



An
Bord
Pleanála

Inspector's Report ABP-305539-19.

Development	Alterations to site layout to provide an additional 10 car parking spaces and extension to opening hours to 23.00.
Location	McDonald's Restaurant, Kinsale Road / Tramore Road, Ballyphehane, Cork .
Planning Authority	Cork City Council.
Planning Authority Reg. Ref.	19/38537.
Applicant	McDonald's Restaurants of Ireland Limited.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party
Appellant	McDonald's Restaurants of Ireland Limited.
Observer	None.
Date of Site Inspection	16 th January 2020.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is located adjacent the old Kinsale Road which is now bypassed by the South City Link Rd, which is the main connection in the area to the N40, the main bypass of the city. The Kinsale Road remains a significant distributor in the area nonetheless and is directly connected to the N40 roundabout to the south.
- 1.2. This is an area of mixed development. To the west is the remains of the old sportsground from which the subject site was originally taken. This continues to function as a vibrant facility and home to Munster rugby. The opposite side of the road is taken up with a mix of small developments including the petrol filling station. I would describe those lands as largely underperforming and potentially ripe for the development. To the north-east is a residential housing estate. There is also significant retail use in the area primarily to the south close to the junction with the N40.
- 1.3. The site itself commands a 200 m frontage along the western part of Kinsale Road. It is a narrow plot and at its southern end is landscaped but it is otherwise significantly developed with the existing McDonald's restaurant. The overall site area is 0.441 ha. The typical width of the site is only 25 m. The vehicular entrance to the site is by way of the left in left out only entrance.
- 1.4. Photographs which were taken by me at the time of inspection are attached.

2.0 Proposed Development

- 2.1. Permission is sought for:
 - An alteration to the site layout to provide an additional 10 car parking spaces.
 - An extension of opening hours from the permitted hour of 23.00 to a proposed hour of 00.00.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for the reasons summarised below:

- Having regard to the scale and nature of the permitted development and the existing road layout, the proposed increase of on-site car parking spaces would have a negative impact on traffic safety in the area and result in excessive traffic congestion in the area and therefore contravene materially paragraph 16.112 and table 16.8 of the development plan in relation to the provision of car parking spaces and would endanger public safety by reason of traffic hazard.
- Having regard to the zoning objective to protect and provide for residential uses and residential amenity it is considered that the proposed extension of opening hours would have a negative impact on the residential amenities of the area and depreciate the value of property in the vicinity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the **Senior Planner** dated 4th of September 2019 concurs with the recommendation of the Senior Executive Planner and Executive Planner.

The **Executive Planner's report** notes the zoning objective for the site and the fact that the provision and protection of residential uses and residential amenity is a central objective of that zoning. The comments of the third party objector, the recommendation of the roads design and the traffic and transport sections and the planning history are outlined.

In addition it is stated

- Based on the development plan standards there is already in excess of car parking provided for this development and that the existing space is adequate to serve the local community as a 'local service'

- The left in left out arrangement is regularly flouted as shown in attached photographs and any further car parking would generate additional traffic which would exacerbate existing traffic issues which are of concern including for pedestrians and cyclists and public safety.
- The Board previously permitted a maximum of 42 car parking spaces.
- Further erosion of the soft landscaped buffers on would erode the visual aesthetics.
- Under the original condition the opening hours were restricted to 0700 – 2200 in the interest of residential amenities and subsequently extended until 2300 by An Bord Pleanála.
- The extended opening hours would adversely affect nearby residential areas and intensify incidents of noise and traffic at a location that is not designated as a commercial, district, local or neighbourhood centre.
- No development contribution would apply.
- Permission should be refused.

3.2.2. Other Technical Reports

The report of **Road Design (Planning)** indicates that the car parking accumulation survey was undertaken during a neutral time period and the 85% occupancy rate is generally regarded as the practical limit for utilisation during a neutral time period. The development which is open 16 hours per day and the car park is theoretically over capacity for less than 1% of the opening times of the development. The application is an unnecessary overprovision of car parking. Oversupply of car parking spaces will be contrary to objectives to control the supply of all parking in the city and to encourage and facilitate cycling and walking. There is ample free and cheap car parking in the area.

Permission should be refused as the proposed car park extension does not comply with the development plan parking standards.

The **Transport and Mobility report** in referring to the transport and traffic assessment (TTA) submitted with the application notes:

- Extension does not comply with development plan parking standards.

- Traffic surveys did not cover a full week and does not reflect how the development operates during a full week.
- The TTA does not clarify if the junction survey includes background traffic on Kinsale Road.
- Pedestrian and cyclist data was not included.
- Existing approvals were not included.
- There is no reference to where the 85% figure comes from.
- Other comments include absence of provision for electric vehicles and for motorcycles.
- Permission should be refused for these reasons.

The report of the **Drainage Division** indicates no objection subject to connection of storm / surface water to the existing drainage and to the disposal being restricted to existing rates.

The report of **Irish Water** indicates no objection subject to conditions.

The **Environment** report indicates no objection subject to conditions.

3.3. **Prescribed Bodies**

The **Health and Safety Authority** outlines the remit of its technical advice and notes that the application appears to be outside of the scope of the regulations.

3.4. **Third Party Observations**

A letter of objection received from the occupant of 12a Slieve Mish Park states as follows:

- the quantum of parking spaces is correct as has previously been assessed and the applicant has not provided compelling reasons for more spaces
- headlights from the existing car park create confusion to motorists on the main roads and increased parking will cause more of these incidents
- the left in left out is being openly flouted including by delivery trucks

- activity at the restaurant extends to early morning deliveries and to half an hour after closure
- the nearby petrol station operates from 0900 to 2000 on weekdays and not 24 hours
- other developments which are claimed to be in situ are not in fact operating or not operating as stated
- the impact of the existing restaurant extends far beyond the boundary of the premises and several hundred houses are affected by litter and smells and by large numbers of teenagers during the summer months
- the activities which the applicant states will be serviced by the extended opening hours have crowds dissipated before 2300
- the current operation is barely tolerable and no changes in the number of car parking spaces are opening hours should be permitted
- photographs are attached.

4.0 Planning History

Under PL28.244280 the Board issued a split decision in relation to this facility, which was at the time under construction.

Permission was granted for an extension of the opening hours to 2300. Permission was granted for additional parking but limited to an increase from 30 to 42 spaces and a standard entrance arrangement.

Permission was refused for a full access junction and signage.

The parent permission is a decision of the planning authority under TP13/35825. A first party appeal was withdrawn.

5.0 Policy Context

5.1. Development Plan

Under the **Cork City Development Plan 2015-2021** the site zoning is 'Residential, Local Services and Institutional Uses'. The land to the west is zoned 'Sports Ground' and at the opposite side of the Kinsale Road 'Retail Warehousing'.

The area is within **car parking Zone 3**. Table 16.8 sets out a maximum standard of **1 space per 20 net square metre for cafes, restaurants and take-aways**.

Policy 16.107 states that the standards are set as maximums in order to constrain car trip generation and promote patronage of 'green' transport modes.

Policy 16.112 identifies the extensive area of the city which falls under Zone 3.

There is an objective to develop a vision for the Tramore Road / Kinsale Road area under Objective 14.5, which would include the identification of suitable uses and appropriate quantum of development and taking into account potential impacts on the adjoining national road and the provision of sustainable modes of transport.

6.0 The Appeal

6.1. Grounds of Appeal

The main points of the appeal are as follows:

- The site is surrounded by a variety of uses in the immediate vicinity and the wider area including premises which operate on a 24-hour basis.
- Under the zoning objective the provision and protection of residential amenity is a central objective and there is also provision that new local and neighbourhood centres or the expansion of some of these are under consideration provided they meet criteria set out. Other lands in the vicinity are also zoned for this objective. The context is a variety and complex zoning pattern within which the existing Macdonald's restaurant is within a business mixed-use local centre.

- The development has been driven by customer need for additional parking and a demand for late-night services.
- Regarding reason 1 and the proposed total number of car parking spaces of 52 including a new turning head and supplementary landscape planting the report of AECOM refers.
- There is some queueing at peak business times for McDonald's which does not necessarily correlate with peak traffic times. The application for additional car parking spaces is in response to traffic management requirements.
- Any other car parks in the area are not under control of the applicant and the comments of the Council's officials in this regard are referenced.
- The applicant has reiterated the need to comply with the road layout to delivery drivers.
- There is a requirement that this type of development including the drive-through component should be considered on its own merits as it is a *sui generis* use and the Board took such an approach under PL 04.23 8937. Comments from the Inspector's report related to that site at Ballincollig are provided. Parking in excess of development plan criteria was considered appropriate.
- Regarding the extended hours of opening this would be in line with other facilities which are named and which operate to midnight or beyond and which are located adjacent a higher quantum of residential development.
- The closing time of midnight would give additional options including for emergency service personnel, taxi drivers and others.
- The dominant uses in the vicinity are non-residential. There would be no effective difference in residential amenity impacts. Reference is made to the existing barriers and to tree planting which has matured and filled out to provide extra screening. The additional parking spaces will encourage use of the site rather than on street parking nearby.
- The recent permission granted for an indoor training facility at the rugby grounds to the north-west as referenced. Condition 10 implies that the centre

may open at least until midnight as there is a restriction on the playing of live music beyond that hour.

- The context has changed in the last two years and is likely to continue to change due to the new training facility and other anticipated developments and there is a demand for the increased parking and extended opening hours.
- On a national basis McDonald's has not generally been restricted to development plan standards but each site has been considered on its own merits and locational context.
- The additional parking would alleviate current queueing for the restaurant and the drive-through facility.
- Regarding landscape and biodiversity it is proposed to increase and intensify the planting to the south of the site.

Amongst the comments in the **AECOM report** attached are:

- Regarding the existing access arrangements this was not the preferred arrangement favoured by the client who has proposed a full junction arrangement, which was refused permission under PL 28.244289.
- The subject development will not result in any increase of floor area. The provision of extra parking will not result in an intensification of vehicle trips. It will not therefore exacerbate road safety concerns at the site access.
- The existing junction arrangement, signage and traffic management measures prohibited right turn movements and any illegal activities is principally a matter of enforcement.
- Collision analysis information for the years 2005 to 2015 indicates no serious collisions. The subsequent years are not yet available on the website.
- The junction turning count surveys submitted with the planning application indicate that the peak operational time for the development was during the lunchtime period over the four days of survey (Thursday to Sunday).
- A The TTA was undertaken based on the assessment of the proposed parking and the TRICS database for comparable sites.

- The impact of the theoretical maximum traffic flows which could be generated by the additional parking spaces is minimal when compared with the background traffic. The development can be accommodated without any resultant congestion or traffic safety issues.

6.2. **Planning Authority Response**

The planning authority has indicated that it has no further comments.

6.3. **Observations**

None.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. I propose to consider the following in my assessment of this appeal:

- the need for and suitability of additional parking at this site
- the suitability of the extended opening hours
- the planning history specifically the decision of the Board under PL 28.244280
- the issue of material contravention of the development plan standards.

7.1.1. Regarding the **additional parking proposed** I consider that there is merit in the argument that the site specific issues dominate in this case. In particular I refer to the existence of left in left out entrance, the need for that entrance arrangement and the planning history which shows a strong pattern of restricting parking at this location.

7.1.2. The site is located in a heavily trafficked area close to a major junction of the South City Ring Road and the presence of a McDonald's drive-through restaurant would appear to be a considerable draw in this area. I consider it reasonable and appropriate given the current layout of the main road that a development of this nature, be regulated as it is and I would describe the entrance arrangement as restrictive insofar as it limits options for motorists. The matter of alternative

arrangements specifically a full standard junction arrangement was considered in detail under PL 28.244280 and was rejected by the Board.

- 7.1.3. The appellant notes that there is no additional floor area and in that context states that the extra parking will not result in an intensification of vehicle trips and will not therefore exacerbate road safety concerns at the site access. The stated purpose is to alleviate congestion. However, as assessed by the planning authority's engineer's there is demonstrated to be very limited congestion (a theoretical exceedance of parking standards for 1% of the time). This has to be balanced with the objective which is set out in the development plan to promote green transport policies. In addition in my opinion there has been no strong case made by the applicant in relation to the levels of congestion and no accident results for the duration of operation are available.
- 7.1.4. It is the stated position of the appellant that the existing junction arrangement, signage and traffic management measures prohibit right turn movements and any illegal activities is principally a matter of enforcement. I would also suggest however that there is a strong role in ensuring that the physical environment guide and control traffic movements.
- 7.1.5. As it is the entrance arrangements allow for customers from one direction only. There is no similar facility at the opposite side of the road in the immediate vicinity. In the circumstances and noting the evidence provided by the planning authority in relation to flouting of the existing arrangements, I consider that the decision to refuse permission is reasonable. In this regard I consider that the development and the additional trip generation would constitute an intensification of use at this site. I consider that the balance of evidence supports the arguments presented in the internal reports of the planning authority including that an increase in parking would give rise to some conflicting traffic movements at a busy route and that it is appropriate in terms of traffic safety to limit the parking on site.
- 7.1.6. In relation to the **development plan standards** this proposal constitutes an over-provision, which matter is reasonably considered in the planning authority reports and which is not particularly disputed in the appeal. Regarding the argument that the use is a *sui generis* use and that throughout the country McDonald's restaurants has not been limited by development plan standards, I consider that neither claim should

guide the Board in this case. There is a clear development plan policy which provides for one car parking spaces per 20 m² of net floor space of development and on that basis the facility is already well provided with parking. Taking into account the specific constraints which have been correctly imposed on the entrance and given the existing road layout which lacks any barrier in the median, I recommend that the decision of the planning authority be upheld and that the permission for additional car parking be refused.

7.1.7. Regarding the matter of **extending the opening hours** to midnight it is appropriate to reference the complex and mixed character of the area. I note the comments of the third party observer in relation to pedestrian activity associated with late-night use of the restaurant in particular during school holidays in the summer period. I note also the reference on behalf of the first party that provision of parking on site would be preferable to customers parking in nearby streets and it is reasonable to assume that that would happen from time to time. I consider that the matter of the additional opening hours is one which is reasonably finely balanced. On the one hand the site does adjoin a fairly heavily trafficked route and is in a very mixed area. On the other hand the nature of the uses in the area for the most part will not generate any noise or disturbance in the late evening and indeed most (including the petrol filling station across the road) would be long since closed by 23.00, which is the existing hour of closure for the McDonald's. I consider that the existing hour of operation in the late evening, which was recently extended by the Board under the decision of PL28.244280 constitutes a reasonable hour of closure in place area given the zoning objective of the site which promotes residential amenities and provides for local services and institutional uses. On this basis I recommend that the decision of the planning authority be upheld.

7.1.8. I now address the specific wording of the decision of the planning authority and the reference to the proposed development which would '**contravene materially**' paragraph 16.112 and table 16.8 of the development plan in relation to the provision of car parking spaces. The stated gross floor area of the development is 432 square metres and the net floor area is stated in the AECOM report of June 2019 to be 180 square metres resulting in a requirement under the development plan standards of 9 no. car parking spaces. There are presently 42 car parking spaces. An additional 10 no. parking spaces would contrive materially the provisions of the development plan,

which specifies that these standards are maximum. The Board did not follow through on the issue of material contravention under the previous appeal and I have taken that into account in my recommendation below.

7.1.9. The **Board under PL28.244280** has previously considered a proposal to increase the number of parking spaces at this site and decided in 2015 to permit only 42 spaces in lieu of the proposed 57 number spaces. The decision also allowed the applicant to extend the opening hours to the requested time of 23.00. I consider it reasonable in the context of this assessment to include consideration of any **materially changed circumstance** which would warrant the increased car parking in particular.

7.1.10. The appellant's submission has referred to the changing character of the area including in relation to some recent permitted developments. The focus of the statements in this regard however are related to the demand for the increased parking and for the extended opening hours. I would not dispute the applicant's comments in this regard. However, I do not accept that the recent permissions including for the indoor training rugby facility have changed the planning context for the Board's decision. The largely mixed nature of the area together with the site specific and over-arching development plan policy for the area is largely unchanged and there has been no diminution in the residential element.

8.0 Recommendation

8.1. I recommend that the Board refuse permission for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. Under the provisions of the Cork City Development Plan the site is located in an area for which a maximum parking standard of 1 space per 20 square metres applies and which standard is set as a maximum level in the interest of promoting sustainable modes of transport. It is considered that there is already a significant exceedance of parking above the development plan standards at the existing facility and that the provision of an additional 10 no. spaces would lead to an intensification of use of the facility, which would be

likely to give rise to conflicting traffic movements in the area. The proposed development is not therefore in the interest of the proper planning and sustainable development of the area.

2. The site is within an area which is zoned for Residential, Local Services and Institutional Uses. The Board is not satisfied that the proposed extended opening hours would not militate against the protection of residential amenities in the area, be compatible with the zoning objective for the site or in keeping with the character of the area and therefore considered that the proposed development is not in the interest of the proper planning and sustainable development of the area.

Mairead Kenny
Planning Inspector

21st January 2020