority did not demonstrate, in any constructive manner, how the proposed additional two hours of opening at this facility would be detrimental to the amenity of the town centre and to residential amenities of properties in the vicinity by way of noise and general disturbance.

- With regard to exacerbating the potential for anti-social behaviour, the Board will acknowledge that this is a public order issue, with responsibility lying with An Garda Síochána.
- In relation to litter, the Board will also note that the control of litter is the responsibility of the local authority under the Litter Pollution Act.

It is my conclusion that the planning authority's reasons for refusal are unreasonable and are not warranted in the absence of any information that would demonstrate that the proposed additional two hours of opening would cause particular amenity or environmental concerns.

8.0 Recommendation

- 8.1. I recommend that permission is granted in accordance with the following reasons, considerations, and condition.

9.0 Reasons and Considerations

Having regard to the zoning provisions for the site, the long-established takeaway use in the premises, and to the town centre location of the takeaway facility, it is considered that the addition of two hours of opening would be compatible with the functioning of a takeaway at this location, would not adversely impact on the amenities of residents in the area or of the town, and would otherwise be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The premises shall not open between 0300 and 0800 hours on any day.

Reason: In the interest of orderly development.

Kevin Moore
Senior Planning Inspector

2nd October 2017