



An
Bord
Pleanála

Inspector's Report ABP302777-18

Development	Change of use of existing commercial premises from a shop to a restaurant and take-away.
Location	Lower Pearse Street/Arran Place Lower, Ballina, County Mayo.
Planning Authority	Mayo County Council.
Planning Authority Reg. Ref.	18/306.
Applicant	JMN Domino's Limited.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellant	Stephen McAndrew.
Observers	None.
Date of Site Inspection	9 th December, 2018.
Inspector	Paul Caprani.

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1.0 Introduction

ABP302777-18 relates to a third-party appeal against the decision of Mayo County Council to issue notification to grant planning permission for change of use from an existing retail use at ground floor level to use as a restaurant and take-away. The grounds of appeal argue that the proposal will result in an over-concentration of fast food take-away premises in the area and that this use is wholly inappropriate for a mixed residential area in the town centre. The grounds of appeal also argue that the proposed development will impact on residential amenities through late night activity, generate odours, give rise to traffic problems and is contrary to many of the stated objectives in the current development plan.

2.0 Site Location and Description

- 2.1. The appeal site is located in Ballina town centre, on Lower Pearse Street between Dillon Terrace and Humbert Street. The general area is characterised by predominantly commercial development although there is a predominance of residential development on the western side of Humbert Street approximately 100 metres to the north-east of the site. Some of the buildings on Dillon Terrace to the south-east of the site are also in residential use. The land uses in the immediate vicinity of the site are exclusively commercial in the form of existing take-aways and restaurants and retail units. Dunnes Stores is located directly opposite the site to the north. To the immediate north-west of Dunnes Stores, Ballina Civic Offices are located. Units to the immediate east and immediate and immediate west of the subject site comprise of existing retail outlets and restaurants.
- 2.2. The subject site occupies the ground floor of a three storey building. The ground floor has a wedding shop window display, but is currently vacant. A barber's shop is located above at first floor level. I could not ascertain the uses at the top floor during my site inspection, but they may be either vacant or in residential use. A narrow laneway runs along the western boundary of the site. The contiguous ground floor unit to the north-east accommodates an Indian take-away while a pizza take-away facility is located on the western side of the laneway adjacent to the site.

3.0 Proposed Development

- 3.1. Planning permission is sought for a Dominos Pizza Parlour at ground floor level. The stated area of the ground floor is 138 square metres.
- 3.2. Originally the drawings submitted with the application indicated that the restaurant area associated with the pizza parlour was to accommodate 16 seated patrons. This was increased to 24 seats by way of unsolicited additional information. The seating area is to be partitioned off from the take-away/pick-up/delivery area at the side of the building. The existing shopfront is to be retained. However, a new fascia board and signage on the front elevation onto Pearse Road Lower and also along the existing window area which faces onto the laneway. The proposed vertical extraction duct is to be located to the rear of the premises at roof level approximately 20 metres to the rear of the front of the building. The location of the extract duct is indicated in the side elevation drawings submitted with the unsolicited additional information on the 3rd September, 2018.

4.0 Planning Authority Decision

Mayo County Council issued notification to grant planning permission on 24th September, 2018 subject to six standard conditions.

4.1. Documentation Submitted with the Planning Application

- 4.1.1. The planning application was accompanied by a completed planning application form, public notices, drawings and an appropriate planning fee. Also submitted was letter from the owners of the subject site permitting the applicant's, JMN Domino's Ltd to apply for permission on the subject site. A covering letter from the Maughan and Associates on behalf of the applicant, states that the proposed development is considered to be appropriate and in accordance with the requirements of the Ballina and Environs Development Plan and the Mayo County Development Plan. A covering letter also suggests that the proposed development would not attract any parking financial contributions.

4.2. Planning Authority Reports

- 4.2.1. The initial planner's report prepared in respect of the current application recommended that planning permission be refused because the proposal would operate predominantly as a take-away and it is considered that a take-away at this location in close proximity to residential dwellings would contravene the development plan which seeks to limit the proliferation of take-aways in the town. As such the proposed development would seriously injure the amenities of the area.
- 4.2.2. However, instead of issuing a notification to refuse planning permission, Mayo County Council granted an extension of time for a period of 3 months to the 26th September, 2018 to consider the application further.
- 4.2.3. A further letter was submitted to Mayo County Council on behalf of the applicant by Maughan and Associates on 30th July 2018. This letter notes the observations contained on file (see below) and states that three planning permissions have been granted for hot food take-aways since the development plan has been adopted. It is suggested that the criteria applied by the Planning Authority in these cases should be applied to the current proposal before it. It is further stated that Domino's Pizza is a predominantly 'sit-down restaurant' as opposed to a take-away facility.
- 4.2.4. A further planning report dated 7th August, 2018 concludes that precedent decisions referred to in the applicant's letter were predominantly restaurants with take-away facilities whereas the current proposal is for a take-away facility in the main as the seating space is limited. It is considered that the current proposal in conjunction with the adjoining pizzeria and Indian restaurant constitutes a "proliferation" of take-aways within the meaning of the Ballina and Environs Development Plan. It is also considered that the introduction of a third take-away premises at this location would increase noise odours and litter nuisance in the surrounding residential development. For these reasons the planner's recommendation should stand.
- 4.2.5. On the 3rd September, 2018 the applicant submitted further unsolicited additional information with amended floor plans. It is stated that the dining space has been increased and the number of seating spaces now proposed is 24 as opposed to 16 in the original application. Furthermore, the pick-up area has been separated from the dining in space which allows take-away customers to collect the take-aways without passing through the sit-down dining area.

- 4.2.6. The applicant was requested to submit revised public notice on 10th September, 2018.
- 4.2.7. A further planner's report states that the revised drawings have addressed the concerns earlier expressed in this report and in the increase in floor area together with the capacity of the seating area and the physical separation of the dining and take-away element are now deemed to be acceptable. Mayo County Council therefore granted planning permission for the proposal.

4.3. **Prescribed Bodies**

- 4.3.1. A report from the Health Service Executive received on 30th May, 2018 states that there is no objection to the above application under the food hygiene legislation subject to:
- Adequate mechanical and/or natural ventilation is required throughout the premises.
 - A wash hand basin with associated facilities is required in the food preparation kitchen.
 - Where necessary a food preparation sink may be required.
- 4.3.2. A report from the Area Engineer Road Design Office states that there was no objection to the proposed development subject to a condition in respect of lighting which requires that the lighting shall be erected in such a way so as not to shine directly in the path of vehicles or distract drivers.

4.4. **Third Party Observations**

- 4.4.1. The planner's report makes reference to two third party observations submitted objecting to the proposed development. However, only one of these observations appears to be on file, the observation submitted by the current appellant. The contents of this observation have been read and noted.

5.0 **Planning History**

- 5.1. No history files are attached.

5.2. The local authority planning report makes no reference to any relevant planning history on file.

6.0 Grounds of Appeal

6.1. The decision was appealed by Stephen McAndrew of Rathilly Street, Ballina. The grounds of appeal are outlined below:

- It is argued that in the case of Dominos Pizza, the dining experience is very low on the priorities of the enterprise and the emphasis is on pizza for delivery or take-away. It is argued that the fast food restaurant is wholly inappropriate for a mixed residential area in the town centre. Such uses have generally been located in the edge of towns or exclusively commercial areas.
- It is good planning practice to protect insofar as possible, the amenities of existing residential areas in town centres. It is also noted that the surrounding streets dated from the early 20th century and have a particularly strong architectural character.
- It is argued that due consideration has not been given to the effect of fumes, odours, hours of operation and general disturbance of nearby amenities and residents.
- A noise/sound report has not been submitted to determine the effects of fans, extractors, hours of operation and general disturbance to adjoining residential properties.
- It is considered that the traffic implications have not been considered at this location as the proposed take-away facility would generate excessive traffic movements and would give rise to traffic congestion. No parking has been provided as part of the application. Adequate and safe delivery areas have not been provided.
- Reference is made to various statements contained in the development plan which seeks to protect the amenity associated with residential areas and it is also noted that the Council is concerned about the proliferation of various land uses including take-aways. It is argued that there is already an excessive

number of take-away restaurants in the town centre, especially in the immediate vicinity of the current application.

- The grounds of appeal list the various restaurant and take-away facilities within the vicinity of the subject site. Two maps are also submitted, one indicating the location of food premises with take-away facilities within 300 metres of the subject site and another map indicating residential properties within 250 metres of the subject site.

7.0 Appeal Responses

7.1. A response was received on behalf of the applicant by Mahon Architects. It is summarised below:

- By way of introduction it is stated that the appellant in this instance is the landlord of the adjacent premises to the west which contains a hot food pizza take-away and restaurant. It is suggested therefore that the concerns raised are intended to protect the commercial interests of the appellant and are not borne out of any legitimate concern for the proper planning and sustainable development of the area.
- It is noted that the site is located within the commercial town centre and is governed by the town centre zoning.
- It is acknowledged that there are a number of residential properties located in the vicinity, particularly on Humbert Street and Dillon Terrace. However the closest of these is 55 metres away. It is also noted that there were no submissions or objections made by any of residential properties in the vicinity.
- Whilst the development plan states that it is important to retain the character of existing predominantly residential streets, it is argued that Lower Pearse Street cannot be considered to be predominantly residential. It is also considered reasonable that residential properties located within the town centre can tolerate higher levels of disturbance associated with traffic etc.
- With respect to odours, details are attached to the response which contains detailed designs of the ventilation system and outlining the parameters to which it has been designed. There are no hot oils or fats used in the Dominos

production process. There will be no deep fat fryers on the premises. As such it is argued that the proposal will be closer to a bakery than a conventional take-away.

- With regard to noise, it is stated that the property is located on the N59 National Primary Route and noise associated with the development will have a negligible impact in the context of ambient noise levels in the area.
- The opening hours as stipulated in Condition No. 3 of the local authority's decision (12 p.m. to 12.30 a.m.) will protect residential amenities of nearby properties and will serve to prevent anti-social behaviour.
- It is stated that, while the take-away aspect of Dominos is a fundamental feature of their business model, the organisation is transitioning from a predominantly take-away to a sit-down and take-away model. Seating is provided for 24 patrons on the subject site and the take-away area is segregated from the seating area.
- With regard to traffic, it is noted that adequate on-street car parking is available in the immediate vicinity with a significant car park located to the rear of Dunnes Stores a short walk away. There is a pedestrian crossing adjacent to the subject site to ensure pedestrian safety.
- It is noted in respect of development plan policies that one policy seeks to ensure that a proliferation of hot food take-aways will not be permitted in any area. However it is argued that the concept of proliferation is not clearly defined in the development plan. It is also stated that three planning permissions have been granted for hot food take-aways in the town centre since this policy was adopted.
- It is argued that the proposed development is consistent with many Council statements in relation to permitted land uses in the town centre.
- Finally, it is noted that the subject premises are currently vacant and has been so many months. The proposed establishment represents significant investment and will employ 20 people. It is therefore considered that the proposed development is not in contravention of the development plan.

7.2. **Planning Authority Response**

It appears that Mayo County Council have not submitted a response to the grounds of appeal.

7.3. **Observation**

No observations have been submitted in respect of the appeal.

8.0 **Planning Policy Context**

8.1. The site is governed by the policies and provisions contained in the Ballina and Environs Development Plan 2009 – 2015 (as amended). The subject site is located in the outer area of the C1 commercial 'town centre zoning'. The principal land uses permitted in this zoning include:

- To provide for shopping and retail stores.
- To provide for office development.
- To provide other town centre uses including houses/apartments.
- To preserve the existing civic amenity town centre character and heritage building sites.
- To improve civic amenity by requiring high standards of civic design.
- To retain retail/shop use from ground level of principal shopping streets.
- To retain the character and use of existing predominantly residential streets.
- To promote living over the shop and to protect the amenity of the residential community.
- To promote the commercial and civic viability of the town by fostering a range of retail and other services within a well accessed environment.

8.2. Policy RC9(6) states that the Council is concerned in relation to the proliferation of bookies, take-aways, discount shops and sex shops and will seek to restrict further the proliferation of such uses.

8.3. Section 3.8.8 of the development plan specifically relates to hot food take-aways. It states that the proliferation of hot food take-aways will not be permitted in any area. Regard will be had to the impact of hot food take-aways on the amenities of the area,

including noise, odour and litter. The Planning Authority may impose restrictions on opening hours of hot food take-aways as a condition of planning permission. Hot food take-aways will not be permitted in close proximity to houses or in residential areas. A condition will normally be attached requiring a closing time of 12.30 a.m. The provision of litter bins will also be required. In some circumstances the granting of a temporary permission may be considered to all the future review of the impact of the development.

8.4. Town centre policies will also seek to ensure that existing and new development will not have a detrimental impact on the quality of life in established residential areas.

8.5. **Natural Heritage Designation**

The River Moy, a designated candidate Special Area of Conservation is located approximately 150 metres to the south of the site.

9.0 **Assessment**

I have read the entire contents of the file, visited the site in question and have had particular regard to the issues raised in the grounds of appeal. I consider the following issues to be relevant in determining the current application and appeal before the Board.

- Impact on Surrounding Residential Development
- Contravention of Policies contained in the Development Plan
- Traffic Issues

As a preliminary matter the applicant in his response to the grounds of appeal argues that the subject appeal is motivated on commercial grounds rather than concerns in relation to the proper planning and sustainable development of the area. Whether or not the appellant in this instance is commercially motivated it is not a matter on which the Board can adjudicate. The fact remains that the issues raised in the grounds of appeal are planning matters pertinent to the proper planning and sustainable development of the area. For this reason, the issues raised should be assessed and evaluated de novo.

9.1. Impact on Surrounding Residential Development

- 9.1.1. The proposed development does have the potential to impact on residential amenity mainly through noise and disturbance, particularly late at night. Potential odour and litter problems etc could also result. While there are numerous residential dwellings in the vicinity of the site, particularly located at Dillon Terrace and Humbert Street, these dwellings are located in excess of 50 metres from the subject site and are located on adjoining streets. Furthermore, there are numerous retail, restaurant and take-away facilities in the immediate vicinity and therefore a precedent for such uses has already been established along this section of the street.
- 9.1.2. Perhaps more importantly the subject site is zoned for town centre activity and as such a restaurant/take-away use is most appropriately located in an area governed by such zoning objective which actively seeks to encourage commercial-type development. The provision of a restaurant/take-away is most compatible with the town centre zoning.
- 9.1.3. With regard to late night activity, I would again make reference to the fact that the subject site is located in an area zoned for town centre uses, and as such the subject site and surrounding sites are likely to generate traffic and demand for services into the late evening. The area in which the site is situated is generally busy with a large Dunnes Stores Shopping Centre located directly opposite the site. Therefore, ambient noise levels in the area, even in the evening time, are likely to be greater than that associated with residential areas.
- 9.1.4. With regard to the issue of odour generation, the applicant points out in his response to the grounds of appeal, that what is proposed in this instance is a pizza parlour and pizzas will be baked in an oven area. The applicant states that no hot oils or fats will be used in the Dominos production process. It is the use of hot oils and deep frying which gives rise to the most offensive odours associated with take-away facilities. The applicant has also provided details of the proposed ventilation system to be installed as part of the proposed development. I note that the ventilation flue is located above the roof of the building, allowing odours to dissipate into the atmosphere high above ground level. Thus, it is not anticipated that any adverse impact will arise as a result of odours.

9.1.5. Any impacts arising from litter is a management issue. The fact that pizzas will be consumed either within the seated restaurant area or will be taken away for consumption at home should ensure that the proposed development will not give rise to any significant deposition of litter in and around the subject site. Additional litter bins on the footpath can be specified by way of condition should the Board deem it appropriate.

9.1.6. I am therefore satisfied, particularly having regard to the zoning objective relating to the site, and the fact that there are no residences contiguous, that the proposed development will not have a significant adverse impact on the residential amenities of residents living in the vicinity.

9.2. Contravention of Policies contained in the Development Plan

9.2.1. The grounds of appeal argue that the proposed development specifically contravenes Section 3.8.8 of the development plan which seeks to prohibit a proliferation of hot food take-aways in close proximity to houses in residential areas. I have argued above that the proposed development is located in an area zoned for town centre activities and as such, such a land use zoning is most compatible with accommodating the use proposed. I am also in agreement with the Planning Authority that the revised drawings submitted by way of unsolicited additional information results in a development that cannot be described solely as a take-away premises. While there is a take-away element associated with the proposal the premises, it is also to accommodate a large seating area facilitating 24 patrons. I would therefore consider that the proposed development would constitute a sit-down restaurant with a take-away element as opposed to a typical hot food take-away.

9.2.2. I acknowledge that there is a concentration of restaurant/take-aways in the immediate vicinity of the subject site. The contiguous uses on either side of the subject site accommodate a pizzeria and an Indian take-away. However, the Board will note that there are numerous policy statements in the Ballina Plan which seeks to ensure that the main shopping streets within the town centre remain vibrant and continue contribute to the vitality of the area. The existing unit at ground floor level is vacant and as such does not contribute to the vibrancy of the town centre. Facilitating the proposed change of use could therefore be seen as a positive benefit.

9.2.3. In conclusion therefore, I do not consider that the proposal constitutes a traditional type hot food take-away and is more akin to a restaurant use with an ancillary take-away. Furthermore, it utilises a unit at ground floor level which is currently vacant which reinforces the commercial heart of the town centre.

9.3. **Traffic Issues**

9.3.1. It is acknowledged that the proposed development does not provide any off-street parking. However, there is no scope to provide off-street parking on the subject site. Furthermore, any retail use on the subject site is likely to give rise to similar levels of car parking demand. On-street car parking is available in the vicinity of the site where a public car park is located to the rear of Dunnes Stores, c. 100 meters away. For these reasons, it would be inappropriate in my opinion to refuse planning permission on the grounds of inadequate car parking or the creation of traffic congestion in the area.

10.0 **Conclusions and Recommendation**

Arising from my assessment above, I consider the Board should uphold the decision of Mayo County Council and grant planning permission for the proposed development in accordance with the plans and particulars lodged.

11.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, 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.

12.0 **EIAR Screening Determination**

The proposal does not fall within a class of development for which an EIAR is required. The need for an Environmental Impact Assessment can therefore be excluded at preliminary examination stage and a screening determination is not required.

13.0 Decision

Grant planning permission in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

14.0 Reasons and Considerations

Having regard to the town centre location of the proposed development and the town centre zoning objective relating to the site it is considered that, subject to compliance with the conditions set out below, the proposed change of use from retail to a restaurant/take-away would not result in an overconcentration of such uses within the area, would not be prejudicial to public health and would add to the vitality and vibrancy of the town centre. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

15.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the unsolicited additional information submitted to the planning authority on the 3rd day of September, 2018, 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 the 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. Prior to the commencement of development, the applicant shall submit details of the proposed shopfront and signage associated with the proposed café/take-away use. Details shall include the colour, textures and materials including samples together with details of any proposed illumination of signage. All details shall be the subject of written approval with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity

3. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the shopfront. Such shutters shall be of the “open lattice” type and shall not be used for any form of advertising unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

4. No goods, sandwich boards or similar structures shall be displayed outside any of the premises.

Reason: In the interest of visual amenity.

5. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provisions amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. A plan containing details for the management of waste (and in particular recyclable materials) within the development, including the provision of a facilities for the storage, separation and collection of waste and, in particular recycle materials and for the ongoing operation of these facilities within the café/take-away shall be submitted to and agreed in writing with the planning authority prior to commencement of development. Thereafter, the premises shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials in the interest of protecting the environment.

8. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

9. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

10. The hours of operation shall be between 12 noon and 12.30 a.m. only.

Reason: In the interest of residential amenity.

11. The developer shall pay to the planning authority a financial contribution of €3,067 (three thousand and sixty-seven euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Paul Caprani,
Senior Planning Inspector

3rd January, 2019.