



An  
Bord  
Pleanála

## Inspector's Report ABP – 302213-18.

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<b>Development</b>	Retention of takeaway, attic conversion, alterations to previously granted development under P.A. Reg. Ref. No. 13/94.
<b>Location</b>	75 Trinity Street, Drogheda, Co. Louth.
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	18415.
<b>Applicant</b>	Mobeen Ashgar.
<b>Type of Application</b>	Retention Permission/Planning Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party.
<b>Appellant</b>	Dominick Borza.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	24 <sup>th</sup> October 2018.
<b>Inspector</b>	Patricia-Marie Young.

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## 1.0 Site Location and Description

- 1.1. No. 75 Trinity Street, the appeal site is located on the northern side of Trinity Street to the east of its junction with the R132 (Old Dublin Road) and West Street, Drogheda's historic pedestrianised town centre and commercial core.
- 1.2. The site contains a two-storey red brick period mid-terrace dwelling which at the time of site inspection was in its entirety in residential use. Adjoining it to the east is a similar two-storey property which contains a take-away unit at ground floor level (Kebab Palace) and residential over. To the west, the site is adjoined by a two and a half storey mixed used property that contains a beauty salon at ground floor level (Renata's Salon) with residential over and a courtyard of residential units behind. To the rear the site backs onto a commercial property that addresses the Fair Green.
- 1.3. The Fair Green contains a mixture of uses as well as public pay and display on-street car parking spaces. To the front of the site there is on-street pay and display car parking. The wider street has a mixed-use character including other take-away establishments with this mixed-use character diminishing to the west into predominantly residential land use.

## 2.0 Proposed Development

- 2.1. Retention permission is sought for the following.
  - Change of use of ground floor level to take-away (c51m<sup>2</sup>).
  - Conversion of attic space to accommodate a shower room, storage and bedroom (c23.5m<sup>2</sup>).
  - 2 no. rooflights to front facing Trinity Street and 1 no. rooflight to rear.
- 2.2. Planning permission is sought for alterations to planning permission P.A. Reg. Ref. No. 13/94 including change of use from permitted shop at ground floor level to take-away. This grant has now expired.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Louth County Council decided to grant permission subject to conditions. Condition No. 8 required payment of €2,560 in lieu of an assessed 1 no. car parking space shortfall.

### 3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** The Planner's Report is the basis of the Planning Authority's decision.

### 3.3. Other Technical Reports

- **Sanitary Services:** No objection.
- **Irish Water:** No objection.

### 3.4. Prescribed Bodies

- 3.4.1. None.

### 3.5. Third Party Observations

- 3.5.1. One submission was received by the Planning Authority to the development sought. The substantive concerns raised are the same as those raised by the appellant in their appeal submission.

## 4.0 Planning History

### **P.A. Reg. Ref. No. 13/94**

Retention permission **granted** for a 2-storey rear extension to an existing dwelling house. Under this application planning permission was also granted for the change of use of part of the ground floor level to a shop and the change of use of part the ground floor level as well as part of the first-floor level to a one-bedroom self-contained apartment together with all associated site works.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The policies and provisions of the Drogheda Borough Council County Development Plan, 2011-2017, apply. The site lies within an area zoned as part of the 'Town Centre' which has an aim to: *"protect and enhance the special physical and social character of the existing town centre and to provide for new and improved town centre facilities and uses"*.
- 5.1.2. Policy TC2 in relation to land zoned 'Town Centre' states: *"to consolidate, strengthen and enhance the social, economic, retail, cultural, historical and environmental strengths of Drogheda Town Centre, while addressing any constraints which hinder its sustainable development"*.
- 5.1.3. Section 4.3.1 of the plan states: *"permitted uses at ground floor level should be predominantly retail"* and it goes on to state that: *"proposed development within upper floors should seek to include residential development in order to enhance the vibrancy of the Town Centre"* and that uses such as take-away: *"at ground floor level will be assessed on their merits and may only be permitted where such development would not result in a predominance of similar non-retail frontages on the street, in order to protect and safeguard the retail uses and street frontages"*.

### 5.2. Natural Heritage Designations

- 5.2.1. None relevant.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows: -
- This development is not in the spirit of Policy TC 2.
  - A variety of businesses should be encouraged to enhance the local economy and bring vitality to the streetscape. Take-aways do not help achieve this.

- Concerns are raised that matters such as anti-social behaviour, waste, litter and air pollution have not been adequately addressed by the Planning Authority nor have appropriate conditions been imposed to deal with them.
- The same opening hours as the adjoining take-away would be appropriate.
- The grant of permission does not impose any conditions or restrictions to safeguarding the environment.
- Concern is raised as to why the Councils Infrastructure Section were not consulted having regard to the proximity of the site to a very busy traffic junction.

## 6.2. Applicants Response

- The applicant contends that they have operated the adjoining take-away for 14 years and that it has become unsustainable to operate.
- It is proposed to not proceed with the previously permitted shop granted under P.A. Reg. Ref. No. 13/94. Instead it is proposed to relocate their takeaway business from the adjoining premises to the ground floor level of No. 75.
- Planning policy in the town encourages traditional living over the shop.
- There are several well-established take-aways in the western area of Drogheda.
- There is no record of anti-social behaviour, traffic or parking problems associated with the applicants adjoining take-away.
- The residential accommodation meets relevant guidelines.
- The hours of operation conditioned are typical for takeaway premises.

## 6.3. Planning Authority Response

- They consider that all matters have been addressed in their Planner's Report.

## 6.4. Observations

6.4.1. None.

## 7.0 Assessment

### 7.1. Introduction

7.1.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. I consider that the issues can be dealt with under the following headings: -

- Principle of development/Planning History
- Amenity Considerations
- Design
- Visual Amenity
- Traffic

I also consider that the matter of appropriate assessment also requires consideration.

### 7.2. Principle of the Proposed Development and Planning History

7.2.1. The development site lies within an area zoned 'Town Centre' under the Drogheda Borough Council Development Plan, 2011-2017, which aims to: *"protect and enhance the special physical and social character of the existing town centre and to provide for new and improved town centre facilities and uses"*.

7.2.2. Under this land use zoning objective while the preferred land use for the ground floor levels of buildings located on land zoned town centre is retail with Section 4.3.1 of the Development Plan seeking that developments in such land include residential development over to enhance the vibrancy of the town. The Development Plan also indicates that take-away developments in such areas are to be assessed on their merits. I would conclude on this basis that the appeal should be so judged, having regard to its location, the pattern of development, traffic implications, amenity and environmental considerations.

7.2.3. Under P.A. Reg. 13/94 permission was granted for the change of use of part of the ground floor level to retail use, including but not limited to a new shop front at ground floor level. This component of P.A. Reg. Ref. No. 13/94 was not carried out. Under

this previous application retention permission was also granted for a two-storey rear extension and a new window opening on the original rear elevation.

- 7.2.4. The current application proposes an attic conversion for use in conjunction with the existing residential use. The general principle of this component of the proposed development is acceptable, subject to safeguards.
- 7.2.5. Drogheda has a historic commercial core which includes West Street and its town centre includes a number of shopping centres. Trinity Street, which forms part of R168 Regional Route into the town is a typical secondary commercial street and it is one of the main arteries into the centre of the town. It contains a significant intermixing of uses particularly towards its eastern end. I noted at the time of my site inspection that Trinity Street alongside the adjoining take-away includes several commercial premises including beauty shops, a laundrette, a real estate office, public houses through to a small number of restaurants i.e. Ming Gardens and The Trinity Quarter which are located to the east. In terms of existing take-aways near the appeal site there is Nikkos, Ming Gardens and Simply Fit Food. The commercial premises alongside the residential properties near the appeal site appear to be solely reliant on-street parking to meet both their day-to-day needs and their customers.
- 7.2.6. The appeal site contains a period 2-storey red brick terrace building of uncertain age, a limited rear yard area, it has no setback from the public footpath, with its road frontage onto the northern side of Trinity Street consisting of part double yellow lines and part of a pay and display car parking bay. It is situated 6.4-meters to the west of a restricted in width local road that provides two-way access to the Fair Green and c110m to the west of the intersection of Trinity Street (R168), the R132 (Old Dublin Road) and West Street (R900) which I observed is heavily trafficked and congested road intersection.
- 7.2.7. Having regard to the pattern of development in this area I consider that the general principle of the change of use of the ground floor level of an existing dwelling that is situated on town centre zoned land and the provision of an attic conversion that would add to the remaining residential floor area is acceptable subject to safeguards.
- 7.2.8. Notwithstanding, I raise a concern with regards to the capacity of the on-street car parking to accommodate the level of car parking such a change of use would



generate over and above the existing situation. This concern is based on the sites edge of centre location, its inability to provide car parking to meet car parking standards for the quantum of development proposed on-site, the demands on car parking near the site and the site's proximity to a heavily trafficked intersection.

### **7.3. Amenity**

- 7.3.1. The appeal site is located within an area that can be described as having a mixed-use character and the development sought would result in the maintenance of a residential. From what I could ascertain the appeal site is adjoined by a quantum of residential use including residential units the adjoining properties to the east and west alongside a quantum of residential units in the immediate vicinity. In addition, within the wider streetscape particularly to the east the character of the area changes to one where the predominant land use is residential use with the commercial presence becoming more intermittent.
- 7.3.2. The potential amenity impacts from a takeaway use are varied in nature and are to some extent dependent on the nature of the premises and its management.
- 7.3.3. In relation to the potential for anti-social behaviour I would doubt that the change of use would result in significant impact over and above what might be expected in an edge of town centre location during the proposed hours of operation which I note in this case are mainly outside of standard business hours.
- 7.3.4. In terms of residential amenity impact, I consider that the change of use has the potential to result in significant impact over and above the existing situation. I reach this consideration based upon the proximity of the proposed takeaway to existing residential properties and the various amenity impacts such as smells, noxious odours, waste and anti-social hours of operation. There are standard conditions that can be imposed to mitigate the impact of these impacts should the Board be minded to grant permission.
- 7.3.5. Despite this I am not convinced that the documentation provided and that a robust condition could deal with the matter of waste and smells/noxious odours.
- 7.3.6. In relation to waste, my concern is based on the constraints of the site which has a restricted in depth and width rear yard. The current application seeks to maintain a residential unit alongside the proposed take-away use. I am not convinced that the waste storage requirements of both uses and no assurance has been provided by

the applicant as part of their application as to how they propose to deal with this matter. I also note that the submitted documentation does not provide a litter management plan and/or proposed litter measures. This is concerning having regard to the fact that the proposed take-away use would open directly onto the public domain.

- 7.3.7. In relation to smells and noxious odours the drawings and documentation submitted with this application do not include any ventilation, extraction or other measures to mitigate against adverse impact arising from the take-away use for residential properties in its vicinity and those using the public domain. I am also not convinced based on the drawings submitted that this building has the capacity to be retrofitted without significant amendments to the buildings overall design.
- 7.3.8. Based on the above I consider that cumulatively the level of residential impact that would arise would significantly and adversely impact on the established residential amenity of properties in its vicinity. This is sufficient reason to warrant refusal of the development sought.
- 7.3.9. In relation to the residential amenity of the subject premises I raise a concern to the Board that the attic space does not meet the standards set out in the current Building Regulations for habitable rooms.
- 7.3.10. Should the Board be minded to grant permission for the development sought I recommend that it impose a condition restricting the use of this space to non-habitable use. I consider that such a condition would be in the interests of residential amenities.

#### **7.4. Visual Amenity**

- 7.4.1. I raise no significant concerns in terms of visual impact arising from the retention of rooflights to this period property. In relation to the provision of a shopfront, while the subject premises is an attractive modest period property it does not benefit from any specific protection nor does it form part of a streetscape afforded any specific protection either.
- 7.4.2. Should the Board be minded to permit the development sought a condition should be imposed to achieve a high quality response to its streetscape context, in terms of shopfront treatment, lighting, advertising and the like. I also recommend the Board

that a condition restricting any venting of odours and the like associated with food preparation occurs in the principal façade.

## 7.5. **Traffic**

- 7.5.1. The Planning Authority imposed a condition in their grant of permission for the development sought under this application to deal with the shortfall of car parking which the proposed change of use of the ground floor level would give rise to. I raise no specific concern should the Board be minded to grant permission for the development sought under this application for the shortfall in car parking to be similarly treated. I also advise the Board should it be minded to grant permission for the development sought to include a condition that restricts the operation of a delivery service as part of the take-away use. This restriction is based on the limited capacity of the public provided car parking at this edge of centre location and the lack of any on site car parking provision.

## 7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the development sought and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise, and it is not considered that, the development sought would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 7.7. **Other Matters Arising**

- 7.7.1. ***Environmental Impact Assessment:*** Having regard to the nature, scale and extent of the development sought, the sites location on serviced lands with capacity to accommodate surface water runoff and wastewater as well as the distance of the site from nearby sensitive receptors, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 8.0 **Recommendation**

- 8.1. I recommend that retention permission be **refused**.

## 9.0 Reasons and Considerations

Having regard to the character of the area and the proximity to residential development, it is considered that the proposed development would seriously injure the amenity of adjoining property by way of noise, food smells, odours and the like associated with the take away service. The proposal would therefore be contrary to the proper planning and sustainable development of the area.

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Patricia-Marie Young  
Planning Inspector  
9<sup>th</sup> January 2019.