



An
Bord
Pleanála

Inspector's Report 302577-18

Development

Standalone, single storey restaurant of 103m² with ancillary takeaway with 2 no internal bin stores of 7m² each with outdoor seating for up to 20 patrons under existing covered side entrance with 8 no, bicycle spaces with modifications to existing external fire escape from first floor of adjoining property with associated landscaping, site works and lighting at rear.

Location

32-36, Main Street, Malahide, Co. Dublin..

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

F18A/0383.

Applicant(s)

Architect Workshop Ltd.

Type of Application

Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party v Grant.

Appellant(s)

Thomas Hynes.

	Liza Fitzsimons.
	Orchid Management Company Ltd.
Observer(s)	None.
Date of Site Inspection	16 January 2019.
Inspector	Des Johnson.

1.0 Site Location and Description

The site is located to the south side of Main Street in Malahide village. It is a short distance east of the railway station and on the opposite side of the road to St. Silvesters Church.

The main body of the site is roughly rectangular in shape and this is served by an access laneway from the Main Street. The laneway if built over. Adjoining the main body of the site to the south is a terrace of four two storey houses called The Priory. The nearest house (No. 1) has a sizeable single storey extension to the rear. To the west is a detached building in use as a beauty salon. To the north is the rear of 3 two storey terraced commercial units. Killeen Terrace is adjacent to the west of the appeal site.

I attach photographs taken at the time of inspection.

2.0 Proposed Development

The proposal is for a standalone, single storey restaurant of 103m² with ancillary takeaway with 2 no internal bin stores of 7m² each with outdoor seating for up to 20 patrons under existing covered side entrance. In addition the proposal is for 8 no. bicycle spaces, modifications to existing external fire escape from first floor of adjoining property, associated landscaping, site works and lighting.

- 2.1. The gross floor area of the proposed development is stated to be 117m² and the gross floor area to be retained is stated to be 361m².

2.2. The proposed development would connect to public mains water supply and public sewer.

3.0 Planning Authority Decision

3.1. Grant permission subject to 11 conditions. The conditions generally relate to standard matters, but include public health requirements. A standard financial contribution condition is included.

3.2. Planning Authority Reports

3.2.1. Senior Executive Planner Report (27.08.18).

Letters of objection received generally relate to the following matters:

- Litter
- Residential impact – including noise, smells, vermin, rowdiness
- Outdoor seating impacts
- Lack of detail on submitted plans
- Overdevelopment.

The proposal is consistent with the zoning objective for the area. There is substantial planning history relating to the provision of restaurant use. The provision of outdoor seating would provide some element of recessed street activity. The Board previously concluded that restaurant use would not detrimentally impact on the amenities or property in the vicinity. The proposal represents a significant reduction in scale to previously approved development. It is not considered that the proposed development would give rise to undue impact on the visual amenities of the area.

3.2.2. **Other Technical Reports:**

Transportation Planning Section (10.08.18). No parking provision is contrary to Development Plan standards. If 50% reduction is allowed for there is still a deficit of 4 spaces. A Financial Contribution of E20,000 should be required in respect of the provision of controlled on-street parking.

Architectural Conservation Officer (03.08.18). Not acceptable as the business should have a proper active frontage onto Main Street.

Irish Water (29.07.18). No objection subject to connection agreement and installation of an appropriate grease interceptor.

Water Services Department (26.07.18). No objection subject to maintaining separate surface and foul drainage networks prior to connecting to existing single combined outfall.

Environmental Health Officer (16.07.18). No objection subject to recommended conditions.

4.0 Policy Context

4.1. Development Plan

- 4.2. The site is zoned 'TC' Town and District Centre with the objective to "protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities". Restaurant use is permitted in principle under this zoning objective.

The site is within an Architectural Heritage Area that includes the historic core of Malahide village. Objective DMS 157 requires any alteration of a building within an ACA to positively enhance the character of the ACA. Nos. 1-4, Killeen Terrace to the west of the appeal site are Protected Structures.

The site is within an area subject of a Public Realm Strategy.

Other relevant objectives include the following:

- Facilitate and encourage the provision of an appropriate retail mix in Malahide (Malahide 4)
- Promote and facilitate tourism, including cafés and restaurants (ED 58)

Car parking space per 15m² is required for restaurants.

5.0 Planning History

Relevant history relating to Appeal Site

300165-17 Permission granted for alterations and revisions to previous permission (PL 06F.247015) for modifications to the ground floor and front elevation ... removal of first floor external terrace and internal modifications to permitted first floor extension to provide for 2 first floor restaurants (one new and one existing) increasing the permitted floor area to 527m² in total.

F17A/0205 Permission granted for change of use of first floor office to restaurant and two storey rear extension comprising amendments to previous permission under reference PL 06F.247015.

PL 06F.247015 Permission granted for change of use of first floor office to restaurant and two storey rear extension.

F12A/0405 Permission refused for retention of signage at 1st floor to unit 5.

6.0 The Appeal

6.1. Grounds of Appeal

Similar grounds of appeal are submitted in 3 separate submissions by the following:

- Liza Fitzsimons, 2, The Priory, Malahide
- Orchid Management Company Co Ltd. Representing 1,2.3 & 4, The Priory
- Thomas Hynes, 1, The Priory, Malahide

The grounds of appeal in 3 similar submissions may be summarised as follows:

1. This is not an appropriate land use on this site given the proximity of existing residential development. The restaurant, takeaway and outdoor seating area is an 'all day operation'. The proposed development would be only 1.6m from the back garden of No. 1, The Priory and 2.6m from its living room and bedroom.

2. Given the proposal for outdoor seating, required noise levels cannot be met. The previous permission required no openable windows due to adjoining residences. If permission is granted there should be a condition requiring the outdoor seating area to be closed by 6pm.
3. Insufficient details with the application. The applicant needs to provide significantly more detail to show how the proposed development would interact with the adjoining residential estate. The proposed outdoor seating area is used to locate bins for the existing operation and this is substandard.
4. The proposed development on a site to the rear of Main Street will give rise to significant disturbance to residential property in the vicinity. There would be a serious loss of quiet enjoyment of existing homes.
5. Take away operations should be for Main Street access only. The outdoor seating area will be used as a smoking area to the detriment of residential amenities. The late night restaurant should be refused.
6. Concern that the proposed development will generate smells from the kitchen. The locations of extraction systems are not shown; there should be no extraction at the rear of the property. Details should be required so that the public can comment on these. The vent should be at minimum 7.5 metres from the boundary wall with No 1, The Priory.
7. The operation of the existing and proposed waste areas is unclear. They should not be permitted close to residential property. A detailed waste plan is required.
8. No security measures are considered to mitigate impact on residential property. There is potential for unsocial behaviour, noise and rubbish. The applicant should be required to put in a secure entrance gate to the Priory development and put up CCTV.
9. The rear boundary wall is structurally deficient and construction works could be dangerous. A health and safety construction condition should be imposed.

6.2. Planning Authority Response

This may be summarised as follows:

1. The proposed development would represent a significant reduction in scale compared to a previous approval. The eaves level of the proposed structure would be level with the dividing boundary wall with The Priory.
2. The proposed takeaway is stated to be ancillary to the restaurant. Many restaurants within town centres offer similar services. The hours of operation are the same as previously approved.
3. Having regard to the village centre location, existing uses on the site and the assessment of the Environmental Health Officer, it is considered that the proposed development would not unduly impact on the residential amenities of property in the area.
4. Any permission granted on appeal should include conditions 2, 3, 4, 8 and 11 attached to the planning authority's decision.

6.3. First Party Response

This may be summarised as follows:

1. The planning authority and the Board previously granted permission for a first floor restaurant over a serviced area roughly on the same site as this proposal. The site for the proposed development is a functioning service yard. The current proposal will have lesser impacts on the appellants.
2. A restaurant is an appropriate use on this site. It accords with the zoning objective and other specific objectives as set out in the CDP and would enhance the urban facilities in the village.
3. The restaurant is fully enclosed adjoining the lands to the south. The outdoor seating area is located to the front immediately adjoining Main Street and away from residential properties.
4. The Environmental Health Officer concluded that noise would not be an issue subject to the specific measures contained in Condition 8.
5. The extractor system has to be agreed by the local authority under Condition 8(c). The location is clearly indicated on the floor plans away from the southern boundary.

6. Bin stores are clearly shown and will be fully enclosed and managed. The proposed two bin store is designed and sized to be used by all commercial units and there will be no requirement in the future to have bins out in the open air service yard. Condition 7 requires compliance with the Environmental Health Officer with regard to waste.
7. Operating hours are limited to 24.00 so there will be no congregation after pub closing.
8. The proposed rear boundary wall is not structurally deficient. Structural engineers will be retained to ensure no damage to built fabric on the site.

7.0 Assessment

- 7.1. The proposal is for a standalone single storey restaurant with ancillary takeaway, internal bin storage, outdoor seating area for up to 20 patrons in an existing covered laneway , and 8 bicycle spaces and associated works. The site for the proposed development consists of an existing covered laneway and a rectangular shaped surfaced area to the rear of existing commercial properties currently housing waste bins.
- 7.2. The site is in the village of Malahide in an area zoned for Town and District centre uses and with the objective of protecting and enhancing the special physical and social character of such centres and to provide and/or improve urban facilities. Restaurant use is permitted in principle within this zoning objective.
- 7.3. There is a recent planning history relating to this site. In May 2018 the Board granted permission for the alteration of a previous permission relating to the provision of 2 first floor restaurants and a two storey extension on a larger site but including the current appeal site. There is no information on file relating to any material changes in circumstances since these previous permissions were granted.
- 7.4. Having regard to village location, the zoning objective as set out in the current CDP and to the planning history relating to this site, I consider that the proposal for a standalone single storey restaurant is acceptable in principle.
- 7.5. The key issue to be considered by the Board is the impact which the proposed development is likely to have on the amenities of property in the vicinity. The

physical impact of the proposed single storey restaurant will be significantly less compared to the permitted two storey extension (6.5m high approximately) on the main body of the site. The proposed structure has no windows or doors in the southern elevation and at eaves level is lower than the boundary wall with No. 1, The Priory. Two proposed enclosed bin stores are at the eastern end of the proposed restaurant. The only proposed opening in the western elevation is a high level window serving the proposed restaurant seating area. Access to the proposed indoor restaurant would be along the existing access laneway. I conclude that the physical impact of this building would not be injurious to the amenities of surrounding property. In terms of its location within an Architectural Heritage Area I consider that the proposed development providing new hand painted signage and entrance from Main Street would contribute positively to the character of the area.

7.6. In terms of use, the proposed development includes a number of elements not included in the previous proposals for which permission was granted. Access to the proposed restaurant and ancillary takeaway would be via the existing covered laneway and a small uncovered area. Given the scale of the proposed restaurant and the ancillary nature of the proposed takeaway, and the separation from adjoining residential property, I conclude that this is not likely to give rise to injury to residential amenities. The proposed outdoor seating area is restricted to 20 persons and is within the covered laneway. However, the precise function or method of servicing of this area is not clear; the seating is remote from the restaurant kitchen and an ancillary takeaway would not normally have seating of this extent and nature. I consider that this requires clarification to enable a full assessment of the impact of this proposed seating area on the amenities of the area. In this regard I recommend that the future use of this area should be made subject to further approval by way of any condition granted.

7.7. Other relevant issues raised in the grounds of appeal relate to waste management for the entire site, the positioning of the kitchen extractor vent and parking. I consider that waste management can be addressed by way of condition. The proposed extractor is shown on the ground floor plan in the north eastern corner of the proposed building and I consider this to be acceptable. Given the village location and proximity to public transport I am not recommending a special financial contribution in lieu of the provision of car parking.

7.8. The appellants raise issue with the structural condition of the boundary wall. Based on my observations at the time of inspection the wall appears to be in sound structural condition.

7.9. **Environmental Impact Assessment**

Based on a preliminary examination of the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment such as would require the submission of an EIAR.

7.10. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and the location of the site in a serviced 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 planning permission be granted.

9.0 **Reasons and Considerations**

Having regard to the village location, the 'TC – Town and District Centre' zoning, the nature and scale of the proposed development and to the planning history relating to the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be seriously injurious to the amenities of property in the vicinity, would contribute positively to the character of the Architectural Conservation Area and would be in accordance with the proper planning and development of the area.

10.0 **Conditions**

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

developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed outdoor seating area is omitted from this permission. This area shall not be used for any purpose in connection with the proposed restaurant and ancillary takeaway without prior benefit of a separate planning permission.

Reason: To enable a full assessment of the likely impacts arising from the use of this area on the amenities of property in the vicinity.

3. The takeaway shall be ancillary to the main use of the premises as a restaurant and shall only operate at times when the restaurant is open for business.

Reason: In the interest of clarity and to protect the amenities of property in the vicinity.

4. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling shall not exceed:
 - (i) An Leq, 1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday Inclusive.
 - (ii) An Leq, 15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

(b) All sound measurements shall be carried out in accordance with ISO Recommendation 1996:2007 Acoustics – Description and Measurement of Environmental Noise.

Reason: To protect the residential amenities of property in the vicinity of the site.

5. The developer shall control odour emissions from the premises in accordance with measures which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health and to protect the amenities of property in the vicinity.

6. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of public safety and residential amenity.

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

Reason: To protect the amenities of residential property in the vicinity.

8. The hours of operation of the proposed restaurant shall be from 0900 to 2400 Monday to Sunday including Bank Holidays. The hours of operation of the proposed restaurant shall be from 0900 to 2400 Monday to Sunday including

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Reason: In the interest of residential amenity.

9. A plan containing details of the management of waste (and, in particular, recyclable materials) within the development shall be submitted to, and agreed in writing with the planning authority prior to the first use of the premises as a restaurant and ancillary takeaway. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: In the interest of residential amenity, and to ensure the provision of adequate indoor refuse storage.

10. Prior to the commencement of development, the developer shall agree with the planning authority details of the following:

- signage and a colour scheme for the façade addressing Main Street
- details for the proposed entrance onto Main Street.
- Details of the proposed extractor system for the restaurant.

Reason: In the interest of visual and residential amenity.

11. Standard Financial Contribution condition.

Des Johnson
Planning Inspector

21 January 2019

