



An  
Bord  
Pleanála

## Inspector's Report ABP-303699-19

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<b>Development</b>	Change of use from retail butcher to restaurant and take away.
<b>Location</b>	278, Glasnevin Avenue, Dublin 11
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	3844/18
<b>Applicant(s)</b>	Texas Fried Chicken Ltd..
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Ben Macari.
<b>Observer(s)</b>	None .
<b>Date of Site Inspection</b>	22 <sup>nd</sup> May 2019.
<b>Inspector</b>	Sarah Lynch

## **1.0 Site Location and Description**

- 1.1. The appeal site comprises a two-storey mid terrace commercial property. The site is located within a parade of shops to the north of Glasnevin Avenue. The existing parade of shops comprise a number of uses at both ground and first floor, including two convenience stores, medical centre, post office, hairdressers, pharmacy and business centre.
- 1.2. The surrounding area comprises predominantly residential uses with commercial uses present to the south of the Glasnevin Rd and to the west of the appeal site. Residential development is largely in the form of semi-detached and terraced dwellings.
- 1.3. Two no. takeaways were noted to the west of the appeal site and the Beneavin De La Salle Collage is present within c. 230 metres to the south west of the site.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the following:
  - Change of use from retail butcher to takeaway.
  - Modifications to front elevation of building.
  - Installation of ventilation unit and stack to rear.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Council granted the proposed development subject to standard conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- The final planners report is consistent with the decision of the planning authority. Further information was requested in relation to the following:
  - Details of existing takeaways within a 1km radius of the site.
  - Details of bins and anti-litter measures.

- Details of waste storage facilities.
- Details of how extract fumes are to be dealt with.
- Provision of evidence-based case for takeaway at this location having regard to policy RD9 of the Dublin City Development Plan.

All further information was responded to, to the satisfaction of the Council.

### 3.2.2. Other Technical Reports

- Engineering Department Drainage Division – no objections subject to conditions.

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

A number of observations were received from businesses in the area, the issues can be summarised as follows:

- There are too many takeaways and food sales in the area.
- Proposal will negatively affect the viability of existing restaurants and takeaways.
- Opening hours are inappropriate.
- Proposal will increase antisocial behaviour.
- Proposal is contrary to policy RD9 and Section 16.25 of the Dublin City Development Plan.

## 4.0 Planning History

4377/07 – Permission was **refused** for the development of a two storey 2-bedroom mews.

1383/00/X1 – Permission for EOD was refused, the reason for refusal cited that no substantial works have been carried out to the proposed dormer, the EOD was

therefore contrary to Section 42 of the Planning and Development Act 2000 as amended.

1383/00 – Permission was granted for dormer window to rear and retention of change of use of office at 2<sup>nd</sup> floor/attic.

## **5.0 Policy and Context**

### **5.1. Development Plan**

#### **Dublin City Development Plan 2016-2022**

The site is located in an area subject to the Z3 zoning objective which seeks to 'provide for and improve neighbourhood facilities'.

- Policy RD9 - To safeguard the health of young people that no further fast food outlets shall be permitted within 250m of primary and secondary schools.
- Section 16.25 – Takeaways
- Section 16.29 - Restaurants

### **5.2. Natural Heritage Designations**

None

### **5.3. EIA Screening**

5.4. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal have been submitted by Jim Brogan on behalf of Ben Macari of Macari's takeaway which is located west of the appeal site. The issues raised within the appeal can be summarised as follows:

- Beneavin De La Salle Collage is situated within 250 metres of the appeal site.
- Development is contrary to policy RD9 of the Dublin City Development Plan 2016-2022.
- Similar developments have been refused by DCC as per policy RD9.
- There are 3 no. existing takeaways in the area and a deli with hot food takeaway counter in 1km of the site.
- There are at least 13 fast food takeaways within Finglas village which is within 1km from the appeal site.
- Opening hours would have an unacceptable impact on the amenities of the surrounding residential properties.

### 6.2. Applicant Response

A response to the grounds of appeal has been submitted by David Mulcahy Planning Consultants Ltd on behalf of the applicant and can be summarised as follows:

- Unit has been vacant since 2016.
- Proposed use is acceptable under Z3 zoning objective.
- Restaurant / takeaway use is different to a standalone takeaway.
- Such uses are important employment providers, proposal will generate 15 jobs.
- Site is highly accessible and serves a large population.
- No car parking is required.
- Use will be open throughout the day and will provide active street frontage.

- Primary product is chicken which is healthy.
- Healthy options will be available to customers also.
- Appeal is to protect commercial interest of appellant.
- Appeal is vexatious and frivolous.
- School is located c. 281 metres from appeal site.
- Refusal of EOD for similar development was not based on planning assessment and therefore can not be cited as precedent.
- Opening hours are considered to be reasonable and less than surrounding takeaways.

### 6.3. Planning Authority Response

- None

## 7.0 Assessment

The site is located in an area subject to the Z3 zoning objective, which seeks to 'provide for and improve neighbourhood facilities'. Restaurant uses are permitted in principle within this zoning objective, whilst takeaways are open for consideration. The main issues relating to this appeal are those which are raised within the grounds of appeal, appropriate assessment is also considered. I am satisfied that no other substantive issues arise. The main issues are as follows:

- Compliance with policy RD9 of the Dublin City Development Plan & concentration of takeaways in area.
- Impact on surrounding residential development.
- Appropriate Assessment.
- Other matters.

### **Compliance with policy RD9 of the Dublin City Development Plan.**

- 7.1. It is contended by the appellant that the proposed takeaway would be located within 250 metres of the Beneavin De La Salle Collage and as such the proposal would be contrary to policy RD9 of the Dublin City Development Plan 2016-2022 which seeks

to restrict the provision of any additional fast food outlets within 250 metres of a primary or secondary school. A response to the grounds of appeal has been submitted by the applicant in which it is stated that the appeal site is located c. 281 metres from the Beneavin De La Salle Collage and as such policy RD9 does not apply in this instance. It is further contended by the applicant that the proposed restaurant/takeaway will provide healthy options in addition to the proposed fried chicken option and can therefore not be considered under the description of unhealthy fast food.

- 7.2. I have read the submissions made by both parties and carried out a site inspection. I consider that the location of the appeal site relative to the existing school is within a 250-metre distance. Policy RD9 of the Dublin City Development Plan 2016-2022 is therefore of relevance to the assessment of this proposal. Given the provisions of this policy and the limited distance from the appeal site to the existing school which is c. 230 metres, and the presence of 4 existing takeaways within 30-40 metres of the appeal site, I consider the proposed development would not only be contrary to policy RD9, but would also provide for an increased proliferation of such uses in this relatively small retail area.
- 7.3. It is contended by the applicant that the proposed development would be in accordance with the proper planning and sustainable development of the area and would provide for 15 jobs and reuse an existing commercial unit which has been vacant since 2016. Whilst I acknowledge the applicants submission, I note that the appeal site is within 800 metres of Finglas village where it is stated by both the applicant and the appellant that there are 13 fast food outlets of various types.
- 7.4. Having regard to the foregoing I consider that the provision of an additional fast food outlet in an area already well served by such facilities would lead to an over proliferation of such uses in a relatively small area. The proposal would therefore be contrary to Section 16.25 of the Dublin City Development Plan and I consider that this over concentration would also have a potentially negative impact on the vitality and viability of this small retail area.

**Impact on surrounding residential development.**

- 7.5. It is contended by the appellant that the opening hours proposed by the applicant which are between 11.30am and 12.30am are excessive and would have a negative impact upon the residential amenity of the area. Whilst I consider that the hours of

opening to be excessive, I consider that an increase in the proliferation of such uses to be of more significance when assessing the potential impacts of the development on the residential amenity of the surrounding area. It is the cumulative effect of additional fast food outlets at this location that will negatively impact the amenities of the surrounding residential properties rather than the specific opening hours of such a use.

- 7.6. Having regard to the foregoing and as per Section 7.4 above, I consider that the provision of an additional fast food outlet in such close proximity to four existing such uses would be contrary to Section 16.25 of the Dublin City Development Plan 2016-2022 in which it is the policy to prevent an excessive concentration of takeaways.

### **Other Matters**

- 7.7. It is contended by the applicant that the appeal is vexatious and frivolous. Section 138 (1) (a) (1) of the Planning and Development Act states that the Board shall have an absolute discretion to dismiss an appeal or referral where, having considered the grounds of appeal or referral, the Board is of the opinion that the appeal or referral is vexatious, frivolous or without substance or foundation. I consider the appeal to have both substance and foundation and I therefore do not consider it appropriate to dismiss the appeal on this basis.

### **Appropriate Assessment.**

- 7.8. Having regard to the minor nature of the development, its location in a serviced urban area, and the separation distance to any 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.

### **Conclusion**

- 7.9. Overall the proposed development of a further takeaway in this location would result in a proliferation of such uses, which would be disproportionate to the overall size and character of the area. The development would therefore be contrary to both the provisions of Section 16.25 and policy RD9 of the Dublin City Development Plan 2016-2022.



## 8.0 Recommendation

- 8.1. I recommend that planning permission should be refused, for the reasons and considerations as set out below

## 9.0 Reasons and Considerations

The proposed development would provide for a 5<sup>th</sup> fast food outlet within 250 metres of Beneavin De La Salle Collage. It is the policy of the Dublin City Development Plan 2016-2022 to prevent an excessive concentration of fast food outlets/takeaways in order to promote a healthier and more active lifestyle. Policy RD9 of the plan specifically seeks to restrict further fast food outlets within 250m of any primary or secondary schools, which is considered reasonable. It is considered that the proposed development of a further takeaway in this location would result in a proliferation of such uses, which would be disproportionate to the overall size and character of the area. The proposed development would therefore be contrary to the provisions of the Dublin City Development Plan 2016-2022 and would be contrary to the proper planning and sustainable development of the area.

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Sarah Lynch  
Planning Inspector

23<sup>rd</sup> May 2019