



An  
Bord  
Pleanála

## Inspector's Report ABP 301578-18

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<b>Development</b>	Change of use of commercial unit to hot food takeaway.
<b>Location</b>	2 & 3 Quinn's Road, Shankill, Dublin 18.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council.
<b>Planning Authority Reg. Ref.</b>	D17A/1067.
<b>Applicant</b>	Changyu Wang.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with Conditions.
<b>Type of Appeal</b>	Third Party.
<b>Appellant</b>	Sam Greene & others.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	26 July 2018.
<b>Inspector</b>	Dáire McDevitt.

## **1.0 Site Location and Description**

- 1.1 The appeal site is located on the southern side of Quinn's Road, a mature residential area to the east of Shankill village. The site is part of a former commercial centre consisting of three units at ground floor and first floor residential accommodation. The building fronts onto Quinn's Road, is set back c. 11m from the road and forms the corner of Quinn's Road and Shanganagh Grove. There is an area of parking located to the front and west of the building. The existing building and associated carpark are in a state of disrepair.
- 1.2 No. 2 & 3 Quinn's Road are vacant units. The first floor residential area appears to be occupied. There is signage erected at Unit No. 1 for a Church and Unit 2 & 3 for an Adult Education Learning Centre. The gable of No.62 Quinn's Road, a two storey semi-detached house, forms the eastern boundary with a pedestrian access to the rear, off the car parking area which serves the site. To the south is Shanganagh Grove, a residential cul-de-sac. Opposite is the junction with Foxes Grove and a row of two storey semi-detached houses fronting onto Quinn's Road.

## **2.0 Proposed Development**

- 2.1. Permission for change of use of existing c. 72sq.m commercial unit (Unit No.3) to a hot food takeaway. The proposal includes alterations to the external façade including new signage and shopfront. A new c.1.2m high wall with a new footpath to the front of the takeaway and the adjoining unit on a site with a stated area of c. 0.039 hectares.
- 2.2. The application site boundaries includes Units No. 2 & 3, however the proposed change of use refers to Unit No. 3 only.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission granted subject to 5 standard conditions. These include condition No. 3:

*The food takeaway facility shall operate between 12:30 hrs-14:30 hrs (Monday-Sunday) and 17:00hrs until 22:30hrs Monday-Friday, until 23:00hrs on Saturday and shall close no later than 22:00 hrs on Sundays.*

**Reason:** *In order to safeguard adjoining residential amenities.*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Following the submission of further information a recommendation to grant permission was made. The main issues dealt with the principle of the development and residential amenities.

### **3.2.2. Other Technical Reports**

**Transportation Planning (2 Reports).** No objection subject to conditions.

**Drainage Division.** No objection subject to conditions.

**Environmental Health Officer.** Advised that the proposal does not support the development of an environment that makes healthy food choices the easy choice. Recommendations set out in relation to drainage and waste disposal.

## **3.3. Prescribed Bodies**

**Irish Water.** No objection subject to conditions.

## **3.4. Third Party Observations**

19 submissions were received by the Planning Authority and a further 15 following the submission of Further Information. These included submissions from the appellants which generally reflects the grounds of appeal and shall be dealt with in more detail in the relevant section of this report.

The main issues can be summarised as follows:

- The proposed use would cause unnecessary disturbance and disruption in a mature residential area.

- The public notices are misleading as the previous use was educational and not retail as stated in the notices.
- Proposal would attract anti-social behaviour.
- Traffic nuisance.
- The proposed use would give rise to noise, odour and litter.
- No justification for a take away at this location.
- A take away is not permitted under the residential land use zoning objective attached to the site.
- Inappropriate use close to sporting facilities.
- Requirement for housing in the area.
- The proposed use would attract vermin.
- It would not comply with section 8.2.6.5 of the current County Development Plan.
- Would be contrary to the Council's Core Strategy and Housing Strategy.

## 4.0 Planning History

There are no details on the Councils Online Planning Registrar for the original commercial centre.

**Planning Authority Reference No. 16A/0291** refers to a 2016 grant of permission for the conversion of the two commercial units to two 1 bed residential units and restore the existing first floor unit to original three bed apartment.

**Planning Authority Reference No. 94A/0486** refers to a 1994 grant of permission for change of use as follows: a) ground floor from shop to professional services and b) residential flat overhead to office.

## 5.0 Policy Context

### 5.1. Dún Laoghaire- Rathdown County Development Plan 2016-2022.

#### Land Use Zoning Objective:

- The site is located on lands zoned under Land Use Objective A ‘to protect and/or improve residential amenity.’
- Takeaway is neither a ‘permitted in principle’ nor an ‘open for consideration’ use under this zoning objectives as set out in **table 8.3.6**.
- **Section 8.3.5** notes that Uses which are not indicated as ‘permitted in principle’ or ‘open for consideration’ **will not be permitted**.
- **Section 8.3.7** refers to other uses not specifically mentioned in the use tables and that these will be considered on a **case-by-case basis** in relation to the general policies of the Plan and the zoning objectives for the area in question.

**Section 8.2.6** refers to retail development

**Section 8.2.6.5 Fast Food Outlets/Takeways** refers to the criteria for the assessment of fast food/takeaway outlets, including drive through. The criteria include amongst other things:

- The requirement to retain the retail mix, overall variety and multi-use function of the area.
- The effect of the proposed development on the existing mix of land uses and activities in the area.
- Careful consideration of the location of fast food outlets in the vicinity of schools and parks.

The proliferation or oversupply of certain premises that cause or are likely to cause disturbance or nuisance, detract from amenities or seriously detract from an area generally in terms of use and services mix may be resisted.

**Section 8.2.6.8** refers to shopfronts, signage and advertising.

**Section 8.2.4 5** refers to carparking standards.

## 5.2. Natural Heritage Designations

None of relevance.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A third party appeal was lodged by on behalf of 14 parties as listed below:

- Gerard Hayes, 62 Quinn's Road, Shankill, D18 (adjoining the site to the west).
- Edward Staunton, 75 Quinn's Road, Shankill, D18.
- Marie & Noel McGarry, 82 Quinn's Road, Shankill, D18.
- Sam Greene, 87 Quinn's Road, Shankill, D18.
- Lorraine Flanagan, 89 Quinn's Road, Shankill, D18.
- Susan Fanning, 91 Quinn's Road, Shankill, D18.
- Joanne Boswell, 95 Quinn's Road, Shankill, D18.
- Derek Adams, Shankill Tennis Club, Quinn's Road, Shankill, D18.
- Nora Ann Sheehan, 1 Shanganagh Grove (adjoining property to the south).
- Don & Sheila Behan, 2 Shanganagh Grove, Shankill, D18.
- Edel Simpson, 43 Shanganagh Grove, Shankill, D18.
- John Kane, 44 Foxes Grove, Shankill, D18.
- Chris Daly, Shankill Tidy Towns, Station House, Shankill Business Centre, Station Road, Shankill, D18.
- Conor Brennan, 23 Grange Park, Foxrock, D18.

The main issues are summarised as follows:

#### 6.1.1 Planning Authority Decision:

- The unit was last used as an adult education centre and not a commercial use. Therefore the Planning Authority has erred in its assessment.
- The site is located within a mature residential area, the proposed use would result in additional traffic movements along Quinn's Road, which is in effect a cul-de-sac.
- The opening hours are inadequate and the Planning Authority's wording of condition No. 3 is incomplete.

#### 6.1.2 Development Plan:

- The site is zoned under land use objective A with an objective to protect and/or improve residential amenity.
- Fast food take away businesses are not listed in the matrix of 'permitted in principle' or 'open for consideration' uses under Land Use Objective A. Therefore the Council granted permission for a use that would materially contravene the Development Plan.

#### 6.1.3 Planning History:

- Permission was granted in 2016 under PA. Ref. No. 16A/0291 for the change of use of the two units to residential units.
- Permission was granted in 1994 (PA. Ref. No. D94/0486) for change of use of the ground floor to 3 no. professional services with residential flats overhead.
- The premises have not been used for retail purposes for over two decades. The most recent use was as an adult education centre. Signage still in place for this use. The Board is, therefore, required to reject the proposal on foot on incorrect public notices.

#### 6.1.4 Analogous application:

PA Ref. No. D03A/0250 (ABP Ref. No. PL.06D.203062) at Newtown Park, Blackrock, Co. Dublin refers to a 2003 refusal of permission for the change of use from retail to takeaway where the appellants are of the view similar issues arose.

6.1.5 Nuisance:

- The proposed use would have a detrimental impact on the amenities of nearby residents by virtue of odours, noise, littering and anti-social behaviour.
- Nuisance from deliveries and increased traffic movements associated with the proposed use.

6.1.6 Errors in the Planning Authority's Assessment:

- The Planning Authority erred in finding that a hot food take away would enhance the vibrancy of this residential area.
- The main issue for this assessment at Quinn's Road must be compliance with the Council's stated objectives of protecting/improving residential amenity. There are several sensitive uses within the immediate vicinity that need to be protected, including Shanganagh Park and the Tennis/bowling clubs.

6.1.7 Sustainable Development:

- Need to promote the sustainable development of the centre of Shankill, uses such as takeaways should be located within this central business area.
- Shankill Tidy Towns have done extensive work to enhance the town and have raised concerns that the proposed use and associated nuisances would have a detrimental impact on the area.

6.1.8 Contingency Submission:

Should the Board be of a mind to grant permission the appellants request that a condition be attached that the premises close at 7pm.

6.1.9 Conclusion:

- The previous uses of the units included a butcher, hairdresser and a newsagent. The demand for such corner shops has declined over the past couple of decades.
- The permitted change to residential units granted in 2016 is more appropriate for this area.



The Board is requested to refuse permission for the following reasons:

1. Having regard to the zoning provisions of the current Development Plan for the area, where the site of the proposed development is zoned 'A' with the stated objective 'to protect and/or improve residential amenity' which objective is considered reasonable, it is considered that the proposed use as a hot food take-away would give rise to noise, general nuisance, and disturbance by reason of the late opening hours, would seriously injure the amenities of the adjoining residential properties and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The public notices given in respect of this proposal is deemed to be inaccurate and inadequate for the purposes of the Planning and Development Regulations 2001, as amended.

## **6.2. Applicant Response**

This is mainly in the form of a rebuttal. Points of note as summarised below:

- The existing building consists of four commercial units, three of which are vacant with shutters closed making the building an unsightly feature in the neighbourhood.
- The units are set back from the nearest houses and separated from them by a car park and public roads.
- The previous use was commercial
- A restaurant is acceptable under the land use matrix, take away use is associated with these premises. The provisions of take away use has been satisfactorily dealt with by means of the limited opening hours.

- The Planning Authority have restricted the opening hours under condition No. 3.
- The opening hours are such that the use will not attract late night revellers.

The applicant notes that the previous use was commercial. However if, as has been contended by the appellants, an adult education use is not a commercial use. Then the use of the unit for an adult education centre would be unauthorised, as the 1994 change of use referred to office/professional use. Following on from this, the permitted use for the unit is the original commercial use.

### **6.3 Planning Authority Response**

The Board is directed to the original Planner's Report as it is considered that the grounds of appeal do not raise any new matters which would justify a change in attitude to the proposed development

### **6.4 Observations**

None.

### **7.0 Assessment**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings

- Principle of development.
- Impact on properties in the vicinity.

- Other Issues.
- Appropriate Assessment

## **7.1 Principle of Development**

7.1.1 The relevant unit (No. 2 & 3 Quinn's Road) forms part of a larger commercial block.

The units are vacant with roller shutters closed and signage in place for an Adult Education Centre (unit 2&3) and a Church on the adjoining unit.

7.1.2 The planning status and nature of previous uses of the units has been raised by both the appellants and the applicant. Notwithstanding the status of previous uses, the application before the Board must be assessed in the context of the policies and objectives for the site under the current Dun Laoghaire Rathdown County Development Plan 2016-2022.

7.1.3 Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, the site is located on lands under land use objective A “To protect and/or improve residential amenity.” Takeaway/Fast food outlet is not listed in table 8.3.6 as either a ‘permitted in principle’ or an ‘open for consideration’ use under this zoning objective. Section 8.3.5 notes that uses which are not indicated as ‘permitted in principle’ or ‘open for consideration’ will not be permitted. I have examined the land use zoning objectives in the current County Development Plan and I note that Take Away/Fast Foods outlets are not included under any of the land use zoning objectives. In the absence of any reference to the proposed use, I consider that Section 8.3.5 of the Development Plan which refers to the consideration of other uses, not included in the land use table, on a case by case basis as set out in section 5.1 of this report should apply.

7.1.4 The appellants have set out in detail in the appeal that the proposed development would materially contravene the residential land use zoning objective attached to the site. The applicant in his response rebuts this and is of the view the proposed change of use of an existing commercial unit to a fast food take away is in compliance with the land use zoning objective ‘A’.

7.1.5 The Planning Authority concluded that the proposed change of use of an existing commercial unit, while located in a residential area, would in this instance be acceptable as the relevant unit is part of a mixed commercial /retail building. The proposal would retain the overall variety and multi-use function of this specific area.

7.1.6 I observed on the day of inspection that the site is located within a mature residential area. The appellants have outlined that existing building was used as a butchers, flower shop and newsagents up to c. 20 years ago. In my view, given the location of the building in the centre of a residential area and having regard to the land use zoning objective 'A' attached to the area. The units would be suitable for a local shop/retail unit that would serve the needs of the local community. I do not consider that a change of use to a fast food take away in a mature residential area is an appropriate use for this vacant unit.

7.1.7 The site is zoned 'A' with the objective to *To protect and/or improve residential amenity*. To permit a fast food take away at this location would be contrary to the zoning objective at this location as set out in the Dun Laoghaire Rathdown County Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

7.1.8 Section 8.2.6.5 of the Development Plan sets out the criteria for the assessment of takeaways. It notes that careful consideration is also required when assessing proposals in the vicinity of schools and parks. It also includes the requirement that proposal shall have regard to existing land uses and activities and to restrict such proposals where it is likely that they would detract from the amenities or seriously detract from the area in terms of use. The impact of the proposal on existing land uses is assessed in section 7.2 of this report.

7.1.9 The appellants have raised concerns that the provision of a take away at this location would be inappropriate and does not comply with section 8.2.6.5 of the Development Plan due to its location within a residential area, its proximity to a park and sports facilities. I note that there are no education facilities immediately adjacent to the appeal site. The closest sports facility is The Tennis and Bowling Club, c. 200m north east of the site. Shanaganah Park is c. 400m to the south of the site, accessed via St. Anne's Park. I have examined the current Development Plan and there is no prescribed minimum required separation distance from schools/sports facilities/parks or identified 'no fry zones' in the Plan

7.1.10 The appellants have also raised the issue of excessive number of take aways in the area. There are seven within a 1km radius of the site (4 of which are in Shankill village). I note that the nearest takeaways are located within Shankill village, c. 400m east of the site, therefore in my view, the proposal would not contribute an over proliferation of these premises in the immediate vicinity.

## **7.2 Impact on properties in the vicinity.**

7.2.1 The appellants have also raised concerns regarding noise, odours and litter generated by the proposed development would have a detrimental impact on the residential amenities of properties in the immediate vicinity. And referred to Planning Authority Ref. No. D03A/0250 (ABP Ref. No. PL.06D.203062) at Newtown Park, Blackrock, Co. Dublin a 2003 refusal of permission for the change of use from retail to takeaway. I note that the context differs from the current application before the Board and that each application is assessed on its own merits.

7.2.2 The gable of the nearest dwelling to the west, No. 62 Quinn's Road, is set back c.13.5m from the side of the unit which is the subject of this application and is separated from it by an existing carpark. To the south, the rear garden of No. 1 Shanganagh Grove bounds the application site.

7.2.3 While I acknowledge that the site appears to form part of a former commercial centre, the immediate area where the site is located is a mature residential suburb. Fast food take away outlets by their nature tend to create different

problems to other commercial/retail uses ranging from noise, litter, odours, hours of operation and general disturbance.

7.2.4 I am satisfied that details regarding litter management within the site can be addressed by appropriate conditions. The issue of littering outside the site is beyond the control of the applicants.

7.2.5 The principle impacts would comprise, in my opinion, noise and odour. I acknowledge that the applicants have submitted details to address the matter of nuisance from odour and have provided, in my opinion, appropriate measures to address the matter of nuisance from odours.

7.2.6 While odour can be controlled by the operator of such a facility, the matter of noise is more complicated to resolve. Taking into account the nature of the take away facility, as opposed to a restaurant, noise levels in the vicinity of such premises are likely to cause an undesirable effect. I note that the Planning Authority attached a condition relating to hours of operation and the applicant has confirmed that the business would not open outside the permitted times and may not necessarily open at lunchtime. The appellants has requested that in the event permission is granted that a closing time of 7pm (19:00) be attached by condition. I do not consider attaching such a restrictive time is reasonable as it would have a significant impact on the viability of the business. Furthermore, taking into account the nature of the proposal and its location, I am not satisfied that a restriction on opening hours is sufficient to address the potential negative impact on residential amenities in the immediate vicinity.

7.2.7 In addition, I note that the floor plans submitted do not show food preparation or cooking areas, however, I note the location of a ventilation duct on the western elevation is indicative of the location of the cooking area. The location of this ventilation duct and potential food preparation and cooking area along the western elevation. Together with activity and traffic movements associated with the storage area, refuse area and car park have the potential to impact significantly on the level of residential amenity currently enjoyed by adjoining residents, particularly the house to the west of the site. The applicant has not presented any evidence to suggest that noise levels associated with the proposed use would not impact adversely on the adjoining properties.

7.2.8 In this regard, taking all the above factors into account and the proximity of adjoining residential properties. I consider the proposed use as a fast food take away would be likely to have a negative impact on the amenities of the adjoining residential properties. Therefore, would be contrary to Section 8.2.6.5 of the Development Plan which sets out that that proposals shall have regard to existing land uses and activities and to restrict such proposals where it is likely that they would detract from the amenities or seriously detract from the area in terms of use.

7.2.9 In terms of the proposal resulting in a traffic nuisance due to increased traffic movements along a residential road and deliveries associated with the proposed use. I am satisfied that the proposal accessed off an existing entrance would not exacerbate the existing traffic movements along Quinn's Road. Nuisance associated with deliveries is dealt within under section 7.2.6 of this report.

### **7.3 Appropriate Assessment**

7.3.1 Having regard to the nature of the proposed development and the location of the site in a fully serviced built up 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.

## **8.0 Recommendation**

I recommend that permission should be refused the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

- 1. Having regard to the nature of the proposed use and the general relationship of the appeal site to existing adjacent residential properties it is considered that the proposed development would be contrary to land Use objective A of the Dun Laoghaire County Development Plan 2016-2022, which seeks to protect and/or improve the residential amenities of the area**

**and contrary to Section 8.2.6.5 of the Plan.** The proposal is considered to be unacceptable in terms of its likely impact on the residential amenities of adjoining residential properties and would be likely to cause undesirable effects on the properties in close proximity by reason of noise, disturbance and general activity generated by, or associated with the associated the operation of the proposed facility. The proposal would therefore be contrary to the proper planning and sustainable development of the area.

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Dáire McDevitt  
Planning Inspector

10<sup>th</sup> August 2018