



An
Bord
Pleanála

Inspector's Report ABP-305957-19.

Development	Change of use from retail to restaurant with ancillary take away and ventilation extraction to front.
Location	Block K, The River Centre, Rathborne Place, Dublin 15.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3890/19.
Applicant	Colm Wu.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant	Colm Wu.
Observers	1. Brian O'Higgins and others. 2. William Byrne. . 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-305805-19. Concurrent consideration of the appeals may be appropriate.

2.0 Site Location and Description

- 2.1. The subject site is in Block K, the River Centre, Rathborne Place which is in the strategic development area of Pelletstown. The available information 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 unit is 91.4m². I did not access the interior of the building.

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 (91.4 m²)
 - mechanical plant extraction to ground floor level at the front.

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.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The planner's report includes the following comments:

- The submitted plans indicate some areas for seating. The design statement refers to the use as a ground floor takeaway while in the report refers to the use as Ashtown Pizzeria. It is considered that the pizzeria's main function would be for delivery/takeaway purposes. It is considered that the takeaway is not an ancillary use.
- With respect to ventilation, waste and other services details of the relevant report are noted.
- The application site is in a predominantly residential area. There is a mix of residential units opposite the subject retail unit at a minimum distance of 16.4 m. Four story apartments are to the rear at a distance of about 16.9 m and include balconies. The planning authority has significant concerns relating to potential impacts in terms of noise, odours and traffic.
- The intended opening hours of the takeaway facility have not been described. There is the potential for inappropriate levels of noise within a residential area particularly during night time.
- Potential litter has not been properly addressed.
- The design statements regarding the intended zero parking strategy is noted. It is accepted that by nature of the existing uses there is a degree of the dual usage of parking spaces. Based on the location of the unit within very close proximity to dwellings the planning authority has concerns relating to envisaged traffic impacts including the absence of a parking management

strategy, potential for delivery service and potential frequency of service vehicles.

- Permission should be refused.

4.2.2. **Other Technical Reports**

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.
- Concerns relating to obesity.
- Businesses in the unit close at 10 PM at which point noise levels reduce. Ventilation to the front will result in noise and odour.
- Area is sufficiently served with takeaway uses. There are other uses which would be suitable.
- The nature of 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 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 Transport Planning Division did not report on the application. This zero parking strategy will ensure support for public transport without adding to congestion or increasing pressure. A controlled parking zone exists. There is existing bike storage.
- The applicant will ensure proper waste management. Litter control will be undertaken after hours once the premises is closed. The units of access to the external lane which is used for bin storage and deliveries. Access is also available on to the front. The bins will be taken directly from the proposed bean enclosure emptied and returned. Smaller deliveries can be made from the front. Agreement regarding off-peak use can be made.
- Detailed information has been submitted with regard to mitigation of odour concerns and further information is presented herein. 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). Agreement on these operational issues would be standard. 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. There is no change in circumstance.
- 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'.
- Interested parties can only comment based on the submitted plans and the floor plans are very clear.
- Even if it was a restaurant permission for such use has previously been refused under a decision of An Bord Pleanála. .

Traffic and Parking

- This is clearly a takeaway. It will be patronised by people using cars. There our already issues with short-term obstructive parking which would increase and would negatively impact on safety of children.
- It is not accepted that there will not be a delivery service.
- There as already a significant problem with parking. The takeaway would exacerbate this.

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. In this context the noise of customers coming and going late at night is a pressing concern.
- 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. Late night litter control would add to noise.

- 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 existing storage area is already congested and adding more storage bins will create health and safety risks.
- The concept of vitality and movement is not appropriate to a narrow and largely residential street.

8.0 Assessment

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

- Nature of use and policy provisions.
- Related matters.
- Traffic and parking.

Nature of 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 reception area. Behind the counter is a single table, in an area which appears to be open only to staff. Within the public area marked as takeaway there is a small counter with 3 no. seats. 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 of the development in close proximity to the laneway which would be used for servicing there are open balconies. The façade of the apartment block is about 16m from the unit. 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.

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.

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, the decision of the planning authority should be sustained.

Related issues

Elements of the technical report are shown on the application drawing I am satisfied that these matters are open to a technical solution. The development could impact on the public realm by reason of noise and odours as the extraction would emit to the front. 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 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.

Finally, it is necessary to have 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 when refusing permission for a restaurant use even. 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.

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 report on the concurrent appeal is noted. The planning authority 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

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.

Mairead Kenny
Senior Planning Inspector

28th February 2020