



An
Bord
Pleanála

Inspector's Report ABP-301029-18

Development	Change of use from tool and plant hire use to restaurant with take away
Location	No. 3 Dublin Street, Blackpool, Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	17/37654
Applicant(s)	Colm O'Reilly
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Colm O'Reilly
Observer(s)	None
Date of Site Inspection	16 th May, 2018
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. No. 3 Dublin Street, Blackpool is on the east side of the street and comprises a two-storey terraced building that is vacant. The ground floor of the structure was previously in use as a plant and tool hire premises. Access to the rear yard of the site is from a gated arch adjoining the shop front. The site is flanked to the north-east by a public house and beyond this by residential properties and to the south-west by a betting office and beyond this a public house and a mix of residential and other uses. There is a wide mix of residential and commercial units along and opposite this terrace. The original Blackpool Shopping Centre and a recently expanded retail area is located to the west of Dublin Street. There is an extensive range of shops, cafes and other retail outlets at this location.

2.0 Proposed Development

2.1. The proposed development would comprise a change of use of a ground floor tool and plant hire premises to a restaurant use with a takeaway facilities. It would also include the demolition of a single storey extension to the rear of the building, the construction of a new single-storey extension, and the replacement of a window with a door on the front elevation. The restaurant and takeaway would have a gross floor area of 92 square metres.

3.0 Planning Authority Decision

3.1. Decision

On 29th January, 2018, Cork City Council decided to refuse permission for the proposed development for two reasons relating to the number of fast food outlets in the vicinity and zoning provisions, and injury to residential amenities and property values in the vicinity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Area Planner noted the site's planning history, development plan provisions, and reports received. It was submitted that the zoning and objectives that applied in a previous application for the site and adjoining No. 4 still apply. It was noted that the Development Plan requires takeaways to be permitted only in district, neighbourhood and local centres and that the proposed site is located in a residential, local services and institutional zone and across the road from an area zoned as a neighbourhood centre. It was considered that, as the floor plan shows the provision of six tables, this suggest that the primary business would be the takeaway element. It was stated that there are quite a number of restaurants and takeaways established in the area. It was concluded that the proposal was not suitable having regard to the site's zoning, the proximity of residential properties, the extent of licenced premises in the immediate vicinity and restaurants/fast food outlets within close proximity, and the limited parking available. A refusal of permission was recommended.

The Senior Executive Planner and the Senior Planner concurred with the Area Planner's recommendation.

3.2.2. Other Technical Reports

The Drainage Engineer had no objection to the proposal subject to conditions.

The Environment Engineer had no objection to the proposal subject to conditions.

The Roads Design Engineer had no objection to the proposal subject to conditions.

3.3. Prescribed Bodies

Irish Water had no objection to the proposal.

4.0 Planning History

ABP Ref. PL 28.240477

Permission was granted by the Board for a change of use of No. 3 Dublin Street to a bookmakers at ground floor and residential at first floor level, and change of use of No. 4 from a bookmakers to a café. Condition 4 of that permission limited the use of

the café such that the sale of hot food for consumption off the premises was prohibited.

5.0 Policy Context

5.1. Cork City Development Plan 2015-2021

Zoning

The site is zoned 'ZO 4 Residential, Local Services and Institutional Uses' with the objective "To protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3."

Historic Street

The site is located within a designated Historical Street Character Area. It is an objective to protect the physical and architectural character of these areas and to seek the provision of higher quality public realm treatments in these areas.

Cafes/Restaurants

The Plan recognises the positive contribution of cafés and restaurants and the clusters of such uses to the vitality of the city. The following are required to 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.

Hot Food Takeaways/Fast Food Restaurants

The Plan states that, in order to maintain an appropriate mix of uses and protect night-time amenities in a particular area, it is the objective 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. In order to protect residential amenity in suburban areas fast-food takeaway units are only permitted in district centres, neighbourhood centres and local centres. They are controlled having regard to the following:

- Land use zoning and specific objectives contained in the plan;
- 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; and
- Traffic implications resulting from the proposed development including the need to service the business and provide for the parking needs of customers.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

Principle of Development

- The Council has assessed the file strictly as a fast food restaurant. The takeaway use would be ancillary to the primary use as a restaurant.

- Small scale restaurants are open for consideration within areas zoned 'Residential, Local Services and Institutional Uses'.
- The takeaway aspect will only act as a service for potential consumers with the aim of broadening the customer base of the restaurant.
- The planning authority did not consider the constraints within the existing structure affecting the scope relating to the layout of the restaurant. The layout shows the majority of floor space clearly accommodating patrons who frequent the establishment to sit down.

Impact on Residential Amenity

- The planning reports cite proximity to residential properties, which is not supported by reasonable argument.
- The site is set within a parade of local services, including a public house/lounge which serves food without any adverse impact on adjoining residential amenities. Another eatery will improve consumer choice compatible with adjacent uses.
- The previous permission restricted hours of operation to 9.30pm for café use. Permissions have been granted elsewhere for restaurant uses without the need to unfairly restrict hours of operation. Reference is made to a number of planning permissions in the Cork City area in support of this.

Parking

- As per Cork City Council's guidance, no car parking spaces are required for the proposed development.
- The site is adjacent to a bus stop, there is significant on-street parking opposite, and a car park to the north-west.
- The premises will predominantly serve a relatively local catchment.

6.2. Planning Authority Response

The planning authority stated that it had no further comments to make.

7.0 Assessment

7.1 The proposed development seeks a change of use from a tool and plant hire outlet to a restaurant with a takeaway facility. I note that the Board, under Appeal Ref PL 28.240477, granted permission for the change of use of the adjoining property No. 4 from a bookmakers to a café and limited its use such that a takeaway use was prohibited. No. 4 remains in use as a bookmakers. I further note the considerations of the planning authority on the current application. I consider that it is reasonable to conclude that the proposed change of use to a restaurant is an acceptable development in principle and that the sole issue of concern relates to the takeaway element. Notwithstanding the limited floor area of the unit and the layout of tables for patrons as proposed, I do not consider that the use of the facility as a restaurant should be dismissed and there is no definitive reason as to why such a use could not function within the constraints of this structure. I, thus, can find no justification for prohibiting the change of use to a restaurant. I am satisfied to conclude that the proposal meets the development plan provisions relating to a restaurant use. I acknowledge that there were no objections from the Drainage, Environment and Roads Design Engineers and there are no concerns arising in relation to the environmental impacts of a functioning restaurant on the amenities of properties in the vicinity. This general location is also very well served by parking in the area and public transport is available also. A restaurant functioning between the hours of 07.00 and 23.30 can be adequately accommodated at this busy location, on the edge of the area of prime commercial activity in Blackpool.

7.2 Moving to the proposed takeaway use, I again acknowledge that the Board restricted the use of the neighbouring No. 4 Dublin Street as a café under Appeal Ref PL 28.240477. Condition 4 is notable and relevant because of the limitations that were placed on a development at this location. The condition was as follows:

“Use of the café premises shall be in accordance with the details as submitted in the revisions received by the planning authority on the 6th day of March 2012 and no change of that use shall take place without a prior grant of planning permission, notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 and any statutory

provision amending or replacing them. The proposed café shall not be used for the sale of hot food for consumption off the premises.

Reason: In the interest of clarity.”

It is apparent from this condition that the Board considered that a change of use of the premises could be facilitated by way of a prior grant of planning permission. However, the Board went on to expressly prohibit the use of the café as a takeaway. It may reasonably be concluded that the Board has previously determined that this location is not suited to a takeaway use although the Direction and reason attached with the condition does not specifically identify the matters leading to this conclusion.

7.3 Further to the above, I note the Cork City Development Plan provisions as they relate to takeaways. Notwithstanding my observations that this is an area undergoing significant change, with a strong emphasis on expanding retail and other commercial uses and facilities in the immediate vicinity opposite this site and which accommodates a wide range of eateries, takeaways, etc., I must acknowledge that the Plan permits fast-food takeaway units in district centres, neighbourhood centres and local centres. The reason given for this is in order to protect residential amenities in suburban areas. A question may arise as to whether this is a suburban area or an urban area and, thus, as to whether the applicability of this provision is apt in this instance. However, I further note that it is an objective 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. This is a location that is well served by takeaways, with Dominos Pizza and McDonalds being examples of outlets a short distance to the north-west of the site. Given the proliferation of such premises, coupled with the zoning provision for the site's location (namely ZO 4 Residential, Local Services and Institutional Uses that has the objective to protect residential uses), it is reasonable to conclude that the area is very well served by takeaway facilities and that such uses can ably be accommodated in the expansive retail area that comprises the neighbourhood centre immediately west of Dublin Street. It is, therefore, reasonable to exclude the takeaway use and this can be done by the attachment of an appropriate condition.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the zoning objectives for the area and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed out in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Details of the external shopfront and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the amenities of the area/visual amenity

3. The premises shall be used as a restaurant and shall not be used for the sale of hot food for consumption off the premises.

Reason: In the interest of residential amenity and to prevent an excessive concentration of takeaways in the area in accordance with the provisions of the Cork City Development Plan.

4. The hours of operation of the restaurant shall be between 0700 hours and 2330 hours on any day.

Reason: In the interest of the amenities of property in the vicinity.

5. Prior to the commencement of development, a scheme for the effective control of fumes and odours from the premises, including details of vents and ducting, shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of public health and to protect the amenities of the area.

6. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

7. A waste management plan, including the provision of facilities for the storage, separation and collection of all waste, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the permitted use.

Reason: To provide for the appropriate management of waste and in the interest of public health and environmental protection.

8. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

10. The developer shall pay to the planning authority a financial contribution in respect of the Cork Suburban Rail Project in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in

such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Kevin Moore
Senior Planning Inspector

31st May 2018