



An
Bord
Pleanála

Inspector's Report PL29S.249233.

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| Development | Change of use from retail use to use as a takeaway premises. |
| Location | Unit 5, Barley House, 90-97 Cork St, Marrowbone Lane, D8. |
| Planning Authority | Dublin City Council. |
| Planning Authority Reg. Ref. | 2252/17. |
| Applicant(s) | Nutweave Ltd. |
| Type of Application | Permission. |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party |
| Appellant(s) | Nutweave Ltd. |
| Observer(s) | Barley House Management Ltd. |
| Date of Site Inspection | 01 st of December 2017 |
| Inspector | Karen Hamilton. |

1.0 Site Location and Description

1.1. The subject site is a ground floor unit (Unit 5) located within a mixed use complex, Barley House, which fronts onto Marrowlane Lane and Cork Street, Dublin 8. Barley House is a four storey building, the ground floor is commercial and there are units along both Marrowlane and Cork Street. The subject site is currently vacant and is the most southern unit along Marrowlane. There are apartments directly above the unit with balconies fronting onto Marrowlane. The surrounding area is characterised by mixed use, where there are commercial units to the north, closer to Cork Street and established residential in the immediate vicinity of the site. The site directly to the south includes a mix of uses and there is a small apartment unit c. 1m from the site.

2.0 Proposed Development

2.1. The proposed development is for a change of use (62m²) from retail to hot food takeaway.

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission for the impact on the surrounding area as summarised below:

- Inadequate arrangements for ventilation,
- Proximity to apartments and to the private shared amenity areas,
- Lack of easily accessible bin storage area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner refers to the previous refusal by the Board on the site (29S.246208) and reflects the decision to refuse permission following the submission of further information as summarised below:

- The location of the site 73m from a signalised junction onto Cork Street and the impact of deliveries for the takeaway, it was submitted that Deliveroo will undertake all deliveries.
- Information on the use of cooking equipment on site, including the use of fryers and location of extraction fans/ vents. It was confirmed that the majority of food was prepared off site and only base ingredients were added, the location of the duct on the first floor facing onto Marrowlane was confirmed.
- Confirmation with the requirements of the Waste management of Dublin City and the location of the bins and waste storage, in the basement which was confirmed and deemed unsatisfactory by the planning authority.

3.2.2. Other Technical Reports

Roads and Traffic Division- No objection subject to conditions.

Drainage Division- No objection subject to conditions.

Environmental Health- Request for further information in relation to the extraction fan and food preparation.

3.3. Prescribed Bodies

None requested.

3.4. Third Party Observations

One submission was received from the management company of the main building and the issues raised have been summarised in their observation to the grounds of appeal.

4.0 Planning History

PL29S.246208 (Reg. Ref 2425/15)

Split decision to grant permission for a change of use of Unit 6 for a childcare facility and refused for unit 5 for use as a takeaway for the reason of inadequate arrangement for ventilations, its proximity to the apartments and to the private

shared amenity areas serving them, and the lack of a dedicated easily accessible bin storage, would lead to a significant adverse impact on the rest of the site.

PL29S.203642 (Reg Ref 1408/03)

Permission granted for the demolition of existing buildings on the site and the construction of a mixed use development comprising of a basement car park with 82 no. cars, height ranging from 2-3 storeys at the Courtyard to 5-6 storeys on the frontages at Marrowbone Lane and Cork Street. The development incorporates 708m² of commercial space on the ground floor.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

The site is located on lands zoned as Z4, District Centres (incorporating Key District Centres), where it is an objective to *“To provide for and improve mixed-services facilities”*

Takeaway is included as a permissible use.

- **Takeaway.**
 - Section 16.24 Restriction on excessive concentration of takeaways and assessment of proposals to include the effect on noise, general disturbance, hours of operation, traffic, litter control, integrated design of a ventilation system, bin waste and location of other facilities within a 1km facility.
- **Mixed use development**
 - Section 16.10.11- In new development, internal ducting or flues shall be incorporated so that grounds floor units have the potential for fumes to be extracted to and discharged at roof level.
- **Noise**
 - Section 16.36- Have regard to the Dublin Agglomeration Noise Action Plan 2013-2018.

- Objective S1O26: To protect residents of mixed-use development from noise emanating from other uses such as shops, office, nightclubs, late night busking, public houses and other night time uses through the planning system.

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted by the applicant and the issues raised are summarised below:

- The proposed development accords with the development plan.
- PL29S.246208 refers to a split decision, grant of permission for a childcare unit in unit 6 and refusal for unit 5 for a takeaway although it is noted the council had granted the takeaway.
- The proposed takeaway is of a high quality with many awards.
- The waste will be removed by the clients own commercial vehicle to an existing central facility in Kilcoole and a condition requiring the same will be accepted on any grant of permission.
- Clean air will be delivered by the extract duct.
- Deliveroo will undertake all deliveries and many clients will walk.
- The local authority note that a fryer will not be used although refer to use by another operator on the site. A condition on a grant of permission could prevent the use of a fryer on the site.

6.2. Applicant Response

The applicant has submitted the grounds of appeal.

6.3. Planning Authority Response

None received.

6.4. Observations

One observation was received from the management company of the main building on the site and the issues raised are summarised below:

- The proposed development will have a severe detrimental impact on the established residential amenity of the area by virtue of traffic hazard, noise and disturbance from the ventilation system serving the unit.
- Planning precedent based on a previous refusal on the site (Reg. ref. 2425/15) which included :
 - Concerns from the Roads Report on the drop off of children, delivery from the takeaway and concern over the lack of provision of set down and takeaway.
 - The Environmental report noted the noise from the fan and the location of the residents living adjacent/ above the unit and the ventilation system is required to be provided at a high standard.
 - Refusal reasons included inadequate ventilation, proximity to apartments, lack of storage area and impact on residential amenity.
- The zoning allows for a takeaway although Section 16.24 of the development plan provides strict controls for the operation of takeaways and the proposal fails to meet the requirements of these guidelines, as it would have a negative impact on the enjoyment of the residential amenity space, cause noise disturbance, cause a general obstruction by way of traffic hazard and would lead to an overconcentration of takeaways in the area.
- Significant issues were identified in the planners report including the ventilation of fumes, the management bin storage.
- Unit 5 is a retail unit and not a dwelling.

- The information submitted in the grounds of appeal, in relation to the ventilation / extraction such as the referral of drawings in 2015 and the report refers to a generic takeaway use such as a burger bar.
- No acoustic analysis have been submitted and it is submitted that the noise levels will have a detrimental impact on the residents above. The impact of the noise was noted in a condition imposed by the Environmental Health Officer in previous permission (2425/15) and noted by the Boards Inspector.
- The hours of operation in the planning application refer to hours from 11am to 11pm which is unacceptable.
- The location of the ventilation system remains inappropriate and it is noted that the same information is submitted that accompanied the previous permission.

6.5. **Further Responses**

None received.

7.0 **Assessment**

7.1. The main issues of the appeal can be dealt under the following headings:

- Principle of development
- Residential Amenity
- Traffic
- Appropriate Assessment

Principle of development.

7.2. The subject site is a vacant unit located on the ground floor of a mixed used development in an area zoned Z4 'to protect, for and improve mixed services facilities' and under the provisions of the development plan and fast-food/ takeaway use is identified as being Permissible Uses. The units along the ground floor (29S.203642) where permitted for commercial use. Based on the zoning, the planning history and the commercial nature of the site I have no objection to the

principle of the use site as a hot food takeaway subject to complying with other planning requirements as addressed in the following sections.

Residential Amenity

- 7.3. The proposed development is located on the ground floor of a mixed use development where the upper floors are apartments. The proposed development includes a ventilation duct/ extraction unit, which starts from the interior of the kitchen at the rear unit, protrudes externally along the southern side, runs along the exterior and finishes at the front of the unit, with the outlet duct at side of the façade. The reason for refusal relates to the impact of the food takeaway premises, in particular the inadequate arrangements for ventilation, its proximity to the residential amenity space and the lack of easily accessible bin storage area.
- 7.4. A submission from an observer refers to a previous refusal on the site (29S.246208) for a similar development at this location. This previous reason for refusal listed the same reasons for refusal as those included with the proposed development and it is considered that the proposal would have the same negative impact on the residential amenity in the vicinity of the site. I note the flue for the ventilation was in a different location, to the rear of the ground floor and extending up to the roof level. The same technical details for the ventilation system have been submitted with the grounds of appeal, although the location of the outlet is along the south of the site, from the rear of the first floor with the final outlet at the front, adjacent to the façade.
- 7.5. Section 16.24 of the development plan provides guidance for a proposed take-away, where such facilities will be strictly controlled, having regard to the effect of noise, general disturbance, hours of operation, litter and fumes on nearby residents. The planner's report refers to the Inspectors Report on the previous refusal (29S.246208), and the location of the outlet for the proposed ventilation/ extraction system and considered that it would cause an intrusion to those living at first floor through cooking and/ or noise. I note the location of the balconies of the first floor residents of Barley House c. 2m directly above the extractor unit for the proposed takeaway and I consider the use of the mechanical ventilation extraction system, which will omit odours, impacts directly onto this private amenity space. No details of the noise levels of the extraction system have been submitted.

- 7.6. The reason for refusal also refers to the lack of easily accessible bin storage area. I note a further information response to the planning authority included the provision of bin storage facilities in the basement carpark, adjacent to the lift and bike storage facility. The grounds of appeal have submitted new information to state that the refuse can be stored on site, collected in a commercial vehicle and disposed of at the applicant's central facility in Kilcoole, which could be dealt with by a suitable condition. I do not consider the storage of waste within a food business for removal at a later time is satisfactory or reasonable to prevent any negative impact on the surrounding residential use.
- 7.7. Having regard to the location of the site below the residential units, the potential for odour emissions and noise and the unsatisfactory provision of waste facilities on site, I consider the proposed development would be contrary the guidance of the development plan and would have a serious impact on the amenity of the adjoining residents.

Traffic

- 7.8. The grounds of appeal have submitted that the delivery of takeaway food will be by Deliveroo and based on the amount of residential use in the vicinity of the site, it is argued that a significant amount of custom will be on foot, which I consider reasonable. I note the report of the Roads Department had no objection to the proposed development. Therefore, having regard to the size of the unit (62m²) and the inner city location and the amount of residence in the vicinity and the use of Deliveroo as transport, I do not consider the traffic generated from the proposed takeaway would not have a significant negative impact on the traffic or pedestrian safety in the vicinity.

Appropriate Assessment

- 7.9. Having regard to the nature and scale of the proposed development within a serviced area and separation distance 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 the conservation objectives of any European site.

8.0 Recommendation

- 8.1. It is recommended that the proposed development is refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the layout and location of the proposed fast food unit, in particular the arrangements for ventilation of the unit, its proximity to residential units, the lack of a dedicated easily accessible bin storage area to serve the unit and the guidance in Section 16.24 of the development plan for the appropriate location of takeaways, it is considered that the proposed change of use would have a significant adverse impact on residential amenity by virtue of noise and conflict with the residential use on the rest of the site. The proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

Karen Hamilton
Planning Inspector

20th of December 2017