



An
Bord
Pleanála

Inspector's Report

ABP-308389-20

Development	RETENTION: retention of restaurant unit, which includes the sale of hot and cold food for consumption on and off the premises.
Location	Circle K Artane, Malahide Road, Dublin 5, D05 K7P4
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	2208/20
Applicant	Gourmet Frites Ireland Limited
Type of Application	Permission
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	First Party v. Conditions
Appellant	Gourmet Frites Ireland Limited
Observer(s)	None
Date of Site Inspection	08 th January 2021
Inspector	Máire Daly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 185sq.m and is located to the rear of an existing Circle K Service Station Site (total area of 5,373.4sq.m) on the western side of the Malahide Road, with Danieli Road located opposite the site to the east. The site is close to the centre of Artane on the northern side of Dublin city.
- 1.2. The larger surrounding site contains the forecourt of the service station, car washing facilities, parking for customers and the single storey retail unit associated with the service station. The car washing area is located to the rear of the forecourt and is comprised of two car washing units. The existing restaurant/takeaway unit, which the subject of this appeal, is located to the north of this car washing area. An outdoor accessible laundromat is located to the south of the site and this area is separated from the main service station retail unit by two car spaces and a yellow box space. The restaurant unit is comprised of two bespoke attached containers, one of which is used for storage and the other for serving the restaurant products via a hatch at the front (southern side). Signage is present on the roof of the front container unit, facing south toward the forecourt area with the branding 'Wowburger' visible. A paved outdoor seating/picnic table area is located to the front of the restaurant unit. A row of mature deciduous trees is located to the immediate north east of the site, along the boundary of the larger service station site.
- 1.3. An existing parade of shops, including a Spar shop and separate Subway outlet is located approximately 30m to the north of the site. To the immediate northeast of the site is a DID Electrical retail warehouse store.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - Retention permission is sought for a Brams Gourmet Fries restaurant unit which includes for the sale of hot and cold food for consumption on and off the premises.
 - The restaurant unit comprises two bespoke adjoined container units measuring 15sq.m in area each (total 30sq.m). The containers measure 2.896m in height, 6.058m in length and 2.438m in width. The front (serving)

container includes an extraction fan on the roof measuring 0.662m in height. The rear container is used for storage and front container for serving food to customers. Access to the containers is provided via separate doors on the southwestern sides.

- Paved seating area which includes for 6 no. outdoor picnic tables and a small grassed area along the south-eastern boundary.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant permission subject to 10 conditions, most of which are of a standard nature, but also included the following condition:

5. The premises shall be open to the public only for:

Monday to Friday from 1000 HRS to 2300 HRS

Reason: in the interests of orderly development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Planner's Report April 2020

- The area planner in their first report (April 2020) noted the existing uses on site and the fact that the original permission on site (ABP. PL.29N.130795) provides for a forecourt shop with eat-in restaurant and take-away food areas. However, they noted that the retail unit does not currently have a staffed hot food service area, but has only a small area serving pre-made and reheated snacks.
- Having regard to the above, the area planner considered it appropriate to request details, including a map, of all hot food takeaway uses and schools within a 1km radius of the site, in accordance with Section 16.25 of the development plan.

- The area planner noted the covering report submitted as part of the application which stated that the premises for which retention was sought is open from 10am to 11pm daily.
- In addition to information on existing takeaways in the vicinity, further information was also requested in relation to control of litter and details of the proposed fumes extraction system and how safe pedestrian access could be provided to the unit.

Planning Authority Report September 2020

- Following the assessment of the applicant's response to the Request for Further Information, a grant of permission subject to 10 no. conditions was recommended as per the Notification of the Decision to Grant Retention Permission.

3.2.2. **Other Technical Reports**

- DCC - Engineering Department (Drainage Division) reports stated no objection, subject to conditions.
- DCC – Environmental Health Officer recommended conditions relating to operational noise and air quality.

3.3. **Prescribed Bodies**

- Irish Water – no response received.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

On site:

- ABP. PL29N.130795 – 2003 – Permission granted for redevelopment of existing filling station including demolition of existing building, new forecourt canopy, petrol pumps, underground fuel storage tanks, 2 no. automatic roll

over car washes, 2 no. jet car washes and provision of shop eat-in & take-away. Condition 4. stated the following:

The hours of operation for the forecourt shop and restaurant/take-away facilities shall be restricted as follows:

Forecourt shop 0700-2300 hours daily.

Restaurant/takeaway 0700-2200 hours daily.

Reason: In the interest of residential amenity.

- P.A. Ref. 3951/03 – 2003 - Permission granted for alterations to shop building elevations and modifications to site layout granted under ABP Ref. PL29N.130795.

Enforcement

- P.A. Ref. E0628/19 – 2019 - current enforcement on subject site.

Relevant planning history in immediate vicinity of site:

- P.A. Ref. 2661/07 – 2016 - Permission granted for a) construction of a new shopfront and signage. b) Change of use of ground floor from Laundrette to unit for the preparation of Pizza for home delivery with ancillary site collection. c) Construction of new fire exit door to rear of unit along with all associated site works.

Condition No.5 stated: *The premises shall operate only between the hours of 12 noon and 12 midnight, Monday to Sunday and shall not under any circumstances operate outside of these hours.*

Reason: To protect the amenities of residents in adjoining areas

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The appeal site has a zoning objective Z6 'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation'. The following Sections of the plan are relevant:

5.1.2. **Section 14.8.6** - Employment/Enterprise – Zone Z6. Use such as a restaurant is compatible with Zoning Objective Z6 and is a permissible use. However, the takeaway element is not permissible or open for consideration within the zoning. In this regard Section 14.4 of the plan states that uses not listed under the ‘permissible’ or ‘open for consideration’ categories are deemed not to be permissible in principle in zones Z1, Z2, Z8, Z9, Z11 and Z15, while other uses may be dealt with in accordance with the overall policies and objectives in this plan.

Therefore, the planning authority or in this case the Board would not be precluded in principle from granting permission subject to compliance with the other policies in the plan.

5.1.3. **Section 16.25 Takeaways** - it is the objective of Dublin City Council to prevent an excessive concentration of take-aways and to ensure that the intensity of any proposed take-away is in keeping with both the scale of the building and the pattern of development in the area.

This section lists considerations to be taken into account when assessing proposed takeaway developments.

5.1.4. **Section 16.29 Restaurants** – states that in considering applications for restaurants, the following will be taken into consideration:

- The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents
- Traffic considerations
- Waste storage facilities
- The number/frequency of restaurants and other retail services in the area
- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.

5.2. **Natural Heritage Designations**

None relevant.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A first-party appeal has been lodged only against Condition No.5, which was attached to the Planning Authority's notification of a decision to grant retention permission. The following grounds of appeal are raised:

- Condition No.5 which limits the opening hours of the restaurant unit to Monday to Friday from 1000 HRS to 2300HRS is unreasonable and unwarranted and the opening of the unit on Saturdays and Sundays is appropriate in the context of the subject site's nature and permitted use and is also in keeping with established practice for restaurants across the city and the decisions of the Planning Authority in relation to similar uses.
- Of significance to this appeal is that under the governing permission on site, granted by the Board (ABP. Ref. PL29N.130795), the permitted hours of operation at the service station are as follows: Forecourt shop 0700-2300 hours daily. Restaurant/takeaway 0700-2200 hours daily.

Dublin City Council's decision to restrict the opening of the unit at the weekends is therefore entirely inconsistent with the governing permission on site.

- The applicant highlights that the Council's permission is a temporary one, by virtue of Condition No.3 which restricts the length of permission to 2 years so that the effect of the development may be reviewed having regard to the circumstances then prevailing. The Planning Authority and the Board can therefore be satisfied that if weekend opening hours have any undue negative planning impact, future permission can be denied to the applicants.
- The applicant submits that the potential impacts as a result of weekend opening hours are no different than those that may arise mid-week.
- The development will not impact on the movement of flow of vehicles and pedestrians on site and safe pedestrian access has been conditioned in the City Council's decision under Condition no.4.

- Condition No. 8 and 9 of the planning authority's decision address noise and air quality control, together with the applicants' operation of the unit in terms of waste and litter, therefore sufficiently mitigating any undue impacts on residential properties.
- Taking into account all the above, the applicant respectfully requests that Condition No.5 is removed.

6.2. **Planning Authority Response**

- No response received to the grounds of appeal.

6.3. **Observations**

- None.

7.0 **Assessment**

7.1. This is a first-party appeal only against condition No.5 attached to the Planning Authority's decision to grant permission. Condition No. 5 restricts the opening hours of the premises to Monday to Friday from 1000HRS to 2300HRS.

7.2. Having regard to the nature and scale of the proposed development and the nature of condition no. 5, it is considered that the determination by the Board of the application, as if it had been made to it in the first instance is not warranted and a de novo assessment is not required. I am satisfied that the proposed development is otherwise in accordance with the proper planning and sustainable development of the area. Therefore, the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act 2000, as amended.

7.3. **Restriction on Operation Times**

7.3.1. The crux of this appeal is to whether or not the operation of the restaurant/takeaway service on site should be allowed to be extended to weekends. In order to assess this, I have carried out an examination of the impacts of the development on the

surrounding land uses in the area, in terms of how the addition of weekend operating hours may impact on same uses.

- 7.3.2. In assessing whether possible impacts may result from the proposed use on site, reference is made both in the area planner's report and the appeal submission to Section 16.2.9 of the Development Plan, firstly the Board should note that this reference is incorrect and the correct Section is 16.29 which refers to Restaurants. In addition, as the use on site also includes a takeaway element, the impacts of operation hours and days should also be considered under Section 16.25 Takeaways.
- 7.3.3. I note the area planner's assessment of the proposal on site includes an examination of the possible impacts on surrounding land uses, in particular residential uses. An outdoor seating area associated with the restaurant/takeaway is located to the front (south east) of the unit. This outdoor seating may generate some additional noise in the area which may otherwise have been absent in the evenings. The nearest residential properties to the development are located northeast of the site at Mornington Grove, at a distance of approx. 47m and at the Castleview housing estate is then located approximately 53m southwest of the site. I would consider that any noise from the outdoor seating area would be mitigated by the distance from the existing residential properties and by a 11pm weekend closing time. In addition, I note that the service station element on the larger site will also be operational up until 11pm 7 days a week, as per condition no. 4 of the ABP. Ref PL29N.130795, therefore a certain level of baseline noise is present currently in the area.
- 7.3.4. The planning authority in order to control noise levels on site has included noise control measures for the operational phase of the development under condition no. 8 of the planning authority's notification of decision to grant retention permission. The Board should also note that the planning authority's permission is a temporary one, by virtue of condition no.3 which limits the length of permission to a 2 year period, therefore there is an additional safeguard in place should any future issues in relation to the use on site for this purpose arise.
- 7.3.5. As part of the 'Planning Report' submitted with the application, the applicant stated that the opening hours which they seek to retain are from 10am to 11pm. Condition no.5 restricts the operation of the restaurant/takeaway to these times but also

imposes the additional restriction of limiting the operations from Monday to Friday. Having assessed the possible impacts of the development on the surrounding land uses and those criteria listed under Sections 16.25 and 16.29 of the Development Plan, I do not believe an extension of operation hours to include the weekends would cause any detrimental impacts on the residential amenities of surrounding properties or result in disorderly development. However, I do not consider that the full removal of this Condition no.5 as requested by the applicant is the correct approach and would recommend to the Board that the condition is instead amended so as to allow the operations of the restaurant/takeaway to be extended to weekend service, but also still limit the opening hours from 1000HRS to 2300HRS in the interest of orderly development. To allow the development to operate with unrestricted hours would not be considered appropriate, in particular as I note condition no. 4 of the parent permission on site restricts the hours of operation of the forecourt shop and its associated restaurant/takeaway facilities to 0700-2300 daily for the Forecourt Shop and 0700-2200 daily for the restaurant/takeaway element within the shop.

7.4. **Appropriate Assessment**

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

8.0 **Recommendation**

- 8.1. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to **AMEND** condition number 5 as follows:

5. The hours of operation shall be between 1000 hours and 2300 hours.

Reason: In the interest of the residential amenities of property in the vicinity and orderly development.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development on lands identified Z6 Employment/Enterprise and the established uses in the vicinity which includes an existing service station, it is considered to extend the use of the restaurant/takeaway unit to include weekends would be acceptable and would not seriously injure the residential amenities of the area or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Máire Daly
Planning Inspector

11th January 2020