



An
Bord
Pleanála

Inspector's Report

ABP-304941-19

Development	Change of use from motor factors to pizza take out, demolition of extension and construction of new extension.
Location	25D, Malahide Road, Artane, Dublin 5
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	2967/19
Applicant(s)	Ming Gao.
Type of Application	Permission.
Planning Authority Decision	
Type of Appeal	Third Party
Appellant(s)	Ming Gao.
Observer(s)	1) Carmel Rogers. 2) Dominic Borza
Date of Site Inspection	28 th October 2019.
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site is located on the Malahide Road c6km north-east of the centre of Dublin. It has a stated area of 200m². It consists of a mid-terraced two storey building in a parade of shops that has a vacant retail unit (86.25 sq.m.) at ground level and a two bedroomed apartment (65.25 sq.m.) at first level. The premises were used as a motor parts outlet for 40 years. It is adjoined by a takeaway and there is another take way at the end of the parade. There is also a beauty salon and an off-license.
- 1.2. The parade is set back from the Malahide Road with an intervening access road and car parking. There is a gated service lane off the Malahide Road which extends along to the rear of the parade separating it from surrounding housing There is a mixed-use development to the north which includes a restaurant, crèche and décor centre to the front and an apartment block to the rear and which has south facing apartments overlooking the parade and rear laneway. The land at the southern end of the parade is flanked by a garage use to the side and rear of a Victorian terraced cottage.

2.0 Proposed Development

- 2.1. It is proposed to demolish an extension and construct a new single storey extension to the rear and new signage and extraction ducting. Internally it is proposed to reconfigure the layout to provide a large kitchen with cold storage ad multiple cooking/frying facilities in addition to food preparation and washing areas. A public counter area lobby with limited seating is located to the front. The overhead apartment is to be retained. Extraction and venting are proposed in accordance with the Building Regulations which is indicated by annotation in drawings, but no detailed drawings or specifications are provided.

3.0 Planning Authority Decision

3.1. Decision

The planning authority refused permission on the basis that:

The subject development is located in a small parade of retail units which has the zoning objective Z3 – to provide for and improve neighbourhood facilities. In addition in section 16.25 of the current Dublin City Development Plan sets out policy with regard to take-aways which includes the consideration of the number and frequency of such facilities within a 1km radius of the proposed development and the context and character of the street and to encourage a range of retail shops in such neighbourhood centres. This small neighbourhood centre currently accommodates two take-aways with a third within a short distance. The proposed new takeaway would result in the loss of a retail unit and would create an over-concentration of such takeaway uses to the detriment of the vitality and range of retail uses in the area. The proposed development would cause serious injury to the residential amenities of the area by reason of intensification of take away use and loss of retail diversity and would therefore be contrary to the policies and zoning objective of the current Dublin City Development Plan and the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

There is no substantive issue with the proposed demolition and extension works. There is some concern about the quality of the signage and lack of detail of venting. However the main concern relates to the impact on the intensification of takeaway use and compatibility with the objectives for the area. The increase from two to three of the five commercial units is appraised by reference to section 16.25 the area is considered at capacity and so a further takeaway use would have a detrimental impact on the vitality and diversity of use in this neighbourhood centre. There is also concern that this would have an impact on residential amenity in terms of reduction in range of retail offer.

3.2.2. Other Technical Reports

Drainage Division: No objections.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

Two letters of objection were submitted raising concerns about intensification of takeaways in the area and the associated nuisances of such a use (venting, noise, drainage, loitering, littering fire risk and waste) and the consequent impact on residential amenity.

4.0 Planning History

4.1. The site

- PA reg ref: 2643/16 – Grant of permission for internal alterations and single storey storage extension to rear
- PA reg ref 2207/12 - Grant of permission for shopfront and signage alterations.

4.2. The terrace

- PA reg ref 2242/15 – Grant of permission in 25C for new first floor and attic residential development with a total of 4 bedrooms and outdoor deck.
- ABP ref 303190 (PA reg ref 3976/18 refers to refusal of permission for a single storey One bedroom dwelling with a stated floor area of 65m² on the open area at the rear of 5a (end of terrace). It would front onto the southern boundary of the site with the adjoining lane. The Transportation Planning Division stated that dedicated car parking is not required. The proposed development would leave no space to the rear of the existing development on the site and information should be sought of the waste storage facilities for that development to ensure there is no overspill onto the adjoining lane that is in the charge of the council.
- PA Reg. Ref. 2661/07 –grant of permission in 25A for a change of use of a laundrette to a pizza shop and other works.

5.0 Policy Context

5.1. Development Plan: Dublin City Development Plan 2016-2022

- 5.1.1. The site is zoned Z3 for **neighbourhood facilities** where it is an objective to provide for and improve neighbourhood facilities. Takeaway is open for consideration.

These are areas that provide local facilities such as small convenience shops, hairdressers, hardware etc. within a residential neighbourhood and range from the traditional parade of shops to neighbourhood centres. They may be anchored by a supermarket type development of between 1,000 sqm and 2,500 sqm of net retail floorspace. They can form a focal point for a neighbourhood and provide a limited range of services to the local population within 5 minutes walking distance. Neighbourhood centres provide an essential and sustainable amenity for residential areas and it is important that they should be maintained and strengthened, where necessary.

- 5.1.2. Section 16.25 provides guidance on **Takeaways**

(See also Appendix 3 – Category 1 and 2 Streets)

In order to maintain an appropriate mix of uses and protect night-time amenities in a particular area and to promote a healthier and more active lifestyle, it is the objective of Dublin City Council to prevent an excessive concentration of take-aways and to ensure that the intensity of any proposed take-away is in keeping with both the scale of the building and the pattern of development in the area. The provision of such facilities will be strictly controlled, having regard to the following, where appropriate:

- The effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents.
- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.
- Traffic considerations.
- The number/frequency of such facilities in the area, particularly in close proximity to schools.
- That the operators come to a satisfactory arrangement with Dublin City Council in relation to litter control.
- The need to integrate the design of ventilation systems into the design of the Building.

- That appropriate cleansing/anti-litter measurements be agreed with Dublin City Council prior to the granting of planning permission
- That all take-aways provide and maintain a suitable waste bin outside their premises during hours of business.
- The number and frequency of such facilities within a 1 km radius of the proposed development. The context and character of the street where the aim is to maintain and improve the vitality of the shopping experience by encouraging a range of convenience and/or comparison retail shops.

5.1.3. In the retail hierarchy z3 neighbourhood centre can be described as

These centres generally provide a local focus for the population and normally consist of one supermarket-sized development up to 2,500 sq.m net retail floorspace with a limited range of supporting shops such as a grocer or chemist and retail services like a hairdressers and possibly other services such as post offices or health clinics grouped together.

5.2. **Natural Heritage Designations**

Not relevant

5.3. **EIA Screening**

5.3.1. Having regard to the existing development on site, the nature and scale of the proposed development and the location of the 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.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. Vincent Farry on behalf of the applicant makes the following case against refusal:

- The use is a permissible use and is accepted by the planning authority to be acceptable in principle. The site is ideally suited in this recessed and serviced site.

- The concentration of uses should be assessed in the context of a 1km radius and in this context an additional takeaway is not excessive.
- The refusal is based on shopping policy as it is considered that it would deprive the locality of retail opportunities, yet, the small parade is within 400m of 3 larger neighbourhood centres which collectively offer a range of services and retail outlets.
- The planning authority has overstated a preference for retail notwithstanding the broader policy framework.
- The exact harm should be looked at in the case of a loss of motor parts outlet and the potential other exempted uses that could be perceived to be incompatible with zoning.
- The locals are more likely to need hot food delivered than car parts and accordingly the proposed use serves the area in the spirit of the objective.
- The affected residences are not identified and it is submitted that there would be no loss in vitality. It is further stated that the replacement of motor parts business with a takeaway would result in no loss of amenity.
- There was no issue with noise, disturbance, dust, odour, safety or anti-social behaviour or other issues of public health and this is submitted to be an acceptance by the planning authority in this regard. Accordingly, loss of retail and range of services is the issue of dispute.
- An Bord Pleanála Case PL29N.237130 is cited in respect of guidance for what constitutes excessive - this relates to the Camden Street area where there are 31 restaurants/takeaways within 200m.

6.2. Planning Authority Response

No further comment.

6.3. Observations

- 6.3.1. Two submissions were made in opposition of the proposal and each submission was cross circulated. The issues raised by each observing party are summarised below.
- 6.3.2. Carmel Rogers of 25c Malahide Road is concerned about being sandwiched between two takeaways and the resultant intensification of odours that are already

experienced through windows, generation of late-night noise, litter and waste. There is one adjacent chipper and a Chinese takeaway is two doors away. Another Chinese restaurant/takeaway is four doors away. In effect takeaways amount to 75% of uses in the neighbourhood centre and permission for another one runs counter to the policy of preventing excessive concentration. (section 16.25). There are other nearby food related business and an abundance of takeaways in the area. Parking in the evening is also an issue due to the intensification of late night uses.

6.3.3. O'Neill Town Planning on behalf of Dominic Borza 25b Malahide Rd objects on grounds of

- Intensification of takeaway night time use in a 5-unit parade and erosion of the mix of services which would undermine the vitality of the centre. This is contrary to the development plan.
- Survey of other such centres (not necessarily Z3 but comparable) shows a disproportionate level of takeaways in this Parade increasing from 40% to 66% of uses: Goblet corner Malahide R/Kilmore Rd, Circle K- Malahide Road and Roundabout Parade St. Brigid's Rd where there 7 or 8 units with overhead dwellings only have 1 takeaway between all three centres.
- Insufficient details and measures for signage /finishes and extraction, venting of premises, litter control, waste management, cleansing and capacity of drains. It is submitted that there would be an exponential increase in the negative aspects on residents which destroy the vitality of the area.

6.4. Further Responses

The agent for the applicant makes the following comments in response to the observations:

- The omission of the description of the signage details in the public notices can be addressed by condition and the applicant is agreeable to this.
- It is disputed, by reference to the development plan assessment criteria for takeaways, that the proposal offends the objectives for neighbourhood centre.
- The land-use analysis should be based on a 1km catchment. Only 3 out of 27 premises are takeaways within a 500m radius. This is not excessive concentration.

7.0 Assessment

7.1. Issues

7.1.1. This appeal relates to an application to change use from a retail unit to a take-away restaurant in a neighbourhood centre and this involves a small extension to the rear in place of an existing extension. While such use is open for consideration there are issues with the overall objective for the neighbourhood centre in addition to issues of amenity and impact on residential uses.

7.2. Conflict with neighbourhood centre policy

7.2.1. The policy for the area is to provide for neighbourhood facilities at the smaller end of the scale and in level 4 and 5 of the retail hierarchy with the emphasis on providing a range of shops and services for the area. It is argued that the replacement of a motor services outlet with a takeaway facility would not result in a significant loss in the range of shopping facilities serving the area having regard to the range of shops and services in the 1km catchment. In support, reference is made to three larger centres that are within 400m that provide for a range of facilities and which between them only provide a low level of comparable takeaways. This basis for assessing overconcentration is supported by reference to the criteria set out in section 16.25 of the Development Plan which refers to the 1km catchment.

7.2.2. The case for a takeaway is further supported by the overall decline in retailing and contraction of the sector and a shift in demand and societal changes.

7.2.3. The planning authority however has assessed this at a more micro level and considers the introduction of a 3rd takeaway in this terrace of 5 units to constitute an excessive concentration of such uses

7.2.4. On the one hand, if the local residential market demands more takeaways and there is a vacant unit in a serviced and semi-segregated purpose-built neighbourhood centre it seems reasonable to permit a use that is open for consideration. However, it is a specific use that is subject to strict controls for reasons of vitality, amenity and public health. Having regard to the Z3 and takeaway objectives and section 16.25 criteria I consider the main objection centres on the scale of the parade and the pattern of uses in the immediate environs. In this case the site is prominently sited and has a hinterland of housing as well as adjacent apartments within and external

to the Parade. In this regard I note four bedrooms alone permitted in conjunction with outdoor terrace in the adjacent 25C.

7.2.5. While I accept it is a challenge to maintain a retail use and perhaps some latitude should be given to using a vacant unit, I do not consider the proposed use by reasons of its nature and hours of operation to contribute in an appropriate way to the enhancement of the neighbourhood centre. The pizza takeaway is typically a late-night operation serving takeaway evening meals until hours after midnight. There are already two takeaways ways in the parade that are shuttered during the day. It would leave a hairdresser and an off-license and set an undesirable precedent for further night-time uses and loss of daytime uses and services within a short walking distance of the surrounding residential development.

7.3. Impact on amenity

7.3.1. The other key issue is impact on amenities both in terms of the immediate neighbours and wider residential area. The proposed takeaway is set up for larger volume of cooking than a restaurant and it also heavily fry based which generates odours and demands ducting and extraction. In this case the premises are adjacent to overhead dwellings and it is difficult to see how the level of cooking can be achieved while protecting the residential amenities of these dwellings that rely on an outdoor terrace. In addressing odour, extraction methods can bring noise and also add unsightly venting. There are insufficient details as to how protection of amenities can be achieved.

7.3.2. Takeaways and food related business generate food waste and there is no provision for storage of this within the site and how this may conflict with the overhead residence and its amenities. This raises public health and amenity issues. I also note that during my site inspection there were full and overflowing bins stored along the laneway which is directly overlooked and adjoined by surrounding residences. The further generation of this type of external storage of food waste and potential for odours, vermin and littering would be unacceptable.

7.3.3. There is also the issue of anti-social behaviour associated with intensification of late-night facilities which is likely to give rise to disturbance.

7.3.4. In terms of visual amenity the signage is noted by the planning authority as being of a lower quality by reference to its design standards however it is not the key amenity

issue. The signage could be addressed by condition and does not constitute reasonable grounds for refusal.

- 7.4. On balance I consider that having regard to the pattern of development in the immediate and surrounding environs and the existing two takeaway business in the parade and a third such use close-by and by reference to criteria in section 16.25, that there is a fundamental conflict with the provision of another takeaway at this location. I concur with the approach by the planning authority in considering the immediate environs of the centre. The proposed development would I consider be contrary to the proper planning and development of the area.

8.0 Appropriate Assessment

- 8.1. Having regard to the minor nature of the proposed development and to the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1. In view of the foregoing I recommend that permission be refused for the proposed development based on the following reasons and considerations.

10.0 Reasons and Considerations

1. The proposed development is located in a small parade of retail units which has the zoning objective Z3 – to provide for and improve neighbourhood facilities. In addition, section 16.25 of the Dublin City Development Plan 2016-2022 sets out policy with regard to takeaways which includes the consideration of the number and frequency of such facilities within a 1km radius of the proposed development and the context and character of the street and to encourage a range of retail shops in such neighbourhood centres. This small neighbourhood centre currently accommodates two take-away with a third within a short distance. The proposed

new takeaway would result in the loss of a retail unit and associated daytime use and would create an over-concentration of takeaways uses to the detriment of the vitality and range of retail uses in the neighbourhood and would therefore conflict with development plan policy for such uses and the proper planning and sustainable development of the area.

2. The proposed development, by itself and in conjunction with existing takeaway businesses in the area and by reason of its nature and hours of operation is considered likely to generate odour, noise and disturbance that would cause serious injury to the residential amenities of the adjoining residential development at first floor level at 25 Malahide Road. Furthermore the Board is not satisfied that the proposed development can satisfactorily address waste management and would therefore pose a risk to public health. The proposed development would therefore be contrary to the provisions of the development plan for takeaways as set out in in section 16.25 and would be contrary to the proper planning and sustainable development of the area.

Suzanne Kehely
Senior Planning Inspector

5th November 2019