



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309449-21

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| <b>Development</b>                  | Change of use from office/commercial to a fast hot food takeaway. |
| <b>Location</b>                     | 48 John Street, Waterford, Co. Waterford.                         |
| <b>Planning Authority</b>           | Waterford City and County Council                                 |
| <b>Planning Authority Reg. Ref.</b> | 20860   |
| <b>Applicant(s)</b>                 | Topafe Ltd  |
| <b>Type of Application</b>          | Permission  |
| <b>Planning Authority Decision</b>  | Refusal   |
| <b>Type of Appeal</b>               | First Party   |
| <b>Appellant(s)</b>                 | Topafe Ltd  |
| <b>Observer(s)</b>                  | None  |
| <b>Date of Site Inspection</b>      | 8 <sup>th</sup> of February 2022                                  |
| <b>Inspector</b>                    | Angela Brereton   |

## 1.0 Site Location and Description

- 1.1. The application site is located in the Waterford City Centre proximate to the 'Apple Market' area. The site is located on the east side with frontage onto John Street and is to the north of the junction with Parnell Street. It is occupied by a vacant terraced two storey property with three storey commercial properties with ground floor restaurant/takeaway use on either side. It appears to have been last used as an office. There is signage on the frontage to this effect.
- 1.2. There is no parking or loading area available for the unit, and no rear or side access. Access is only from the frontage of the premises onto John Street. This is one way from Parnell Street and there is no parking proximate to the site.
- 1.3. The John Street area is dominated by public houses, restaurants, cafes and fast-food outlets. The site is located in the city centre on lands zoned as City Centre Commercial. The premises on either side of the subject unit are 3 storey and are in use as takeaway/restaurants – 'Istanbul' is a larger premises, located on the corner and 'Yummy' adjoins to the north. 'Hillbilly's' is a large restaurant/takeaway premises on the opposite side of John Street. There are several other fast-food outlets in the vicinity and this appears to be the dominant usage in this area of John Street. There are a few retail/commercial premises and some vacant units further up the street.

## 2.0 Proposed Development

- 2.1. This proposal seeks permission for the following:
  - A Change of Use from office/commercial to a traditional fast food takeaway, with the menu orientated to but not confined to, the specialist peri-peri brand of rich vitamins/minerals fast hot food meals, together with carrying out the necessary modifications and fitting out, installing the necessary services and providing elevational fascia signage all at 48 John Street, Waterford.
  - A Site Location Map, Floor Plans, Sections and Elevations have been submitted.
  - A letter has been submitted from their Architects to provide a rationale for the proposed change of use.

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 21<sup>st</sup> of January 2021, Waterford City & County Council refused permission for the proposed development for the following reason:

Having regard to the existing presence of a significant number of takeaway facilities within the immediate area of that proposed, it is considered that the provision of an additional takeaway facility would constitute an excessive concentration of such uses in the area, contrary to the provisions of Section 8.4, Development Management Standards, Variation No. 1 to the *Waterford City Development Plan 2013-2019* (as varied and extended), and would seriously impact on and detract from the amenities of the area and thus would be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's Report had regard to the locational context, planning history and policy and to the Interdepartmental reports. Their Assessment includes the following:

- They have regard to Section 8.4 of Variation no. 1 of the Waterford City Development Plan 2013-2019 (as varied and extended) which seeks to prevent a proliferation of Take-Aways etc.
- They note that the area is dominated by night-time type businesses such as public houses, restaurants and take away outlets.
- They consider that there is an over concentration of take away type uses and that the development proposal would be contrary to development plan policy and would be inappropriate in this instance.
- They recommend refusal on the grounds that there is an excessive concentration of takeaway facilities in the area.

- They include a Habitats Directive Project Screening Assessment with their Report, which concludes that there will be no significant impact on Natura 2000 sites.

### 3.3. Other Technical Reports

#### Chief Fire Officer

They note that the proposed development requires a Fire Safety Certificate in accordance with Part III of the Building Control Regulations (1997 & 2020).

That the proposed layout does not comply with Part B of the Building Regulations (1997-2019) in that the escape stairs from the first floor does not discharge directly to a final exit or by way of a protected passageway to a final exit. That this layout may inhibit the granting of a Fire Safety Certificate.

### 3.4. Third Party Observations

None noted on file.

## 4.0 Planning History

The Planner's Report provides a detailed planning history of the subject site and the surrounding area. Those relevant to the subject site include:

- Ref. 11500113 (11/113) – Permission granted subject to conditions to Sean Carey for 'Indefinite retention of temporary change of use of ground and first floors from retail to office use and permission to erect new 900mm x 900mm vertical hanging sign to front façade'.

Condition no.2 is of note: *The use of the premises for Class 2 office use as set out in Part 4 of Schedule 2 of the Planning and Development Regulations 2001, as amended, shall cease on the expiration of a period of 60 months from the date of the order, unless in the interim permission for its retention has been granted.*

*Reason: It is considered that the use as an office on this city centre site does not represent a long term sustainable use of the lands.*

This permission was granted by Waterford City Council in November 2011 and has since expired. The unit which is now vacant was most recently in office use.

## 5.0 Policy Context

### 5.1. Development Plan

Following the amalgamation of Waterford County Council and Waterford City Council in 2014, the lifetimes of the existing development plans within the amalgamated council area were extended. The 2013-2019 City Development Plan remains in effect until a new City & County Development Plan is prepared following the making of the Regional Spatial & Economic Strategy.

The site is in an area zoned 'City Centre Commercial; *To protect, provide and improve City Centre Commercial Uses*. It is also within a General Conservation Area.

Variation No.1 of the Waterford City Development Plan 2013-2019 (as varied and extended) includes (as referred to in the Planner's Report relevant to the Council's decision):

Section 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.

Section 8.12 refers to Shop Fronts & Commercial Facades and notes the importance of such in determining the character, quality and image of retail streets in the City Centre as well as in smaller centres located throughout the city and county. Criteria include:

- Original traditional shop fronts, pub fronts & façades shall be retained, preserved or restored where appropriate and practical, inclusive of ACA's.
- Contemporary shop/ pub fronts will be considered on a case by case basis; • The Council will aim to reduce visual clutter and control the number and type of signs that are displayed;
- Generally the use of external roller shutters/security screens shall not be permitted on the front of shops. If required they should be placed internally.
- The design of the shop front/façade should include the street number of the premises;
- The applicant shall submit proposals for the removal of external signage in the event the unit ceases trading.

## 5.2. Retail Planning Guidelines 2012

These guidelines are aimed at ensuring that the planning system continues to play its role in supporting competitiveness and choice in the retail sector commensurate with promoting the vitality and viability of city and town centres thereby contributing to a high standard of urban design and encouraging a greater use of sustainable transport.

The Guidelines have five key policy objectives:

- Ensuring that retail development is plan-led;

- Promoting city/town centre vitality through a sequential approach to development;
- Securing competitiveness in the retail sector by actively enabling good quality development proposals to come forward in suitable locations;
- Facilitating a shift towards increased access to retailing by public transport, cycling and walking in accordance with the Smarter Travel strategy; and
- Delivering quality urban design outcomes.

## Annex 2 – Assessing the Vitality and Viability of Town Centres

### 5.3. Natural Heritage Designations

The closest heritage area is the Natura 2000 site Lower River Suir SAC (Site Code 002137) approx. 500 metres to the north.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A First Party Appeal has been submitted by John F. Santry Architects on behalf of the Applicants. Their Grounds of Appeal include the following:

- There was no request for Further Information and the decision to refuse was issued eight weeks from receipt of application.
- The premises is within the area zoned City Centre Commercial.
- They have regard to previous planning history where permission was granted for a change of use from retail to office use (Reg.Ref. 11/113 refers).
- The best efforts to sustain a retail business and/or an office business would appear to have failed and the premises has remained closed for some time.
- It is evident that an expansion of the take-away restaurant activities in this city centre location will occur.

- They have regard to Section 8.4 of Variation no.1 of the Waterford City Development Plan 2013-2019 (as varied and extended). They provide that there are no nearby residences which would be adversely affected.
- The business model is set in this area and the commissioning of this proposed use will not create any percentage increase on that as now pertaining in this location.
- This section of John Street was relatively recently modified to one-way traffic. They consider that the proposal for no.48 John Street will not impact on traffic movement considerations in this centre city location.
- The existing presence of a significant number of takeaway facilities providing similar type uses in menu choices within the immediate area of the appeal site is accepted.
- However, a reasonable mix of suitable take-away uses is not provided in this concentration. This should not be seen as a further traditional take-away facility. It will provide a suitable/alternative mix and provide healthy options with the menu including Peri-Peri hot food meals. Halal foods will also be provided, and they note the 2016 Census confirmed an increase of Muslims in Ireland, who they consider appear to have been denied this service through the traditional takeaways currently being operated in the city.
- It will reactivate a long-term trading activity to the 48 John Street premises.
- This new initiative for Waterford is to be commended and they would encourage a positive response from the Board.

## 6.2. **Planning Authority Response**

None

## 6.3. **Observations**

None



## 6.4. Further Responses

None

## 7.0 Assessment

### 7.1. Nature of Use and Policy Provisions

- 7.1.1. As noted in the Planning History above this unit was formerly in retail use and a temporary office use was granted in 2011, which has since expired (Ref. 11500113 (11/113) refers). Condition no.2 of that temporary permission for the office use is as quoted in the History Section above is of note. Therefore, permission for the office use of the premises has now expired. The two storey, terraced property is now vacant. It is located between two 3 storey properties, both in use for Restaurant/Takeaway uses. There is another on the opposite side of the road and there are several other such fast food uses on John Street which is within the 'City Centre Commercial with a zoning objective: *To protect, provide and improve City Centre Commercial Uses*. They appear to form the dominant use in this area of John Street. There are other city centre uses such as retail, office/commercial in John Street but in view of the proliferation of restaurant/take-away uses, they are in the minority. There are also some vacant units such as the subject unit, which do not add to the character of the street.
- 7.1.2. This proposal is for a change of use from what was a former now vacant office/commercial premises to a traditional fast hot food takeaway, with specialist menu (description given in information on file), together with carrying out all the necessary modifications and fitting out, installing the necessary services and providing elevational façade signage. The First Party provide that the objective is that this is an alternative menu offering in a suitable alternative mix to the more traditional takeaway menu as being provided in John Street area.
- 7.1.3. Regard is had to the Council's reason for refusal, which refers to Section 8.4 Development Management Standards, Variation No. 1 of the *Waterford City Development Plan 2013-2019*. This seeks to maintain an appropriate mix of uses and to prevent an excessive concentration of uses including 'Take-Aways'. This includes that such uses are to be strictly controlled (as quoted in the Policy Section

above). This includes: *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.*

- 7.1.4. Regard is had to the Retail Planning Guidelines 2012. Section 1.1 notes the Aim of the Guidelines includes ensuring that development is plan-led and to provide for comprehensive retail planning. Annex 2 of the Guidelines refers to Health Check Indicators relative to Assessing the Vitality and Viability of Town Centres. These include regard to *Diversity of uses* and how that balance has been changing. Reference is also had to *Proportion of vacant street level property* and to *Accessibility and Public Realm*.
- 7.1.5. I would be concerned that the addition of another fast-food takeaway use in this area would not comply with policy in that it would further add to the proliferation and excessive concentration of such uses in this area of John Street and would detract from the range and diversity of uses within this city centre area.

## 7.2. **Design and Layout**

- 7.3. Drawings have been submitted showing floor plans, sections and front elevation of the existing unit. This shows the ground floor (stated area 34.17sq.m) for 'General Office' use with stairs to the first floor (stated area 34.93sq.m), in use as the 'Directors Office' toilet and coffee dock area.
- 7.4. The floor plans submitted for the change of use, show no change or extensions are proposed to the floor area. The ground floor is to be used as a public area with counter service and cooking and storage areas to the rear. The stairs are to remain in situ and first floor plans, show separate areas for admin, cold room, with tea station/cloak room and existing toilet retained. The layout shows that the premises is to be used as a takeaway and all associated facilities. The ground floor plan refers to an 'extraction canopy 1500 high partition'. The section shows an extraction duct. However, details have not been given of external ventilation, necessary to limit smells and odours or that would be necessary relative to the preparation of 'hot' food such as described. Also, no area for refuse storage has been shown. I would be concerned about these omissions relative to the operation of the proposed change of use. While the First Party says there is no residential in the immediate area, this has not been clarified.

7.5. The description of development also refers to the provision of elevational fascia signage. Section 8.12 of the Waterford City DP as varied notes the importance in determining the character, quality and image of retail streets in the City Centre and refers to criteria. I would recommend that if the Board decides to permit that it be conditioned that details of the signage be submitted for the written agreement of the Council prior to the commencement of development.

#### 7.6. **Access and Parking**

7.7. It is noted that the only access to the building is via the frontage and that there is no rear or side access. The Fire Officer's concerns are noted in the Planner's Report. However, these and compliance with the Building Regulations are dealt with under separate remit.

7.8. John Street is one way from its intersection with Parnell Street. There is also an emphasis on pedestrianisation. There is no loading/unloading bay or proximate parking available. It must be noted that this is similar to other takeaway/restaurant uses in this city centre area.

#### 7.9. **Screening for Appropriate Assessment**

7.10. It is noted that the Council have carried out a Habitats Directive Project Screening Assessment. The closest Natura 2000 site is the Lower River Suir SAC (Site Code 002137) approx. 500 metres to the north. It is concluded that there is no significant impact on the designated Natura 2000 site.

7.11. Having carried out Screening for Appropriate Assessment, it has been concluded that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 002137, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

### 8.0 **Recommendation**

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

## 9.0 Reasons and Considerations

1. Having regard to the proliferation and concentration of takeaway uses in this area of John Street, to the lack of diversity of uses including retail and to protect the vitality and viability of this Waterford City Centre commercial area, it is considered that the proposed change of use and on this restricted site, would be contrary to the provisions of Section 8.4, Development Management Standards, Variation No.1 of the Waterford City Development Plan 2013-2019 (as varied and extended) and to Annex 2 of the Retail Planning Guidelines 2012, which are Ministerial Guidelines. As such the proposal would detract from the character and amenities of the area and would be contrary to the proper planning and sustainable development of the area.

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Angela Brereton  
Planning Inspector

17<sup>th</sup> of February 2022