



An  
Bord  
Pleanála

## Inspector's Report PL08.248963

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<b>Development</b>	Permission to extend opening hours at Burger King Restaurant.
<b>Location</b>	14 College Street, Killarney, County Kerry.
<b>Planning Authority</b>	Kerry County Council.
<b>Planning Authority Reg. Ref.</b>	17/500.
<b>Applicant</b>	M/S OKR Group.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To Refuse Permission.
<b>Type of Appeal</b>	First Party -v- Decision.
<b>Appellant</b>	M/S OKR Group.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	6 <sup>th</sup> October, 2017.
<b>Inspector</b>	Brendan Wyse.

## 1.0 Site Location and Description

- 1.1. The appeal site comprises the Burger King restaurant at 14 College Street, Killarney. College Street, running into Plunkett Street and off Main Street, is one of the principal commercial streets in the centre of Killarney. It generally comprises a mix of retail, retail services and tourism related uses. There is a large surface car park located opposite the Burger King restaurant.
- 1.2. Maps and photographs in file pouch.

## 2.0 Proposed Development

- 2.1. Permission is sought to extend the opening hours of the restaurant as follows:
  - 1.00 a.m. to 3.30 a.m. on Fridays/Saturdays/Sundays and 1.00 a.m. to 2.00 a.m. on Mondays for the following 12 no. weekends:
    - Valentines (February)
    - St. Patricks (March)
    - Easter (April)
    - Bank Holiday (June)
    - ROK Cycle (July)
    - Bank Holiday (August)
    - All Ireland Football (September)
    - Bank Holiday (October)
    - Halloween (October)
    - Christmas (December)
    - New Years (December/January).

2.2. The application documentation includes:

- Of the 26 Burger King restaurants operated by the applicants this is the only one with restricted opening hours.
- The restaurant is sit down only.
- Local competitors currently operate sit down and take-away without restrictions.
- Details of private security operated at the premises.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

The decision to refuse permission cites two reasons that refer to:

1. Increased vehicular and pedestrian traffic in the early hours of the holiday weekends and events leading to serious injury to the amenities of residential properties in the vicinity by reason of noise, litter and general disturbance.
2. The congregation of large groups of people in this area of the town centre in the early hours giving rise to traffic hazard. The development would be contrary to Objective 12.3.5 that aims to improve the development of the town centre.

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

##### 3.2.1. **Planning Report**

Basis for Planning Authority Decision.

Includes:

- Open hours were set under An Bord Pleanála Ref. 63.111688 in 1999.
- The current application to extend the opening hours differs from three previous applications to do so (two refused and one withdrawn) in that it refers only to some weekends rather than to every weekend.
- EIA Screening.
- AA Screening.

### 3.2.2. Other Technical Reports

None.

### 3.3. Third Party Observations

3.3.1. A submission by Sheila and Michael Buckley, 23 Plunkett Street, Killarney objected to the proposal by reference to:

- Previous refusal Planning Authority Ref. 03/204131.
- Anti-social behaviour as area is a hotspot with nightclubs.
- Taxi rank right outside so people congregate.
- Residential amenity.
- Noise and litter.
- Premises was meant to be a restaurant and not a take-away.
- There are strict rules in the town plan concerning opening hours for take-aways.
- Adverse effect on Observers business – Mikes Takeaway Limited.

## 4.0 Planning History

### **P.A. Ref. 3370/98, ABP Ref. 63.111688**

This is the original, 1999, permission for the restaurant.

Condition 8 stipulated no opening on any day between the hours of 0100 and 0730.

**Reason:** In the interest of orderly development and residential amenity.

Condition 7 disallowed take-away use for the same reason.

[Copy Order in file pouch].

### **P.A. Ref. 01/3776, ABP Ref. 63.128427**

This is a 2002 refusal of permission for ancillary take-away use for reasons relating to residential amenity by reference to noise, litter and general disturbance, notwithstanding the predominantly commercial nature of the area.

[Copy Order in file pouch and file attached].

## **P.A. Refs. 01/3777 and 03/4131**

These were previous, 2001 and 2004, applications for permission to extend the opening hours. Reasons for refusal similar to those cited in subject case.

[Details in file pouch].

## **5.0 Policy Context**

### **5.1. Killarney Town Development Plan 2009-2015 (extended)**

The premises are located within the area zoned Town Centre Facilities.

The objective (Section 12.3.5) is to provide for and improve the development of the town centre.

Permitted uses include restaurants, residential, hotels and guesthouses.

Section 12.60 indicates that the Planning Authority may impose restrictions on opening hours of hot food take-aways where they are permitted.

The plan includes the designation of Housing Protection Areas within and in close proximity to the town centre (Section 3.6 and Policy HSG-03 refers). Identified areas include St. Anthony's Place that is accessed off College Street a short distance to the east of the appeal premises.

### **5.2. Natural Heritage Designations**

None relevant.

## **6.0 The Appeal**

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

6.1.1. The main grounds of appeal can be summarised as follows:

- It is not the case that allowing Burger King to trade for additional hours on selected weekends will give rise to large amounts of vehicular and pedestrian traffic.

- The premises are surrounded by fast-food take-aways and nightclubs that trade much later, in one case until 4.00 a.m.
- The restaurant, therefore, is seeking to serve people already in the immediate vicinity.
- The business is sit down only with no takeaway. Private security is employed to ensure a safe environment.
- The location is retail/commercial with no known residential properties in the vicinity.
- The total number of additional hours would be 102 spread over 12 weekends (8.5 hours per weekend) or an increase of just 1.6% on total trade hours.

## 6.2. **Planning Authority Response**

None received.

## 6.3. **Observations**

None.

## 7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the Planning Authority's reasons for refusal and I am satisfied that on other substantive issues arise. The issues are addressed under the following headings:

- Residential Amenity
- Traffic
- Appropriate Assessment
- Other Matters

### 7.2. **Residential Amenity**

7.2.1. I note that the current opening restrictions stipulated by the Board in 1999 [P.A. Ref. 3370/98, ABP Ref. 63.111688] were imposed in the interest of orderly development and residential amenity. Further, the 2002 refusal of permission for an ancillary take-

away (P.A. Ref. 01/3776, ABP Ref. 63.128427) also referred to the issue of residential amenity while acknowledging the predominantly commercial nature of the area.

- 7.2.2. The applicants refer to the absence of residential properties in the vicinity. However, I note the Housing Protection Area at St. Anthony's Place with access via an archway off College Street just a short distance to the east of the appeal premises. I would also extend the concept of residential amenity to include tourist accommodation which is clearly a significant component within Killarney Town Centre. The issue of disturbances associated with late night activities does, therefore, require some careful consideration.
- 7.2.3. The applicants, in my view, do present a convincing case for extending their opening hours. They make reference to the significant number of fast-food take-aways and nightclubs in the area that trade later than the applicants are currently permitted to. This does not come as any real surprise as such uses typically cluster in town centres. It is also worth noting that in Killarney many of the nightclubs/late night venues are associated with hotels and other forms of tourist accommodation. This is the case in the immediate College Street area. The contention, therefore, that the restaurant is seeking to serve people already in the area seems well founded.
- 7.2.4. I note that the extended hours are generally sought for bank holiday weekends but also include a number of other event days, some of which may fall on different days from one year to another. Also a different time is sought for Mondays as opposed to Fridays, Saturdays and Sundays. This, in my view, is excessively complex both from the point of view of the restaurant operator and in terms of enforcement.
- 7.2.5. It seems to me that the applicants have essentially identified all of the times when they would have a commercial interest in opening late. At other times there simply would not be the business to justify late opening. In the circumstances, I consider that the opening arrangements should be simplified. I would suggest allowing opening until 3.00 a.m. on any day. While this is a little less than sought for some days it allows the operator greater flexibility across all days and should better facilitate business operations. It would also facilitate enforcement should this prove necessary.

7.2.6. In this connection I draw the Board's attention to a recently decided case in Carlow – ABP Ref. 01.248956.

7.2.7. Given the circumstances as outlined I am satisfied that extending the opening hours of the subject restaurant would not give rise to any serious injury to residential amenities in the area.

### 7.3. **Traffic**

7.3.1. I see no basis for the contention that extending the opening hours of the restaurant would give rise to a traffic hazard. Traffic levels late at night should be very low and the restaurant would be largely serving people already in the area.

7.3.2. Objective 12.3.5 of the plan is a general objective to improve the development of the town centre. It follows that I not consider that the proposed extension of opening hours would have any substantive impact in this regard.

### 7.4. **Appropriate Assessment**

7.4.1. Having regard to the nature and scale of the proposed development in respect of a change of opening hours at a premises within a serviced 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.

### 7.5. **Other Matters**

7.5.1. I draw the Board's attention to the fact that the Planning Authority Planner's Report on this case includes a formal EIA Screening. In my view such a screening exercise (formal EIA determination) is not warranted for a proposed development of such minor significance and has no legal basis. Being a change of opening hours as described it is not a class of development for EIA and, therefore, cannot constitute sub-threshold development. Therefore, not even the de minimus scenario as expressly provided for under Article 109(2) Planning and Development Regulations applies.

## 8.0 **Recommendation**

I recommend that permission be granted subject to conditions.



## 9.0 Reasons and Considerations

Having regard to the location of the restaurant in Killarney Town Centre it is considered that the extended opening hours would not seriously injure the residential amenities of property in the vicinity 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 and residential amenity.

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Brendan Wyse,  
Assistant Director of Planning.

21 November, 2017.