



An
Bord
Pleanála

Inspector's Report

ABP-307971-20

Development

Retention planning permission to retain indefinitely (i) the existing floor plan layout, (ii) the existing front elevational fascia signage and (iii) the existing food menu - All to trade in a full traditional takeaway and pizzeria format, including the menu for a full range of takeaway food dishes, pizzeria foods, Halal foods and all dishes to include accompanying fried chips.

Location

4 Tyrone Road, Lismore Park,
Waterford.

Planning Authority

Waterford City and County Council

Planning Authority Reg. Ref.

20190

Applicant(s)

Farid Ahmad Mohammad and
Waheedula Nasseri

Type of Application

Permission

Planning Authority Decision

Grant Permission

| | |
|--------------------------------|--------------------------------|
| Type of Appeal | Third Party |
| Appellant(s) | Bleri Malaj |
| Observer(s) | None |
| Date of Site Inspection | 29 th January, 2021 |
| Inspector | Stephen Kay |

1.0 Site Location and Description

- 1.1. The appeal site is located c.1.5km to the south west of Waterford city centre and comprises a ground floor commercial unit in a terrace of 7 no. similar units in the Lismore Park area of Waterford City. The units in the terrace are two storey and in the case of No.4, there is a hairdressers operating at the upper floor. To the rear there is a yard area that is accessed via a laneway that is accessed from the western end of the terrace.
- 1.2. Businesses in the ground floor part of the terrace of units comprise a pub, off licence, bookmaker, mens hairdressers and three fast food takeaways / Chinese takeaway units. To the north, on the opposite side of Tyrone Road from the terrace in which the appeal site is located, is another run of retail units. The uses accommodated in these units comprise a bookmakers, a convenience store (SPAR), a post office (located within the SPAR outlet) and a pharmacy / medical centre. There is a filling station which has a forecourt shop with deli counter located at the junction of Brown's Road and Tyrone Road to the east of the site and further to the east, on the eastern side of Brown's Road is Waterford Shopping Centre. This centre has a take away unit with external access located at the southern end of the centre, however it was closed at the time of inspection and, on the basis of information on file, is no longer operating at this location.
- 1.3. The layout to the front of the site comprises a parking area set back from the road and accessed via two entrances, one at the eastern end of the terrace and one to the west.
- 1.4. The stated area of the unit on the appeal site is 70.43 sq. metres and the area of the site 0.018 ha. .

2.0 Proposed Development

- 2.1. The development which is the subject of the current appeal comprises retention of the following at No.4 Tyrone Road.
 - the existing floorplan layout to the unit,
 - existing fascia signage to the front elevation,

- existing food menu to include full traditional takeaway and pizzeria format including *'a full range of takeaway food dishes, pizzeria foods, halal foods and all dishes to include accompanying fried chips'*.

3.0 Planning Authority Decision

3.1. Further Information

Prior to the issuing of a Notification of Decision, the Planning Authority requested further information on the following issue:

1. Noted that a submission on file from MW Keller and Sons Solicitors which states that they act for the owners of the unit on the application site and that these owners do not consent to the making of the application. Noted that this contradicts the letter submitted with the application and clarification is sought.

In response, the applicant stated that the consent of the property owner was obtained prior to making the application and the relevant letter submitted. Stated that subsequently the owner of the site approached the applicant and stated that consent may have to be withdrawn and a letter to this effect was received from MW Keller and Sons dated 4th July, 2020. Noted that this letter does not withdraw the earlier consent and that the matter is not a planning issue and the application should be processed.

3.2. Decision

The Planning Authority issued a Notification of decision to Grant Retention Permission subject to 7 no. conditions. The most significant of these conditions are considered to be as follows:

Condition No.3 requires the provision of at least one litter receptacle on site that shall be emptied at least daily.

Condition No.4 limits the hours of trading to 12.00 hrs to 23.30 hrs (Sunday to Thursday) and 12.00 hrs to 24.00 hrs (Friday and Saturday) and requires that the kitchen / ventilation system shall not be used outside of these hours.

Condition No.5 requires that operations are undertaken in a manner that does not significantly impact on the environment beyond the site.

Condition No.7 requires that within 4 weeks of the final grant of permission that a waste management plan to be submitted for the written agreement of the planning authority.

3.3. Planning Authority Reports

3.3.1. Planning Reports

Initial planning officer report notes the significant planning history on the site and the fact that the previous application on the site was assessed on the basis of the previous development plan. Stated that an additional takeaway in this location is not considered to be consistent with the zoning objective and not to have a significant impact on residential amenity or on the vitality or viability of the shopping areas in the city. Further information with regard to the consent of the site owner is recommended. A second report subsequent to the submission of further information states that a valid consent was presented with the application and the application is therefore considered to have been validly accepted. Section 34(13) of the act relating to a grant of permission not entitling a person to undertake development is also referenced and a grant of permission consistent with the Notification of Decision to Grant Permission which issued is recommended.

3.3.2. Other Technical Reports

None

3.4. Third Party Observations

An observation was received from the occupier of the adjoining unit at No.3 Tyrone Road. The main issues raised in this submission can be summarised as follows:

- That the application is invalid as the letter of consent that accompanied the application has been withdrawn by the owner of the property on the appeal site.
- That the applicant is knowingly operating an unauthorised take away business. The site is the subject of ongoing court proceedings and there is an extant s.160 injunction against the use.
- That the use sought is the same one as that previously refused permission by the Board under Ref. PL31.240737.
- That there has been no change in development plan policy since the decision of the Board issued in 2012. Similarly, there has been no change to the number of fast food outlets operating in the area and the use proposed in the current application is the same as that previously refused permission by the Board.
- That the applicant has not put forward any changes in circumstances that would justify a reconsideration of the previous refusal of permission.
- That the application is considered to be an attempt to stay further court proceedings.

4.0 Planning History

Appeal Site

As per the reports of the Planning Officer and the first party appeal there is an extensive planning history relating to the appeal site. A full list of the planning applications and enforcement history relating to the site is contained in these documents which are on file. The following planning history is particularly noted:

It is stated that up until 2011, the premises operated as a butchers shop.

Waterford City and County Council Ref. 11/500002 – Permission granted for change of use of the unit from butchers shop to pizzeria incorporating both takeaway and delivery.

Subsequent to this permission it is stated by the first party that the unit was used for a fast food takeaway and that changes made to the layout including the addition of

air ventilation and extraction ducting to the rear elevation. These changes were the subject of enforcement proceedings including warning letter and injunction which was granted.

Waterford City and County Council Ref. 12500046; An Bord Pleanála Ref.

PL31.240737 – Permission granted by the Planning Authority for the retention of the ventilation / extraction systems and for permission for a fast food takeaway and pizzeria. On appeal, the Board issued a split decision with retention permission granted for the air extraction / ventilation system and permission refused for the fast food take away element of the proposal. This was refused for a single reason relating to the current mix of uses in the neighbourhood centre including a mix of takeaway uses and that an additional fast food takeaway would lead to a duplication of such uses such as to impact negatively on the viability and vitality of the centre and would seriously injure the amenities of the area and of properties in the area.

Referral Case

I note that the agent for the third party appellant makes reference in their appeal submission to a Section 5 reference submitted by the occupier of the appeal site seeking clarification that the sale of the following hot food items for consumption off the premises is development and is exempted development: *'wraps, paninis chips, burgers, kebabs, southern fried chicken, pasta, wedges, chargrill chicken and sauces'*.

Stated by the first party that the declaration issued by the Planning Authority was as follows:

The use of the premises for the sale of pizzas and / or pasta main courses, the sale oven baked wedges, chips, chicken or other meat pieces, garlic and other bread and pasta side orders only, hot and cold beverages and desserts are considered consistent with Waterford City Council Planning Ref. 11/2 and as such are considered to be development which is exempt.

No reference is provided with regard to this section 5 referral case and it is not referred to in the report of the Planning Officer. I have not been able to find a record

of any referral case using either the map or work based search on the Waterford City and County Council website.

5.0 Policy Context

5.1. Development Plan

The applicable development plan is the Waterford City Development plan, 2013-2019. This plan has been extended on foot of s.11A of the Planning and Development Act, 2000 (as amended) and will remain in effect until the adoption of a Regional Spatial and Economic Strategy for the Southern Region when a new plan will be prepared.

Variation No.1 of the Plan comprises a revision to the development management section to co ordinate the development management policies contained in the county and city plans and the Dungarvan Town Plan.

The site is zoned for General Business under the provisions of this plan with the following objective: *‘To provide and improve general business uses’*.

Section 8.4 of Variation No.1 relates to take away uses and states as follows:

8.4 Take-Aways, Amusement Centres, Night Clubs/Licensed Premises/Public Houses, Off-Licences, Betting Offices, Casino’s/Private Member Clubs

In order to maintain an appropriate mix of uses and protect night time amenities in a particular area, it is the objective of the Council to prevent an excessive concentration of the above uses and to ensure that the intensity of any proposed use is in keeping with both the scale of the building and the pattern of development in the area. The provision of any of the above will be strictly controlled, having regard to the following where appropriate:

- *The amenities of nearby residents, i.e. noise, general disturbance, hours of operation, litter and fumes.*

- *The need to safeguard the vitality and viability of shopping areas in the city and county and to maintain a suitable mix of retail uses.*
- *Traffic considerations.*
- *The number/frequency of such facilities/events in the area.*
- *The operators come to a satisfactory arrangement with the Council in relation to litter control.*
- *The larger leisure complexes which contain a mix of uses, e.g. cinema, bowling, and restaurant will be treated on their merits.*

5.2. Natural Heritage Designations

The appeal site is not located within or close to any European sites.

The closest European site to the appeal site is the Lower River Suir SAC (site code 002137) which is located within c.1.8 km of the appeal site at the closest point, and the site is located within c.330 metres of the Johns River which is a tributary of this SAC.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the third party grounds of appeal:

- That the conditions attached to the permission do not address the concerns of the appellant and do not restrict the range of foods that can be served as takeaway as per the previous decision of An Bord Pleanála.
- That there is a significant planning history to the site which includes permission being previously refused for fried food take away (Ref. PL31.240737) and a section 5 reference which clarifies the type of food that can be sold from the premises under the terms of the existing permission.

- That the retention application has been made without the written consent of the landowners. During the course of the application, the planning authority highlighted in the further information that solicitors for the owners of the premises had stated that they did not consent to the making of the application.
- That the applicants were aware that to get the consent of the owners to the making of an application they would require that the use of the premises would revert to that permitted (that is as a pizzeria for delivery and take away) and then make an application for planning permission and not retention.
- That the initial letter of consent on file (dated January, 2020) to the making of the application is signed by only one of the owners.
- The Board is requested to dismiss the appeal outright having regard to s.138 of the Act based on the applicant's disregard for the Planning code.
- That the land use zoning of the site has not changed since the decision to refuse permission for the fast food takeaway on the site. Under both the current and previous plans the site is zoned General Business.
- It is noted that the report of the Planning Officer refers to the section 8.4 of Variation No.1 of the development plan as it relates to Take Aways, Amusement Centres, Night Clubs, Licenced Premises, Public Houses, Off Licences, Betting Offices, Casino's / Private Members Clubs. It is noted that this is the exact same wording of Section 11.2.8 of the 2007-2013 Development Plan cited by the Board inspector in Ref. PL31.240737.
- The report of the Planning Officer is therefore considered to be incorrect in implying that the development plan policy has changed since the last application.
- Reference to the substitute consent legislation and that the applicant would have had to demonstrate to the Board that they had not knowingly undertaken unauthorised development. That is not the position in the current case.
- That the report of the Planning Officer does not make any reference to a take away deli use that was operating from a nearby filling station.

- That there has not been a consistency of application of the development plan (between the 2012 application and the current case) and that this is contrary to the provisions of the Development Management Guidelines for Planning Authorities issued by the DEHLG. It is noted that despite changes being made to the text of the report, that it was not countersigned by a more senior planning officer.
- That the appellant was aware of the restrictions on the operation of the adjoining unit (No.4 – the appeal site) when he acquired the lease to the unit at No.3 in 2014. Non compliance at No.4 only started in 2018 and the appellant has an entitlement to enforcement of the original permission as expected and to protection from unfair and unauthorised competition.
- That the condition attached regarding a litter receptacle (Condition No.3) is not feasible as the premises does not extend outside of the unit and take away customers will not return inside to dispose of rubbish.
- That the restriction on hours of operation (Condition No. 4) is contradictory to the previous position of the Planning Authority in Ref. 12200046 where no such restriction was considered necessary.

6.2. **Applicant Response**

The following is a summary of the main issues raised in the first party response to the grounds of appeal:

- Summary submitted of the timeline regarding the original application (Ref. 11/2) and the retention application (Ref. 12/6). Stated that concern expressed by the operator at the adjoining unit at No. 3 (Patrick Brennan) led to the retention application being submitted.
- Noted that the parties behind the appeal against the retention application (Ref. 12/6; ABP Ref. PL31.240737) Patrick Brennan, Jack Cunningham and Marco Cala all had an interest as lessee, owner and sub lessee respectively of Unit No.3.

- Submitted that the appeal in 2012 and the current appeal are more motivated by competition than by a any over supply of trade or product.
- That the catchment area served by the site and adjoining units is significant comprising a large residential catchment, the community college, Waterford Institute of Technology and Waterford Industrial Estate.
- That the original intent of the first party in 2011 was for the unit to accommodate fast food take away and pizzeria.
- That works undertaken on the unit on foot of the 2011 permission were consistent with the requirements of both the planning permission and the fire officer report.
- That the injunction obtained in respect of the operation of the site may have had an impact on the assessment of the Planning Application Ref. 12/6.
- That it is hearsay and inaccurate for the appellants to state that the Planning Authority were misled by the actions of the applicant. Similarly, it is contended that it is hearsay for the appellant to suggest that the applicant proceeded to open a fish and chip shop against the advice of his agent, or that 'the applicant intimated his intention to the planning authority'.
- That contrary to the statement of the appellant, it is not correct to state that the solicitor's letter to the first party received no response. Cope of responses from John Santry to solicitors attached.
- That it is an exaggeration to state that all of the units on Tyrone Road (7 no.) could change to takeaway uses.
- That rather than just the seven units on Tyrone Road, consideration of an over concentration of uses should have regard to the wider retail units on the opposite side of the road and also to the very large catchment area served that includes c.500 houses. Noted that there are no takeaway uses operating within the Waterford Shopping Centre and that the previous takeaway outlet within the centre operated by Patrick Brennan is now closed.

- Therefore, it is incorrect to state that 43 percent of the overall units are takeaway shops or that 10 percent of the commercial units would be takeaway shops.
- In the current appeal, there appears to be confusion in the submission between Nos. 3 and 4, specifically where it is stated that No.3 is authorised as a traditional takeaway / fish and chip shop and also that the warning letter related to No.3.
- That contrary to the statement in the appeal, there is a valid fire access to the hair salon located over No.4 Tyrone Road.
- Noted that since the previous assessment by the Board that the takeaway unit located at the shopping centre has closed down.
- That contrary to the appeal, the consent of the owner of the property was submitted (copy of letter dated 29/6/2020 as submitted is attached with appeal). The application was validated, and a decision made on the application by the Planning Authority.
- That the number of take away outlets is considered acceptable to the Planning Authority and the unit in the shopping centre has closed down meaning that a grant of permission would return the area to a status quo.
- That similar businesses should operate under similar trading conditions and the non sale of fried chips is an unfair and unacceptable condition.
- That the issue of litter is fully controlled as far as possible by the operators of No.4 Tyrone Road. There is space at the rear of the premises for the storage of refuse and access for collection.
- That the hours of operation as set out in Condition No.4 of the Planning Authority decision are noted and accepted.
- Letter submitted from the operator of the premises on the appeal site which includes the following points:
 - That the property owner agrees with the making of the application.
 - That the appellant has sought to purchase the unit from the first party.

- That he was not aware that the permission did not include for the sale of chips / fried food when he leased the unit.
- Details provided as to how consumer behaviour has changed since 2012 and specifically how there is an expectation that orders can be placed anytime and that 90 percent of the orders at the outlet are now online.
- That the outlet serves Halal food. The nature of the fast food offer at the appeal site differs from that on offer at No.3. There is a significant market for halal product.
- That the online nature of the sales is such that the demand is now from a much wider geographic area than just the Lisduggan area. There is significant demand from the Waterford IT.
- That there is a need to have a range of foods available to serve the wide range of customers.
- That the shop has ventilation, soundproofing and refuse collection within the unit. A litter bin can be installed outside the unit. All waste is properly collected and disposed of.
- That the basis of the objection is to avoid competition.
- That a pizzeria that is not able to offer chips / fried food for sale cannot realistically survive. There is competition for pizza sales from No.3 next door and also the filling station across the road.
- Video submitted showing people coming into the shop at No.4 eating food that has been purchased elsewhere. Photographs of this activity also submitted.
- That the Chinese take away unit serves a completely different type of food from Unit 4.

The appeal response is accompanied by a data stick and disk which contain a video and photographs regarding the refuse storage and collection issues at the rear of the site, frontage of the forecourt shop at the junction of Tyrone Road and Brown's Road and persons within the shop.

6.3. Planning Authority Response

No record on file of response to appeal received from the Planning Authority.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of the subject appeal:

- Zoning, Principle of Development and Validity of Application
- Design, Layout, and Impact on Visual Amenity
- Impact on Amenity and Compliance with Plan Policy
- Other Issues
- Appropriate Assessment

7.2. Zoning, Principle of Development and Validity of Application

7.2.1. The appeal site is located on lands that are zoned General Business under the provisions of the Waterford City Development Plan 2013-2019 (as extended and varied) with the following objective, '*To provide and improve general business uses*'. Under section 12.16 of the Plan 'restaurant and take away' uses are listed as permissible on lands zoned for this use. The proposed take away use is therefore considered to be acceptable in principle and consistent with the land use zoning objective.

7.2.2. The third party appeal raises the issue of the validity of the application as submitted to the planning authority and specifically raises concerns that the owner of the premises on the appeal site does not give their consent to the making of the application. The situation with regard to consent to the making of the application is as follows. The applicant has a lease on the premises and the stated owners are Richard and Mary Vereker. At the time of submission of the application to the Planning Authority (25th March, 2020) the application was accompanied by a letter dated 28th January, 2020 signed by Richard Vereker, stating that he was the landlord

of No.4 Tyrone Road and that he gave his consent to the making of the application. During the course of the application, the planning authority highlighted in the further information that solicitors for the owners of the premises had stated that they did not consent to the making of the application. This correspondence was submitted care of MW Keller Solicitors and is dated 7th April, 2020.

- 7.2.3. The Planning Authority determined that as the application was accompanied by a letter consenting to the application that it was appropriate that the application was validated and that a decision be issued. Notwithstanding the fact that the original letter of consent is signed by only one party (Mr Richard Vereker), I agree with the approach taken in the validation of the application. The objection of the owners to the making of the application as set out in the letter dated 7th April is noted, and it appears likely that some discussion between the first party, the third party appellants and the owner of the appeal site have been held which has led to the change in position on behalf of the owners. Given the fact that the application as originally submitted was accompanied by a letter of consent and deemed to be a valid application by the Planning Authority such that a Notification of Decision issued, I consider it appropriate that the Board would proceed to determine the appeal in this case. In stating this, it is noted that under the provisions of s.34(13) of the Planning and Development Act no person is entitled solely by virtue of a grant of planning permission to undertake development for which they do not have sufficient legal interest or the consent of the legal owner.
- 7.2.4. I note the request of the third party appellant that the Board dismiss the appeal outright having regard to s.138 of the Act based on the applicant's disregard for the Planning code. I do not agree that this is an appropriate action given the case made by the applicant for the change of use sought and given the period of time that have elapsed since the determination of the previous application on the site for a similar form of development (An Bord Pleanála Ref. PL31.240737).
- 7.2.5. I also note the references in the appeal to the significant planning history on the site, including permission being previously refused for fried food take away (Ref. PL31.240737) and a section 5 reference which clarifies the type of food that can be sold from the premises under the terms of the existing permission. As highlighted in the Planning History section of this report above, I have not been able to find any reference to a section 5 reference case relating to the appeal site on the Council

website and no such case is referred to in the report of the Planning Officer. Notwithstanding this, the submission from the first party is clear that they know that their current use of the site is not in accordance with the planning permission granted and that the current application is a means of rectifying this. As set out above, I consider that a valid case as to why retention permission should be granted has been set out by the first party and I do not therefore consider that there is a clear basis that the appeal should be dismissed under s.138 of the Act.

7.3. Impact on Amenity and Compliance with Plan Policy

- 7.3.1. The basis of the refusal of permission issued by the Board in case Ref. PL31.240737 was that the number of existing takeaway uses in the neighbourhood centre in which the site is located were such that a further such use would impact negatively on the viability and vitality of the centre and would seriously injure the amenities of the area. It is contended by the third party appellant that the circumstances that led to this previous refusal of permission remain relevant and specifically that the current situation with regard to the proposed use, the uses in the vicinity of the site and that the development plan policy, notably with regard to zoning and policy regarding fast food take away uses, have not changed since the time of the previous decision by the Board.
- 7.3.2. The case presented by the first party as to why a change in the use of the outlet to permit take away fried food should be permitted relate mainly to the commercial need to be able to retail such foods as not to be able to do so places the business at a competitive disadvantage. It is also contended that there is a very significant catchment for the outlets in this location including a significant residential area and Waterford IT. Finally, the first party makes the case that the nature of fast food retailing has changed in the intervening period since the previous Board decision and that online sales and delivery apps have combined to make the catchment of such uses significantly greater than would previously have been the case. All of these points are noted, and I agree with the first party that online sales and delivery apps mean that the catchment of the outlet would be greater than previously the case and that the percentage of custom direct to the shop would likely be lower. The

issues raised regarding the importance of providing an element of fried food to compete with other take away outlets is also noted.

- 7.3.3. Notwithstanding these issues however, in my opinion, the primary issue in this case is the impact that the expanded range of take away foods sought would have on the local environment in the vicinity of the site. In this regard, the relevant provisions of the development plan is Paragraph 8.4 of Variation No.1 of the development plan, and I note the point highlighted by the third party appellant that while included in Variation No.1, the wording of Paragraph 8.4 was contained in the original text of the 2013-2019 City Development Plan and also significantly contained in the previous 2007-2013 development plan (paragraph 11.2.8). The basis for the previous refusal of permission issued by the Board related to the concentration of fast food take away outlets that would result in this location, and specifically the fact that to permit the range of take away uses sought would result in three fast food take aways in a row within the terrace of units containing the appeal site. In my opinion, the circumstances of the current appeal are such that this situation remains relevant.
- 7.3.4. I acknowledge that the odour control and ventilation system permitted under ref. PL31.240737 would likely mean that issues of fumes and odours would not likely occur. Similarly, I would on balance agree with the assessment of the Planning Authority that there would be a limited direct negative impact on residential amenity arising given the separation of the appeal site from residential properties and the fact that there do not appear to be any residential uses at upper floor levels of the terrace of units where the site is located. Traffic issues as referenced in Paragraph 8.4 do not arise in this case given the availability of parking in the vicinity of the site. However, it is my opinion that to permit a third fast food take away use serving fried food in this location would lead to a further concentration of patrons in this location with resulting potential for noise and litter.
- 7.3.5. More fundamentally, I have significant concerns with regard to the impact of permitting a third fast food take away outlet serving fried food in this location would have on the mix of retail uses in this location and on the future vitality and viability of the neighbourhood centre of which the appeal site forms part. As it exists, the 7 no. units in the centre comprises a public house, an off licence, a bookmakers, three fast food outlets (Roberto's Take Away, Golden Mountain Chinese Take Away and Lismore Take Away), two of which currently serve fried food, with only a single other

retail or service use, that being the gents barbers in Unit 4 adjoining the appeal site. In my opinion, to permit a further unit in the centre to served fried take away food would further erode the range of uses provided and would act to negatively impact on the vitality and viability of the existing local retail area. For this reason, I consider that the proposed development would be contrary to paragraph 8.4 of Variation No.1 of the development plan.

- 7.3.6. The points made by the first party regarding competition, the need to match competitors retail offer and the contention that the position being taken by the third party appellant is based on anti-competitive motives are noted, and I also note that the Retail Planning Guidelines for Planning Authorities state that the role of planning is not to inhibit competition, (paragraph 64, Page 23). The same section however goes on to state that *'the proliferation of an excessive number of fast food outlets that would have a significant negative impact on the viability of existing cluster of retail outlets is a valid planning consideration'*. This is what I consider to be the main issue of concern in this proposal and is why, on balance I consider that permission should be refused for the proposed development on the basis of the creation of an excessive concentration of take away uses that would adversely impact on the vitality and viability of the local area as a retail location and have a potential negative impact on the amenities of the local area due to the congregation of persons and resulting negative environmental impacts in terms of noise and litter.

7.4. Design, Layout, and Impact on Visual Amenity

- 7.4.1. The application as submitted proposes the retention of a number of internal alterations to the unit which is on the appeal site and also the retention of the fascia signage to the front of the unit.
- 7.4.2. With regard to the signage, I do not have an objection in principle to the design and scale of signage for which retention is sought. The name is not however reflective of the permitted use of the site as a pizzeria take away use and given the substantive reason for refusal recommended for the proposed change of use, refusal of permission for the signage is recommended.
- 7.4.3. With regard to the changes to the internal layout, firstly no internal inspection of the site was possible as the unit was closed at the time of inspection. The submitted

layout plan (Drg. No. 1964/301) does not detail what changes have been made to the floorplan layout from that originally permitted under Ref. 11/500002. The drawing states that '*Layout of Ground Floor – No Modifications. Retain Trading – Full Takeaway*' and no details are listed in the public notices or other application documentation. The drawing does note that there is a change of service counter location which it is stated is not a material change. I note that the layout does indicate a chip fryer as part of the layout and, given the substantive reason for refusal recommended for the proposed change of use to permit fried food for take away, together with the lack of clarity around what changes to the layout are sought in the current application, refusal of permission is recommended.

7.5. Other Issues

- 7.5.1. I note that the third party appellant highlights the fact that conditions were attached to the notification of decision issued by the Planning Authority specifying hours of opening (Condition No. 4) and provision of a litter bin on site (condition No.3). In the event that the Board was minded to grant permission, it is recommended that a condition specifying hours of opening along the lines of that attached by the Planning Authority would be included given the suburban location of the site and the fact that information online indicates that the current closing time of the premises is generally 23.30 hours.
- 7.5.2. Similarly, in the event of a grant of permission, it is recommended that a condition requiring the proposals for a refuse bin to be submitted to the council for agreement would be attached. The first party submission on file states that there is already a bin within the shop and indicates a willingness to provide additional such facilities outside, notwithstanding the fact that such a bin would have to be outside the curtilage of the site and on the public footpath.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission be refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. Having regard to the current mix of uses in the neighbourhood centre where the site is located, where there are a number of existing take away outlets serving fried food, it is considered that the further duplication of these takeaway uses would impact negatively on the vitality and viability of the local retail centre and would have a potentially significant negative impact on the amenities of the area due to the congregation of patrons and the resulting generation of noise and litter. The proposed development would therefore be contrary to Paragraph 8.4 of Variation No.1 of the Waterford City Development Plan, 2013-2019 relating to take away uses, would seriously injure the amenities of the local area and would be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

3rd February, 2021