



An
Bord
Pleanála

Inspector's Report ABP-305805-19.

Development	Change of use from retail to restaurant and staff accommodation.
Location	Unit 3, Block K, The River Centre, Rathborne Place, Dublin 15.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3729/19.
Applicant	Wenqin Chen.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant	Wenqin Chen.
Observers	1. David Farrell. 2. Patricia O'Higgins and Brian O'Higgins. 3. William Byrne. 4. Michael Connolly.
Date of Site Inspection	25 th of February 2020.
Inspector	Mairead Kenny.

1.0 Introduction

The Board is referred to a similar case related to another unit in the vicinity – ABP-305957-19. Concurrent consideration of the appeals may be appropriate.

2.0 Site Location and Description

- 2.1. The subject site is unit three, Block K, the River Centre, Rathborne Place which is in the strategic development area of Pelletstown. The applicant submission indicates that approximately half of the available land in this development and regeneration area has been put in place with over 2,000 new residential units constructed. There are large undeveloped sites in place in addition.
- 2.2. The subject unit is in a small neighbourhood type centre where existing uses include a medical centre, gym, childcare facility and shop. The commercial units are in a wedge shaped block which fronts onto Rathborne Place to the south where the façade of residential buildings are 16m from the site. To the rear are residential units which face towards the subject site with a separation distance of approximately 12m from the balcony edge to the rear of the subject unit.
- 2.3. The stated overall area of the building is 223.8 m². I did not access the interior of the building but the floor plans submitted describe the interior as containing a mezzanine above the ground floor over which the first floor is located.

3.0 Proposed Development

- 3.1. Permission is sought for development which may be summarised as follows:
 - change of use of ground floor retail to restaurant with ancillary takeaway (67.8 m²)
 - provision of 158.3 m² five bedroom staff accommodation unit at first (mezzanine) and second floor associated with the restaurant/takeaway use
 - the first floor layout would comprise a kitchen / dining area of 46.5m² with three store rooms off that area and a 5 m² bathroom accessed off the landing
 - the second floor would be laid out to provide 5 double bedrooms one of which would be en-suite and one 5m² bathroom

- construction of an additional 6.7 m² by removal of a void.
- mechanical plant extracting to ground floor level at the rear laneway
- other minor modifications including to rear elevation.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to refuse permission for the following reason:

- Having regard to the proximity to residential property including balconies, to the layout and extent of the premises and the very confined area for sit-down restaurant use and for servicing including bin storage and the predominantly take away use at ground level, the proposed development would seriously injure the amenity of nearby residential property by reason of noise, disturbance and odours.
- Having regard to the absence of private open space to serve the proposed 5 bedroom residential unit, the proposed entrance to the unit by way of a narrow gated services laneway, the development is not in compliance with Ministerial guidelines and would provide substandard residential amenities.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The planner's report includes the following comments:

- Limited information submitted with the application and limited changes since previous refusals.
- The takeaway will be the main use of the ground floor and the application is subject to section 16.25 of the development plan. Details relating to potential impacts on noise, hours of operation, litter, odour and mitigation measures or details of frequency of such facilities in the area are not provided. Inadequate details relating to ventilation and storage of waste is provided.

- The location is within a predominantly residential area. The planning authority has significant concerns relating to potential impacts of the takeaway in terms of noise, odours and traffic impacts.
- The residential development is a 10 person unit which reads more as a communal living unit without internal or external communal open spaces. In its current form there is insufficient levels of accommodation to ensure appropriate levels of amenity for potential occupants.
- Regarding the suitability of the building in terms of its design and quality of materials and the relatively limited retrofitting proposal, the proposed development does not provide residential accommodation of sufficient high quality design and amenity.
- Permission should be refused.

4.2.2. **Other Technical Reports**

Road Planning Division

Considers that the main use will be a takeaway and not a restaurant. Some dual usage of the 12 spaces to the front of the block would be anticipated. It is envisaged that the majority of trips to the restaurant would be on foot. Nevertheless clarity is required in relation to the proposed use.

Drainage Division

No objection subject to standard conditions.

4.3. **Prescribed Bodies**

No reports.

4.4. **Third Party Observations**

A large number of third-party objections were received and the issues raised may be summarised as relating to the following:

- Nature of use is inconsistent with residential areas in the vicinity.
- Adequate provision of takeaway uses in the area.

- Very limited parking in the area. Would give rise to traffic safety and congestion issues. Area already congested during periods of time when people visit gym/crèche.
- Odours will impact residential amenity.
- Area is sufficiently served with takeaway uses. The use will attract antisocial behaviour.

5.0 Planning History

Reg. Ref 4289/00 (PL29N.126649) relates to a **10 year permission for a mixed-use** development comprising 593 dwellings, for a crèche, community facility, leisure centre, retail units and for vehicle access and traffic management improvement measures, measures relating to surface water attenuation, and other works on a 20.5 ha site adjacent Pelletstown House, known as Pelletstown.

Reg. ref 3351/03 relates to **amendments to Block K** (previously permitted under reg. ref 4289/00) was granted permission by the planning authority. The main elements of the proposal included provision of a community facility, gymnasium, crèche, three number single story commercial/retail units, a separate two-storey commercial unit, other development including a service access to the rear of the commercial units by way of a new access road to the east of Block K and other works.

Under ref. ref. 3279/05 (PL 29N.215457) the **Board refused permission for a change of use of the existing retail units in Block K to restaurant / retail**. The reasons for refusal related to:

- Additional traffic movements, distance between the proposed use and residential units, impacts of noise, traffic and general disturbance would contravene the development plan, would endanger public safety by reason of traffic hazard and would seriously injure the amenities and depreciate the value of property in the vicinity.
- Having regard to the limited seating area and the substantial percentage of deliveries it is considered that the restaurant use would be ancillary to the

overall development, which would be predominantly a takeaway. Takeaway use not permissible under the zoning.

Reg. ref 3306/08 (PL 29N.230894) relates to alterations and change of use of permitted retail unit no. 3 in Block K, which had been subject of the above applications. The development provided for change of use of permitted retail unit no. 3 of 168 m² from retail use to restaurant use with ancillary takeaway. This included provision of a mezzanine floor area of 68 m² to form part of the restaurant. The decision of the Board to refuse permission had regard to the proximity of residential property including balconies, the layout and extent of the premises, the very confined space for servicing / storage, together with the nature and scale of the proposed restaurant use would adversely affect the amenity of nearby residential property by reason of noise, disturbance and odours.

6.0 Policy Context

6.1. Development Plan

Dublin City Development Plan 2016-2022

The site is zoned Z14 the objective of which relates to rejuvenation areas with mixed uses. Restaurants are 'Permissible' and takeaways are 'Open for Consideration'.

Section 16.25 and section 16.29 relate to takeaways and restaurants.

Policy relating to residential standards are in section 16.10.1 and 16.10.3 and to mixed development in 16.10.11.

A **Local Area Plan** adopted in 2013 was extended to December 2023.

The River Centre is described in section 4.3.2 as serving local needs and being secondary to the Village development at the western node (close to the railway station). All new mixed-use areas should contribute to active streets and quality public realm. Ground floor shops, café's and restaurants can add vitality and there is also scope for additional office development. There is no explicit reference to takeaway uses.

6.2. Natural Heritage Designations

No Natura sites in the immediate vicinity of the site.

7.0 The Appeal

7.1. Grounds of Appeal

The main points of the third party appeal are summarised below:

- The uses will ensure vitality and movement is maintained throughout the day and evening time.
- The residential unit is deemed to be permissible and acceptable in principle and the proposals for staff accommodation accord with the guidance.
- The uses are in line with the zoning.
- The layout is indicative only.
- There is no increase in parking demand in terms of the development plan standards. Users of the restaurant will be from the locality.
- The provision of staff accommodation is a significant planning gain reducing the need for car use and promoting a live work environment.
- There is no requirement for open space as the proposal is for non-permanent staff accommodation and is proximate to areas of public open space.
- The quantum of living space per bedspace is appropriate on a pro-rata basis. The building will be retrofitted internally.
- The applicant will ensure proper waste management. Litter control will be agreed with the planning authority.
- A detailed specification and drawings on the effective control of fumes and odours will be agreed prior to commencement of development.
- Any extraction system will be properly installed in order to safeguard the amenities of adjoining premises and general surroundings. Noise levels when all plant is operating shall not exceed the LA90 by more than 5 dB (A).
- It is proposed that the hours of operation would be 8 AM to 12 midnight.

7.2. Planning Authority Response

No detailed response received.

7.3. Observations

The observers raise common themes and are summarised under thematic headings.

Planning History and Nature of Development

- Previous refusals are noted. Permission for a restaurant was refused under 3306/08 by An Bord Pleanála.
- This proposal is the most intrusive of all four applications involving a residential unit and opening hours to midnight.
- The submitted plans clearly indicate a takeaway.

Development plan policy matters

- The quoted phrase from the development plan section 14.8.4 relates to District Centres. The centre is a neighbourhood centre and not suitable for this use.
- The takeaway policy is relevant. This is 'open for consideration'.

Traffic and Parking

- This is clearly a takeaway. It will be patronised by people using cars. It is not accepted that there will not be a delivery service.
- The Spar shop already results in conflict between residents and shoppers due to inadequate parking. The takeaway would exacerbate this.
- Parking demand from the residential unit has not been addressed.

Regarding the impact on **existing residential amenities**:

- The late evening / night use would give rise to disturbance and interfere with sleep.
- The narrow nature of the streets is a relevant consideration.
- The appeal points relating to odours, ventilation, litter management and patronage are refuted.

- The burden of litter management in this area which is not in charge already falls partly to residents. Litter impacts from the takeaway are inevitable.
- The expelling of fumes / odours at high velocity will not limit impacts on residential properties which are higher than the subject building. Management of measures cannot be relied upon.

The residential unit proposed:

- The unit would lack residential amenity for future occupants. No open space.
- Its entrance by way of a congested bin storage area is unacceptable and could pose a risk to safety in event of a fire.
- The building is unsuitable and inappropriate for residential use.
- The meaning of 'non-permanent' accommodation is unclear.

8.0 **Assessment**

I consider that the issues arising may be summarised as relating to:

- Nature of ground floor use and policy provisions.
- Related issues.
- Residential unit.
- Traffic and parking.

Nature of ground floor use and policy provisions

I consider that it is reasonable to conclude that the development which is described as a restaurant with ancillary takeaway would be dominated by a takeaway function. This conclusion derives from the floor plans submitted with the application, which shows a counter separating the kitchen and serving area and a relatively small area available for seating. The appellant refers to this as an indicative layout. However, the layout shown is that which would have to be implemented in the event that permission is granted.

Based on the above I consider that the policy provision relating to takeaways is most relevant. The use would be 'open for consideration' in his zone. It is therefore subject

to assessment based on compatibility with the overall policies and objectives and not having undesirable effects on permitted uses.

I am of the opinion that River Centre would reasonably be described as a neighbourhood centre in terms of its nature and scale and that the dominant character of this area is residential. It is relevant to note the western anchor of the Village area where there is a more significant commercial area including a Supervalu and the LAP description of the River Centre as for local needs. The site is served by a narrow street network.

To the north there are open balconies and the façade of an apartment block about 12m away. I consider that the late night operation of the takeaway restaurant would be likely to give rise to significant noise and disturbance to those residents by reason of use of the rear lane for bin storage and potentially as a smoking area / congregation area for staff. A 12m separation between residential units would not be considered sufficient and overlooking cannot be ruled out in the absence of details relating to the building upgrade.

To the south there are residential units separated by about 16m from the entrance. I consider that the proposed takeaway restaurant use would impact these residents by reason of the significant increases in vehicular traffic and pedestrian activity in the evening and night-time. Such noise and disturbance would be out of character and not in keeping with the proper planning and sustainable development of the area.

The policy set out in section 16.25 of the development plan also identifies matters which I consider are relevant to the assessment of the impact on residential amenities and which have not been addressed in the application submissions including:

- Prior agreement with DCC relating to litter management.
- The need to integrate ventilation systems into the building, which is not shown on the drawings.

I consider that the nature of the use when considered in this particular context is unlikely to enhance the vitality and viability of this small neighbourhood centre.

To conclude, I consider that for the above reasons relating to the impact on nearby residential properties I consider that the proposed development contravenes the

zoning objective and policy relating to takeaways. Therefore, reason 1 of the decision of the planning authority should be sustained.

Related issues

I note the submission of a technical report which relates to the mechanical ventilation and extract services. This refers to the kitchen extraction which is proposed to be ducted to 500 mm above roof level. The ducting will be placed through a fire compartment within the building and the system would be fitted with carbon filters and odours dispelled at high velocity thus minimising their detection in the vicinity. The extract system would be designed to allow maximum noise level of 35 dB. While elements of the technical report are shown on the application drawing I am satisfied that these matters are open to a technical solution. In the event that the Board decides to grant permission I recommend that detailed design be agreed with the planning authority prior to commencement of development and that the installed system and its performance be verified to the planning authority prior to occupation of the ground floor unit.

The Board may wish to consider whether it would be appropriate in this case to grant permission for a restaurant use and to omit the proposed takeaway use by condition. I have considered this option and do not recommended it in this instance. No such suggestion has been made by the first party in the appeal submission and I find that there is nothing to indicate that this would be a sustainable solution.

I have had regard to the appeal submission that there is no intention to provide a delivery service but note that such services can operate independently.

The application submission notes the requirement for fire safety certificate which will be lodged and the planned upgrading of the building from the inside. It is considered that the development successfully re-integrates an existing vacant building back into the community. I agree that the full functioning of this vacant unit would be welcome but I am unconvinced about the merits of the development in the absence of more detailed design information. For example, it is not clear whether windows would need replacement or whether there would be a need for any other modifications which would affect the external appearance of the building.

Finally, in my recommendation above I have had regard to the planning history, outlined in detail above. I note that the Board has previously referenced the proximity

of residential property to the block. I consider that there are no significant changes in the current application which would warrant a reversal of the approach of the Board to developments of similar nature in this block.

Residential unit

The proposed residential unit is described as 'non-permanent' and intended for occupation by staff of the restaurant. It is for this reason that the appellant considers that the absence of private amenity space is acceptable. While the concept of short term accommodation for use by workers has gained a place in planning policy it is in specific contexts. The proposed residential unit is located in an area of full time residential occupancy, is a separate self-contained unit and in my opinion should be assessed as a conventional residential unit.

In principle and in terms of the area of the apartment and the size and number of the various rooms, I have no objection to the development. I also note that there is ample provision for public space in the area.

However, given the potential occupancy of the development (10 persons) it is not in my opinion acceptable to provide a residential unit which is completely devoid of any private open space. The use of the bin lane / storage area as the main access further adds to my concerns relating to the residential amenity of the proposed development. For these reasons I consider that reason 2 of the decision of the planning authority should be upheld.

Traffic and Parking

In response to concerns which were raised by third party objectors relating to traffic impact and parking congestion the Road Planning Division accepted that a degree of dual usage of the 12 spaces in front of the neighbourhood centre would be likely. It was also noted that the crèche and medical centre operate predominantly during daytime hours. I consider that there would be likely to be some conflicts in terms of uses in the early evening in particular when residential uses, patronage of the takeaway and visits to the gym would coincide.

The Roads Planning Division consider that there was a lack of clarity relating to the nature of the proposed use and recommended further information relating to current parking management strategy operating at the centre and in relation to the development whether a delivery service would be provided. The latter point has been

addressed. However, I consider that the applicant has not demonstrated that there is spare parking capacity at the relevant hours and in particular I note the absence of any site specific surveys or other relevant information. I consider based on my inspection and the comments of the third parties that there are grounds for concern and that further information on this matter is warranted in the event that the Board is minded to grant permission.

9.0 Recommendation

9.1. I recommend that permission be refused for the reasons and considerations below.

10.0 Reasons and Considerations

1. Having regard to the nature of the River Centre as a local centre, the narrow road network, parking arrangements and the predominantly residential nature of the area, it is considered that the proposed use as a take-away food outlet would seriously injure the residential amenity of property in the vicinity, by reason of late-night activity, noise and general disturbance associated with such use. The proposed development would, therefore, be contrary to the zoning objective and the policy for takeaway uses as set out in the Dublin City Development Plan and would not be in accordance with the proper planning and sustainable development of the area.
2. The proposed residential development, which would have a potential occupancy of 10 persons, by reason the failure to provide a satisfactory means of access to the apartment and the absence of private amenity open space, would result in a substandard form of development and would, therefore, seriously injure the amenity of property in the vicinity and be contrary to the proper planning and sustainable development of the area.

Mairead Kenny
Senior Planning Inspector

28th February 2020