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Bord  
Pleanála

## Inspector's Report ABP 302518-18

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<b>Development</b>	Retention of change of use from delicateessen and gourmet food store to take away and extractor flue.
<b>Location</b>	58 Clontarf Road. Clontarf. Dublin 3.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	3332/18
<b>Applicant(s)</b>	Kusu Foods Ltd.
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	To Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Kusu Foods Ltd
<b>Observer(s)</b>	Churchfield PD Owners Management Company. Residents of Churchfield estate Tanya Sheridan & Torben Dahl.
<b>Date of Site Inspection</b>	December 4 <sup>th</sup> , 2018.
<b>Inspector</b>	Breda Gannon

## 1.0 Site Location and Description

- 1.1. The subject site is located at 58 Clontarf Road, Dublin 3. It is part of a terrace of three-storey buildings with varying roof profiles that face towards the promenade. Shops and other commercial uses are accommodated on the ground floor with office and residential uses on upper floors. Access to the site is directly from Clontarf Road and rear access is available via a laneway off Hollybrook Road.
- 1.2. Residential uses predominate in the wider locale. These include terraced housing on Hollybrook Road and the more recently developed three storey units at Churchfield to the east. St Anthony's Church and hall are located further east and there is a large public car park on the opposite side of Clontarf Road.

## 2.0 Proposed Development

- 2.1. The proposal seeks the retention of change of use of retail to takeaway and to provide a flue outlet to the rear.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to refuse permission for the retention of the takeaway due to the significant detrimental effects on neighbouring residential amenity arising from noise, odours and traffic. It was concluded that the proposal does not provide for, and improve neighbouring facilities as required by the Z3 zoning, and that the continued operation of the development contravenes Section 16.25 of the Plan.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The **Planning Officer's** report of 14/8/18 notes that while takeaway use is open for consideration in Z3 zoned areas, it must be considered in light of the overall zoning objective which is to provide services to the local neighbourhood, providing essential and sustainable amenity for residents in a 5 minute walking distance. The takeaway, while it provides a useful service by delivering food over a wide catchment area,

does not provide a positive contribution to the vitality and vibrancy of the neighbourhood centre, which takeaways often do by offering a retail or restaurant function.

More significantly, it is immediately adjacent to a Z1 residential zoned area, where takeaways are not permitted at all, due to the potential for negative impacts such as noise, litter, fumes, traffic etc. The more sensitive zone must be considered in the assessment of developments immediately adjacent. The negative effects of the development are being allowed to spill over into this residential area. It is considered that the scale and intensity of the business is not in keeping with the pattern of development in the area, particularly given the large number of commercial and residential uses at close quarters.

#### Other Technical Reports

The **Drainage Division** in their report of 24/7/18 raised no objection to the development subject to standard type conditions.

### 3.3. Prescribed Bodies

None received.

### 3.4. Third Party Observations

A number of submission were received by third parties which raised the following issues;

- Non-compliance with the conditions of the original permission which did not permit cooking of food on the premises.
- Noise and odour from an extractor fan, which is exacerbated by food preparation.
- Hours of operation.
- Insufficient kerb side car parking and impacts on designated resident carparking.
- Overconcentration of takeaways in the area.
- Overall impact on the residential amenities of properties in the vicinity.

## 4.0 Planning History

**Reg Ref No 1842/01** – Planning permission refused for a change of use from retail into a hot food takeaway outlet for home consumption on the grounds that it would be contrary to the provisions of the plan, result in the overprovision of takeaways in the area, and inadequate parking for delivery vehicles.

**Reg Ref No 3383/01** – Planning permission granted for the change of use to a delicatessen and gourmet food store with provision to sell hot food for home and office consumption. The decision was upheld by the Board (PL 29N.128544).

## 5.0 Policy Context

### 5.1. Development Plan

The operative development plan is the **Dublin City Council Development Plan 2016-2022**. The site is located within an area zoned Z3 'Neighbourhood Centre' with an objective 'To provide for and improve neighbouring facilities'.

Section 16.25 sets out the requirements in relation to takeaways.

### 5.2. Natural Heritage Designations

None

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The following summarises the grounds of appeal;

- The premises has been used for the sale of hot food off the premises since 2001.
- The takeaway preceded the residential development where the objectors live.
- Strongly rejects the contention that the development contravenes the Z3 and Z1 zoning objectives.

- The existing flue and odour control measures are rudimentary as they were designed before the adjoining houses were constructed. An upgraded and enhanced odour control and noise abatement system is proposed. The air intake and exhaust air duct work will be fitted with in-line attenuation to ensure that ambient noise levels to the rear of the premises do not exceed EPA guidelines.
- The development does not give rise to litter.
- There is ample kerbside parking immediately to the front of the premises. There is also a large public car park on the opposite side of the road with traffic lights adjacent.
- The hours of operation are from 17.00 to 23.30 and given the busy nature of the road, this level of use does not introduce any additional activities into a quiet residential area.

## 6.2. Planning Authority Response

No response to the grounds of appeal were submitted by the planning authority.

## 6.3. Observations

Observation were received from Churchfield PD Owners Management Company, the Residents of Churchfield Estate and Tanya Sheridan & Torben Dahl. The issues raised are similar and are summarised below;

### *Unauthorised development*

- The premises is currently in operation in complete contravention of the 2001 permission which did not permit the preparation or cooking of food on site.
- The preparation of food on the site constitutes a material change of use.
- Any claim that the takeaway as it currently operates have been established simply because it has been used for that purpose for a period of time is erroneous and misleading.

### *Zoning*

- The current proposal is not in compliance with the zoning objectives and section 16.25 of the development plan and the need to avoid development that would be detrimental to the amenities of more sensitive zones.
- Churchfield is zoned Z1 and the planning authority decision respects the zoning provisions by not permitting a development that creates negative effects on adjacent residential areas. Takeaways are not a permissible use adjacent to an area zoned Z1.
- The proposal does not make a positive contribution to the vitality and vibrancy of the neighbourhood centre as required by the Z3 zoning.

### *Residential amenity*

- The premises operates essentially as a kitchen that delivers to a catchment area as wide as Dublin 1 to Dublin 9, the negative effects of which are allowed to spill over into adjoining residential areas.
- It has ongoing onerous impacts arising from noise, odour and car parking, which are incompatible with residential amenity and the ability of residents to enjoy their homes and gardens.
- The use of the takeaway has significantly increased from the prescribed use of the original permitted takeaway facility. The hours of operation extend out beyond that listed, as food preparation starts prior to the opening of the premises.
- The works proposed are not sufficient to resolve on-going noise and odour issues. There is no expert analysis of how odour/noise will be reduced and the information provided is easily procurable from the internet. There is no analysis of whether the plan would be in compliance with European odour regulations.
- The extract from the EPA guidelines cited in the appeal is incorrect, indicating that no real effort has been put into a solution that will make the situation better for residents. It does not refer to the intermediate noise reduction

required by the guidelines for evening time (50 Db LA<sub>T</sub>). The guidelines also mandate that hours of operation, continuity etc, and whether the noise is tonal in nature must be taken into account.

- The development cannot rely on the very limited on street car parking outside the premises. While there is public carparking along the promenade, delivery staff continue to park on double yellow lines and cause disruption to the residents of Churchfield. They also access designated resident parking at Churchfield causing disruption to residents.

It is considered that the planning authority has prepared a thorough, robust and impartial report of the current situation created by the Maharaja operation and the Board is requested to uphold DCC's decision so that adjoining neighbours can continue to enjoy the amenity of their homes and gardens.

## 7.0 **Assessment**

7.1. The main issues that arise for determination by the Board in relation to this appeal relate to the following;

- Unauthorised development.
- Zoning provisions of the plan.
- Impacts on residential amenity.

### 7.2. **Unauthorised development**

7.2.1. The permission granted under PL 29N.128544 allows the premises to operate as a delicatessen and gourmet food store and to sell hot food for consumption off-site. I note from the Inspector's report on the file that the intention was that food would be produced by a central production kitchen and would arrive in the shop individual containers in the form of ready made meals. The food could be reheated on the premises and taken away in the same packaging for home/office consumption. There would be no food preparation/cooking on site and as such it would operate quite differently to a normal takeaway. Condition No 1 of the permission precluded any other type of food takeaway operation without a prior grant of permission.

7.2.2. The current use of the premises involves food preparation and cooking and it is, therefore, operating outside the terms of the permission granted. The development is therefore unauthorised, regardless of applicant's argument that it is immune from prosecution, due to the period it has been operational.

### 7.3. **Zoning**

7.3.1. Under the provisions of the Z3 zoning objective which applies to the subject site, takeaways are 'open for consideration'. An 'open for consideration use' is one which may be permitted where the planning authority is satisfied that the development would be compatible with the overall policies and objectives of the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.

7.3.2. In this instance the planning authority has concluded that the proposal is not in accordance with the Z3 zoning objective on the basis that it would not make a positive contribution to the vitality and vibrancy of the neighbourhood centre. The Board will note planning authority has consistently resisted the change of use of this unit from retail to a takeaway (1842/01) on this basis, and having regard to the overprovision of such uses in the area.

7.3.3. There are two other takeaways between No 54 -58 Clontarf Road. While Casa Pasta also operates as a restaurant, La Costa is purely a takeaway facility that also does deliveries. Taken in conjunction with existing facilities, I consider that the proposed development would result in an overconcentration of such uses in a limited area. I accept as stated by the planning officer that due to the nature of its operations, which is essentially a collection/delivery service for fast food, it contributes little to the overall vitality and vibrancy of the neighbourhood centre, or to the mix of retail uses required to protect the area.

### 7.4. **Impacts on residential amenity**

7.4.1. All of the objectors reside in Churchfield which is a more recently developed residential scheme to the north-east of the site. There concerns relate to the impacts on their amenity arising from noise, odour, carparking and the proliferation of takeaways in the vicinity.

7.4.2. To the rear of the appeal site there is an extractor flue which is the source of noise and odour impacting on local residents. It was confirmed by the planning officer who



visited the site during operational hours that the odour arising from the premises was pervasive, impacting negatively on a large number of local residents. The noise from the extractor fan was audible at dwellings close to the site, creating a nuisance and negative impacts on residential amenities.

7.4.3. It was acknowledged in the first party rebuttal that the existing extractor flue is 'rudimentary' and needs to be replaced. I accept that takeaways are a feature of urban landscape and through the use of more modern equipment to curtail odour problems and suppress noise, can operate successfully in conjunction with other uses without creating adverse impacts and causing annoyance to adjoining property. Should the Board be minded to grant permission for the retention of the development, I recommend that a suitable condition be attached to address these matters.

7.4.4. The development is more intense in terms of traffic generation than other retail uses. Kerbside parking is limited in front of the site and is required to service a plethora of shops, cafes, restaurants and other uses. At the time of inspection, which was close to mid-day there were no available spaces outside the site. Similar conditions were reported by DCC when the premises was inspected later in the evening. Although there is a car park on the opposite side of the site, this is likely to be less attractive to customers who are stopping to collect food and move on than those who would be staying for longer periods to shop or visit a café/restaurant. The lack of kerbside parking results in overspill into adjacent designated residential spaces at Churchfield, with impacts on residential amenity.

## 8.0 Conclusion

- The existing operation, which involves the preparation and cooking of food on the site is in breach of the terms of the existing permission and is therefore unauthorised.
- The preparation and cooking of food on the premises results in noise and odour impacts which are impacting significantly on the amenity of adjacent residents. Should the Board consider that the proposal is otherwise acceptable, I consider that these impacts can be addressed by condition.

- Taken in conjunction with existing adjoining development including two takeaways, and lack of adequate car parking facilities, it is considered that the proposal, due to the nature of its operations involving fast food collection and delivery results in indiscriminate parking along Clontarf Road and within Churchfield, with impacts for traffic safety and residential amenity.
- It is considered that the proposed development would result in an overconcentration of takeaways in the area which would be contrary to the Z5 zoning provisions and section 16.25 of the development which seek to provide for and improve neighbourhood facilities and to safeguard the vitality and viability of shopping areas by creating a suitable mix of uses.

## **9.0 Appropriate Assessment**

9.1. Having regard to the location of the development within a serviced built up area, the nature of the development and the separation distance from Natura 2000 sites, I consider that the proposed development either alone, or, in combination with other plans or projects, would not be likely to have significant effects on a European site, in view of the sites' conservation objectives and that, therefore, a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement is not required.

## **10.0 EIA Screening**

10.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **11.0 Recommendation**

11.1. Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the

planning issues, I recommend that permission for retention be refused for the development for the reasons and considerations set out below.

## 12.0 Reasons and Considerations

Taken in conjunction with existing similar facilities in the area, it is considered that the retention of the proposed development, due to the nature of its operations involving the collection and delivery of hot food for consumption off the premises, would not be in accordance with the Z3 zoning objective for the site and section 16.25 of the Dublin City Development Plan 2016-2022, which seeks to prevent an overconcentration of takeaways in any area and to maintain a suitable mix of use in order to maintain and strengthen Neighbourhood Centres. Furthermore, it is considered that the nature of the traffic movements associated with the development would place an unacceptable demand on existing limited kerbside parking, result in indiscriminate roadside parking and the inappropriate use of adjacent designated residential parking, which would impact on the traffic safety and the residential amenity of adjoining property. It is considered that the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Breda Gannon  
Senior Planning Inspector

10<sup>th</sup> December 2018