



An
Bord
Pleanála

Inspector's Report ABP-302489-18

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| Development | Change of use of existing laundry to family restaurant with ancillary takeaway use, |
| Location | 43, Kinvara Park, Dublin 7 |
| Planning Authority | Dublin City Council North |
| Planning Authority Reg. Ref. | 2123/18 |
| Applicant(s) | BOL Property Investment Limited |
| Type of Application | Permission |
| Planning Authority Decision | Grant Permission subject to conditions |
| Type of Appeal | Third Party |
| Appellant(s) | David O'Donoghue Kinvara Park / Road Residents Association |
| Observer(s) | Joan Burton Leanne Geoghegan Glynn and Robert Glynn Tom McGrath Cllr Cieran Perry |

Date of Site Inspection

24th November, 2018

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site comprises an end unit in a run of 4 no. two storey commercial units located on Kinvara Park. The Kinvara area comprising Kinvara Park, Avenue and Road is located to the north of the Navan Road in the Ashtown area.
- 1.2. The existing site at No.43 previously accommodated a laundry at ground floor level though this is now vacant. At first floor level there is residential accommodation. The area to the rear of the building is generally undeveloped with the exception of an outhouse located on the western site boundary. Access to the rear of the site is currently available via a side passage on the western side of the building. The rear garden area also has access onto a rear laneway that runs between Kinvara Avenue and Kinvara Road. This laneway is fitted with gates at either end with access only for property owners.
- 1.3. The other units in the terrace comprise a pharmacy, a euro shop and a convenience store (Mace).
- 1.4. The general context of the site is residential with the commercial units at this location surrounded on all sides by two storey semi detached properties. The layout of the residential units immediately adjoining the commercial units is such that the corner dwellings are located at an angle and such that the rear of No.45 Kinvara Park to the immediate west of the site faces onto the appeal site.
- 1.5. The stated area of the site is 233sq. metres. The stated existing floor area of the commercial / residential premises on the site is 144 sq. metres.

2.0 Proposed Development

- 2.1. The proposed development comprises the reconfiguration of the existing ground floor of the unit with the relocation of the staircase from a mid-point in the floor plan to a location closer to the front. The unit is proposed to be extended to the rear with the addition of a flat roofed extension that would run the full width of the site from a point approximately 1.5 metres back from the existing rear boundary of the building.

The existing side passage area is proposed to be retained, however there would not be access available to the rear laneway with the full width extension blocking access.

- 2.2. The rear ground floor extension and the reconfigured ground floor area of the existing building is proposed to accommodate a restaurant use. The submitted floorplans indicate a seating layout for approximately 40 persons with the kitchen and customer toilet area located at the rear (northern) end of the floorplan. The rear extent of the site extends beyond the existing rear site boundary and into the laneway at the rear of the site. This extended building line is consistent with the extensions undertaken to the units to the east of the site, although it is noted that this area is zoned Objective Z1 '*to protect and / or improve residential amenity*' in the development plan. The application documentation indicates that the nature of the proposed use is as a family orientated sit down restaurant rather than a take away and that the ancillary take away element relates to coffee / sandwiches and such items and will be a very small part of the overall development.
- 2.3. The height of the proposed single storey rear extension is indicated on the submitted plans as being c.3.5 metres above the level of the rear laneway. The stated floor area of the new development is 124 sq. metres and the floor area of non-residential use within the development 194 sq. metres. The boundary wall between the appeal site and No.45 Kinvara Park is indicated on the plans as being c. 2.0 metres, however in reality this wall varies in height with the majority being c. 1.6 metres apart from a short section where there is an outhouse on the appeal site that abuts the boundary.
- 2.4. At first floor level residential use is proposed to be retained and the layout indicated shows a one bedroom layout, albeit with a second room that could be used as a single bedroom. The stated floor area of this first floor unit is 72 sq. metres.
- 2.5. An access from the kitchen to the rear laneway is indicated with access onto the laneway for a bin store also provided. There is a separate bin storage area indicated on the western side of the ground floor plan that would be accessed from the front of the building onto Kinvara Park.

3.0 Planning Authority Decision

3.1. Further Information

Prior to the issuing of a decision, the Planning Authority requested further information on the following items / issues:

- That the planning authority had concerns with regard to the scale of the proposed rear extension and potential over bearing impact on No.45 Kinvara Park. Revisions to the layout / design are invited.
- Clarification on the proposals for waste storage and collection,
- More details on proposed restaurant use and traffic generation arising,
- Clarification of compliance with Policy RD9 (restriction on take away outlets within the 250 metres of schools) and details of the ventilation system and signage proposed.

In response, the applicant submitted / stated as follows:

- No changes to the rear extension which is considered similar to other permitted in the vicinity and to be necessary and appropriate for a commercial location.
- Revised floor plans submitted showing arrangements for waste storage and disposal.
- Confirmation that the proposed use is as a family restaurant and that there would be a table service.
- NRB Traffic Consultants prepared a traffic report and this was submitted. Very little traffic anticipated to be generated by the development. Delivery via small vans. An auto track analysis submitted of the access by such deliveries.
- That the proposed use is not fast food and therefore Policy RD9 is not applicable.

- A bespoke mechanical ventilation system is proposed. This will be fitted with noise attenuating baffles and a primary odour control device. Plan PL103 refers.
- Plan PL102 shows the proposed simple shopfront design.

3.2. Decision

The Planning Authority issued a *Notification of Decision to Grant Permission* subject to 15 no. conditions, the most significant of which are considered to be as follows:

Condition No.3 requires that the restaurant shall not operate as a take away or for the sale of hot food for consumption off the premises save where this use is clearly subsidiary to the main use of the site as a restaurant.

Condition No.4 sets the opening hours as 09.00 to 23.00 hrs.

Condition No.5 and 6 relate to noise and odours and require the submission of a scheme for the control of fumes and odours from the development.

Condition No.9 requires that the enclosed waste storage area at the south west corner of the site shall be for the sole use of the residential occupant of the building.

Condition No.15 relates to bin storage and collection.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The report of the Planning Officer notes the planning history, internal reports, further information and third party submissions received. Concern regarding the scale of the extension and impact on No.45 Kinvara Park is expressed and inaccuracies in drawings of this property noted. Clarity on a number of aspects of the development including the exact nature of the use also required. A second report subsequent to the receipt of further information notes that permission for a similar scale of development permitted at the other end of the terrace (Mace store). Proposals for the use, take away element, parking / traffic and shopfront noted and considered generally acceptable. A grant of permission consistent with the Notification of Decision which issued is recommended.

3.3.2. Other Technical Reports

Roads and Traffic – Initial report recommends further information relating to parking and servicing of the site.

Drainage Division – No objection.

3.4. Third Party Observations

A significant number of third party submissions were received by the Planning Authority. The main issues in these submissions related to:

- Noise,
- Odours and ventilation
- Parking and congestion with deliveries and visitors,
- Excessive number of take aways,
- Noise and impact on amenity,
- Excessive scale of extension and impact on amenity.
- Contrary to zoning objective,
- Excessive hours of opening proposed,
- That permission already refused for similar development on the site,
- Nature of use is not clear,
- Impact on amenity of No.43 Kinvara Park.

4.0 Planning History

There are a number of previous applications referenced in the report of the Planning Officer and in the submissions on file. The most significant of these are considered to be as follows:

Appeal Site

Dublin City Council Ref. 2242/08; ABP Ref. PL29N.230736 – Permission granted by the Planning Authority and decision upheld on appeal by the Board, for the change of use of the appeal site from residential to office use at first floor and for the construction of a new side extension of 85 sq. metres to provide access to the office accommodation, a single storey rear extension and the change of use of the existing ground floor retail unit to a pizza outlet and takeaway (floor area 105 sq. metres) with separate retail unit of 37 sq. metres), the relocation of the vehicular access to the rear and 2 no. car parking spaces.

Dublin City Council Ref. 2810/11 – Split decision issued by the Planning authority with permission granted for the change of use of the first floor from residential to office use and refusal of permission for the change of use of the ground floor from retail / residential to a take away use. The reason for this refusal of permission related to the proximity to surrounding residential uses and to the availability of car parking the development would have an adverse impact on residential amenity.

Other Sites

Dublin City Council Ref. 3932/16; ABP Ref. PL29N.248399 – Permission refused by the Board on a site at No.3 Kinvara Road for the demolition of a shed and the subdivision of the site with the construction of a single storey building at the rear for the provision of sessional pre school and after school services. Permission

5.0 Policy Context

5.1. Development Plan

The appeal site is located on lands that are zoned a mixture of Objective Z1, '*to protect provide for and improve residential amenities*', and Objective Z3, '*to provide for and improve neighbourhood facilities*'. The configuration of the site is such that the bulk of the site is zoned Objective Z3 with a small part of the rear of the site in the laneway at the rear zoned Objective Z1. Under the Plan, 'Restaurant' is a Permissible Use on lands zoned Objective Z3 (Neighbourhood Centre) and an Open for Consideration use on lands zoned Objective Z1 (Residential).

The indicative site coverage for lands zoned Objective Z3 is 60% and plot ratio of 1.5 – 2.0. The plot ratio of the proposed development is stated to be 1.1 and the site coverage 83%.

There are a number of other policies of relevance as follows:

Section 7.6 contains general retail policies and includes Policy RD9 which states that fast food outlets will not be permitted within 250 metres of a school.

Section 16.24.3 relates to shop fronts and signage.

Section 16.25 relates specifically to take aways.

Section 16.29 relates to restaurants and recognises the beneficial contribution that such uses can make. A number of specific criteria to be taken into consideration are listed and these include noise, disturbance, fumes, odours, traffic, waste and the prevalence of other similar outlets in the general area.

There is a *Dublin City Council Shopfront Design Guide* that dates from 2001.

5.2. Natural Heritage Designations

The site is located such that the closest Natura 2000 site to the appeal site is the South Dublin Bay and River Tolka Estuary SPA which is c.6km to the east of the appeal site at the closest point. There is no hydrological connection between the appeal site and this Natura 2000 site.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the 2 no. third party appeal submissions received:

- That the wording of condition No.3 regarding the take away element is contradictory and inadequate,

- That light and views from the rear of No.45 will be destroyed. There will be an overbearing visual impact. That there will be noise and nuisance from living beside a use that will be open until 11.00 PM.
- That the area is primarily residential and the proposal would be out of character with the area.
- That a similar development was refused by the council in 2011. This refused development was of a smaller scale than the current proposal and specifically referenced the impact of the development on the amenity of No.45.
- Permission was also previously refused by An Bord Pleanala, (at No.3 Kinvara Road).
- That the plans appear to indicate that the boundary wall would be used to build on.
- That parking demand will increase and there will be congestion in the parking area to the front of the shops. This area is already extremely busy.
- That there are a number of omissions in the traffic report submitted. There is no comparison of the traffic impact between the existing and proposed uses. The average visit time of 2.5 hours is very long, there is no allowance for staff parking demand.
- There is no reference to or account for the existing parking issues and the existing issues relating to delivery traffic. There is significant illegal parking of vehicles frequently observed at the site.
- It is not acceptable that the traffic assessment projects that the majority of visitors would walk to the site.
- Bollards to control traffic parking have been broken down.
- The congestion results in traffic parking on the street and impeding road traffic passing.
- There is no reference to a recent ABP decision to refuse permission at the adjacent No.3 Kinvara Road for a pre school / crèche.
- That the development would impact negatively on surrounding residential properties in terms of smells and odours.

- That the other sites on the block have been extended, however only one of these adjoins a residential property. These are not considered to be a good precedent for the scale of development proposed. The proposed development would result in over development of the site.
- That there are a significant number of other restaurant / eating outlets in the vicinity of the site. The proposed development would result in the loss of a needed retail unit / use in the local area.
- That the development would lead to loitering and anti social behaviour.

6.2. Applicant Response

The following is a summary of the main issues raised in the response to the ground of appeal received from the First Party:

- That the proposed extension would not lead to the overshadowing of the rear garden of No.45. The rear garden to this property is an awkward layout and is already overshadowed by a boundary wall.
- That the proposal will not impact on amenity due to noise. The building will be noise insulated with a residential unit at the upper floor level and the appellants dwelling is physically separate from the appeal site.
- That the grant of permission contains specific conditions relating to noise. Conditions 5 and 6.
- That the proposed extension will be constructed entirely within the appeal site and not on the boundary wall as stated by the appellants.
- That all of the other commercial units have extended to the rear in a similar manner to that proposed by the first party and these other extensions are not 'bad planning precedents' as stated by the appellants.
- That NRB Traffic Consultants have undertaken a review of the proposed development in terms of traffic. Using TRICS the proposed development is estimated to have a negligible impact on traffic generation.

- That the nature of the proposed use is as a family orientated sit down restaurant rather than a take away. The ancillary take away element relates to coffee / sandwiches and such items and will be a very small part of the overall development.
- That the site is zoned for commercial development.
- That there was a previous permission on the site for a take away. This is not what is proposed in this case.
- That the restaurant would be served by small delivery vans. An auto track analysis has been submitted and the large vans indicated in the appellant's submissions will not be used.
- Regarding odours, reference is made to the odour suppression measures submitted to the Planning Authority. Conditions attached to the decision issued would ensure that odours are not a problem in the development. (Condition No.6).
- That the development has been designed to be compliant with the Fire Safety provisions of the Building Regulations.
- That the proposal is consistent in scale with other permitted developments in the vicinity and would not constitute over development of the site.
- That the list of other uses in the vicinity is not comparable to the proposed restaurant use. Only one of the 11 outlets listed is similar in nature to the proposed development.
- That observers have confused the proposed restaurant use with the previously proposed take away use.

6.3. Planning Authority Response

There is no record on the appeal file of a response to the grounds of appeal being received from the Planning Authority.

6.4. Observations

Four observations on the appeals have been received. The following is a summary of the main issue raised in these submissions:

- That the site is inappropriate for a take away due to the excessive number of such facilities and the impact on residential amenity in terms of noise.
- That the houses on Kinvara Park are zoned Objective Z1 to protect and improve residential amenity.
- That the area is primarily residential and there are residential properties in very close proximity to the site.
- That there would be an increase in traffic congestion. No on site parking is currently available. A restaurant use will require more parking and long stay parking than the previous laundry.
- There will be issues regarding the access for deliveries.
- There will be litter generated.
- There will be odour issues and these will impact on residential amenity.
- That the size of the proposed extension is excessive and the previous grant of permission for a large extension should not be a precedent.
- That rubbish generated by the use would be a source of anti social behaviour problems.
- That there are already issues of incorrect storage of waste and this must not be repeated at this development.
- That the LUAS is not within walking distance of the site. It is 28 minutes away. The decision of the Board to refuse permission for a pre school facility earlier this year (Ref. PL29N.248399) related to reasons of traffic, parking and access.
- That the wording of condition No.3 relating to the take away element is ambiguous.
- That the hours of operation permitted are excessively generous.

- That the emergency escape and bin access both open out onto the laneway that is restricted access.

7.0 Assessment

7.1. In my opinion the following are the main issues in the assessment of this appeal:

- Principle of Development and Land Use Zoning
- Noise Odours and Impact on Residential Amenity
- Traffic Issues
- Other Issues
- Appropriate Assessment
- EIA

7.2. Principle of Development and Land Use Zoning

7.2.1. The appeal site is located on lands that are zoned a mixture of Objective Z3, *'to provide for and improve neighbourhood facilities'* with a small part of the site at the rear zoned Objective Z1. Under the Objective Z3 land use zoning objective, a 'Restaurant' is a Permissible Use on lands zoned Objective Z3 and an Open for Consideration use on lands zoned Objective Z1. Regard must, however, also be had to the fact that the adjoining lands surrounding the appeal site to the north, south and west, including the immediately adjoining dwelling at No.45, are zoned Objective Z1 Residential with the stated objective *'to protect and / or improve residential amenity'*.

7.2.2. With regard to the principle of development, the development of a restaurant use in a neighbourhood centre is considered to be a beneficial amenity for the surrounding residential area and is such that in my opinion it should be encouraged in principle. This is reflected in Section 16.29 of the *Dublin City Development Plan, 2016-2021* which relates to restaurants and recognises the beneficial contribution that such uses can make. A number of specific criteria to be taken into consideration are

however listed in section 16.29 of the Plan, and these include noise, disturbance, fumes, odours, traffic, waste and the prevalence of other similar outlets in the general area. These issues will be considered in more detail in the sections which follow.

- 7.2.3. With regard to the principle of development, I note that the first party references the fact that that all of the other commercial units have extended to the rear in a similar manner to that proposed by the first party. It is stated by the first party that these other extensions are not '*bad planning precedents*' as stated by the appellants. I note the fact that these extensions to the rear of the adjoining properties at Nos. 39 and 41 do not directly adjoin residential properties and that the extension to the rear of the other end of terrace unit at No.37 does not cover the entire site as is proposed in the current application.
- 7.2.4. I also note reference in third party submissions to the decision of the Board to refuse permission for a pre school facility at No.3 Kinvara Road to the north west of the appeal site (Ref. PL29N.248399), for reasons related to traffic, parking and access. It should however be noted that this site is located such that there is no set down parking area as is the case with the appeal site and that the application was for a use that would potentially generate significant parking / set down requirements. While noted therefore I do not consider that it is necessarily a strong precedent for a decision on the subject appeal case. I note that at the time of inspection of the site works were nearing completion on refurbishment of this property.
- 7.2.5. Finally with regard to the principle of development, I note the fact that permission was previously granted for a fast food take away on the appeal site. I also note that, contrary to some of the submissions on file, that the use that is proposed as part of the current application is clearly indicated on the drawings / layout and the written submissions of the first party to be a restaurant use with sit down area and table service. There is proposed to be some small take out element, however this is stated to be ancillary to the main use and a small overall activity. The application is assessed on the basis of this use and the details submitted.

7.2.6. I note reference in the third party submissions on file to the proliferation of other restaurant outlets in the area. Policy RD5 relates to prohibiting an over concentration of off licences, however here is no policy in the development plan that relates specifically to restaurants. In my opinion, the proposed restaurant use is not such that the planning assessment should excessively focus on the number of other similar outlets in the vicinity. In any event, from the list of other outlets provided by both the first and third parties to the appeal I do not consider that there are an excessive number of comparable uses in the local area.

7.3. **Noise Odours and Impact on Residential Amenity**

7.3.1. The appellants question the impact of the proposed development on residential amenity under a number of headings including overshadowing, overbearing visual impact, odours, noise and disturbance and provision for bins and refuse. With regard to the issues of **noise and odours** firstly, the first party has clarified by way of further information that odour suppression measures as submitted to the Planning Authority are proposed. These measures provide for a mechanical ventilation system that would be fitted with noise attenuating baffles and a primary odour control device. The layout of this proposed system is shown in Plan PL-103 submitted as part of the response to further information and the exit point for this system is indicated as being in the back wall of the site facing onto the rear laneway. On the basis of the information presented, and subject to conditions relating to odour and the submission of a detailed odour control plan as required by the Planning Authority, I do not consider that the proposed development is likely to have a significant negative impact on residential amenity by virtue of noise or odours from the ventilation of the kitchen area.

7.3.2. With regard to other noise issues that maybe generated by the proposed use, I note the description of the use as a restaurant and the associated information submitted. I do not consider that such a use is likely to result in significant noise impacts as a result of customers arriving or departing from the premises. In stating this however I note the proposed **hours of opening** of 09.00 to 23.00hrs and the inclusion of these hours by way of condition by the planning authority. In my opinion the closing time of 23.00 hrs is too late for a neighbourhood restaurant that is surrounded by residential

properties and I would share the concerns of the third parties that noise could be generated by staff post closing. In the event of a grant of permission therefore I consider that a closing time of 22.00 hrs would be more appropriate.

- 7.3.3. In terms of the control on the **nature of the use**, I note that Condition No.3 of the decision of the Planning Authority requires that the restaurant shall not operate as a take away or for the sale of hot food for consumption off the premises save where this use is clearly subsidiary to the main use of the site as a restaurant. The third parties have questioned the appropriateness and enforceability of this condition, however I consider that on the basis of the information presented by the first party and on file that such a condition is appropriate and should be included in the event of a grant of permission.
- 7.3.4. The **bin / refuse storage** was the subject of a request for further information issued by the Planning authority and details of the bin areas to serve both the restaurant and residential uses are indicated on the plans submitted by way of further information. The bin store for the restaurant accesses onto the rear laneway and, while access to this area is restricted for security reasons, it is accessible to the occupants of the appeal site. Subject to the submission of details by way of condition, I consider that the submitted proposals relating to bin storage and access are satisfactory.
- 7.3.5. The first party contend that the proposed rear extension to accommodate the restaurant use would not lead to the **overshadowing** of the rear garden of No.45. It is contended that the rear garden to this property is an awkward layout and is already overshadowed by a boundary wall. From an inspection of the garden and house at No.45 I note that the house is sited such that it faces towards the appeal site due to its corner location. The dwelling has been extended to the rear with a kitchen extension that is close to the boundary wall and the existing garden is narrow and restricted. I also note the fact that the boundary wall is lower than the 2.0 metres indicated in the application drawings and that the proposed c.3.5 metre high development on the appeal site would likely have some adverse impact on the availability of daylight and sunlight to the garden and house at No.45.

- 7.3.6. Of greater concern however, from my observations of No.45 during my inspection of the site it is apparent that the orientation of the ground floor kitchen and first floor bedroom windows are such that the proposed development would have a potentially significant adverse impact on residential amenity by virtue of ***overbearing visual impact***. As stated by the first party, the rear garden of No.45 is an awkward layout, however it is an existing dwelling located in an area that is zoned Objective Z1, ‘to protect and / or improve residential amenity’. The proposed layout in my opinion fails to have adequate regard in its design to the amenity of No.45 given the relative positions of the sites, and I consider that more could have been done with the proposed development to address these issues. I also note that the Planning Officer of Dublin City Council expressed concerns regarding the scale of the proposed rear extension on the appeal site and the potential impact on residential amenity and that this issue was raised by way of further information but that no amendments to the design were made. The site coverage proposed at c.83% is significantly above the 60% indicative level cited in the Dublin City Development Plan and, when taken with the configuration of the adjoining residential property and adjoining residential land use, is in my opinion indicative of the over development of the appeal site.
- 7.3.7. For the reasons set out above it is considered that in the absence of any changes to the design, such as a step back from the boundary or the introduction of a courtyard close to the boundary with No.45 close to the rear building line, that the proposed development would have an excessively adverse impact on the residential amenity of the occupants of No.45 Kinvara Park by virtue of overbearing visual impact and loss of daylight and such that permission should be refused on this basis.

7.4. **Traffic Issues**

- 7.4.1. The existing layout is such that parking spaces are not lined however there are approximately 7 no. standard parking spaces fronting the shops, with room for an additional c.5 no. cars to park on the public road fronting the site. There is no option for parking on the footpath on the opposite (southern) side of Kinvara Park as there are bollards placed along the edge of the footpath in this location. At the time of inspection, which was a Saturday morning, the vicinity of the site was observed to be busy with a regular turnover of cars in the spaces. There was some evidence of

illegal parking on the footpath to the east of the site in the vicinity of No. 35 Kinvara Park.

- 7.4.2. The main issues raised by the third parties relating to traffic concern the limited availability of customer parking, the existing congested nature of the vicinity of the site, provision for delivery parking / access and the fact that parking was a reason for refusal in the case of the crèche / pre school development proposed at No.3 Kinvara Road.
- 7.4.3. As part of the further information request issued, the first party commissioned a traffic assessment of the proposed development. This report utilised a TRICS based assessment of the parking generation of the proposed development which concluded that the customer trip generation would be very low. The TRICS figure used in the assessment does appear to me to be low for a suburban location such as the appeal site, however I would accept the general approach that as a local restaurant a significant proportion of the trips to the site would be by foot. In any event, the existing congestion at the site would likely lead to persons travelling by foot where feasible. The proposed restaurant use would lead to a number of long stay visitors using car parking spaces, however there is likely to also be an element of dual usage of spaces with the peak periods for the restaurant and the existing shops unlikely to significantly overlap. I note and accept the case made by the third party observers that the traffic assessment does not compare the traffic generation of the previous laundry / drycleaner use with the proposed restaurant and that the restaurant is likely to have a higher car parking demand. Overall however, I do not consider that the availability of car parking is a clear basis on which permission for the proposed development should be refused.
- 7.4.4. With regard to service and delivery access, as part of the response to further information, the first party submitted an auto track analysis of the route of delivery vehicles to serve the site. I note the fact that the vehicles used in this analysis are relatively small vans rather than trucks and on the basis of the use proposed I would accept the case made that this scale of vehicle is the type that would typically deliver to a restaurant. The third parties have submitted images of large lorries making deliveries to the convenience store adjacent to the site, however I do not consider it likely that such vehicles would be used to serve the proposed use.

7.4.5. Finally, I note the submission of the third parties that parking was a reason for refusal in the case of the crèche / pre school development proposed at No.3 Kinvara Road. As set out previously in this report, I consider that the context of that decision in terms of the location of the site and the nature of the use with significant parking / drop off demand over a limited time period are such that it is not a clear precedent for an assessment of the traffic impact of the current proposal.

7.5. Other Issues

7.5.1. Limited details of the shop front of the proposed development have been submitted. A section through the shop front is illustrated in Drg. PL102 submitted as part of the further information response and it is stated by the first party that a standard design and signage would be used. In the event of a grant of permission it is considered appropriate that details of the proposed shopfront and signage including materials would be submitted by way of further information.

7.5.2. I note the fact that the existing residential use of the first floor of the existing building on site is proposed to be retained. The existing indicated layout of 4 no. bedrooms is proposed to be altered to provide for a double room with an additional store /single bedroom. The previous layout was such that there was access for the occupants of the first floor accommodation to the rear garden of the property. In the proposed layout, access to the first floor residential accommodation would be via a door on the Kinvara Park frontage. There is a small private amenity space indicated on the plans submitted as part of the further information response that would be accessible to this residential accommodation. This space comprises a terrace on the roof of the proposed extension and measures c.2.0 metres by 1.8 metres giving c.3.6 sq. metres total and below the development plan standard of minimum 5 sq. metres per one bed unit. The private amenity space is proposed to be accessed from the bedroom of the residential unit. There is limited detail of the proposed terrace shown in the submitted drawings and while it has a privacy screen, my inspection of the property at No.45 and the view from the upstairs bedroom window indicates that the proposed terrace would likely be visible from No.45. A larger private amenity space is required and it needs to be clearly demonstrated that this space would not be overlooked by, or impact on, the amenity of surrounding residential accommodation

including at No. 45 and first floor residential accommodation at Nos 37-41 Kinvara Park.

- 7.5.3. Third party submissions raised issues regarding **the fire safety access** being onto the rear laneway. The first party state that the development has been designed to be compliant with the Fire Safety provisions of the Building Regulations. Fire Safety is covered by a separate code and the development will require a Fire Safety Certificate. I do not consider that there is any clear basis to conclude that the proposed development is not acceptable on the basis of fire safety aspects. Specifically, I do not see that the provision of a fire access to the rear onto the laneway is an issue in terms of compliance with fire safety requirements. Any issues arising would have to be addressed in an application for a Fire Safety Certificate.
- 7.5.4. In the event of a grant of permission a financial contribution in accordance with the requirements of the adopted development contribution scheme should be required by way of condition.

7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

7.7. **EIA**

- 7.7.1. Having regard to the nature and scale of the development including its connection to the public water supply and drainage network and to the absence of a direct pathway to any European site, 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. Having regard to the above, it is recommended that permission be refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. Having regard to the height and extent of the proposed rear extension to No.43 Kinvara Park, to the relationship with the existing two storey dwelling at No.45 Kinvara Park in terms of proximity and relative aspect and to the Objective Z1 residential zoning objective of No.45 which seeks '*to protect and / or improve residential amenity*' it is considered that the proposed development would have a likely significant negative impact on the residential amenity of No.45 Kinvara Park by virtue of overbearing visual impact, loss of aspect and loss of daylight. The proposed development would therefore seriously injure the amenities and depreciate the value of adjoining residential properties in particularly No.45 Kinvara Park, would be contrary to the residential zoning objective of this property and would be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

24th November, 2018