



An
Bord
Pleanála

Inspector's Report

ABP-309524-21

Development

Permission for modification to approved plans Reg Ref: D18A/1172, to extend delivery hours only up to 12.30 am each day thus amending the second sentence of condition no. 2 to: "No collection service shall operate from these premises after these closing times; delivery services are permitted up to 12.30 am each day"

Location

Unit 28, Belarmine Plaza, The Village Centre, Belarmine, Stepaside, Dublin 18.

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D20A/0899

Applicant(s)

Peter and Alan Woods

Type of Application

Permission

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party

Appellant(s)	Peter and Alan Woods
Observer(s)	None
Date of Site Inspection	31 st May 2021
Inspector	Emer Doyle

1.0 Site Location and Description

- 1.1. The appeal site is located on Belarmine Avenue within the Belarmine estate in Stepside, Dublin 18.
- 1.2. The site forms part of a neighbourhood centre within the development. The immediate area has a mixture of residential and commercial uses with the commercial uses generally at ground/first floor level and residential overhead. There are a number of vacant units within the centre.
- 1.3. Unit 28 is currently vacant, and according to information submitted with the appeal, has never been occupied. There is no set down area directly outside the premises and a large area of surface car parking is available through an arch to the rear of the premises.

2.0 Proposed Development

- 2.1. Permission is sought for modification to approved plans PA Reg. Ref. D18A/1172 to extend delivery hours only up to 12.30 am each day thus amending the second sentence of condition no. 2 to 'No collection shall operate from these closing times; delivery services are permitted up to 12.30 am each day.'

3.0 Planning Authority Decision

3.1. Decision

Permission refused by the Planning Authority for one reason as follows:

Having regard to the policy objectives contained within the Dun Laoghaire Rathdown County Development Plan, 2016-2022, it is considered that the proposed development fails to accord with Policy RET6 which states that it is Council policy to encourage the provision of an appropriate mix, range and type of uses - including retail and retail services – in areas zoned 'NC' subject to the protection of the residential amenities of the surrounding area. The proposed extended hours do not provide an appropriate balance between the use of the unit and the residential amenities of the adjoining residential dwellings. The proposals would have a negative impact on the residential amenity of the adjoining properties, by way of

increased noise and disturbance late at night, contrary to the proper planning and sustainable development of the area and the provisions of the County Development Plan 2016-2022. The amendments proposed would also materially contravene condition 2 of an existing permission for development granted under Reg. Ref. D18B/1172.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- The planner's report considers that the existing opening hours are reasonable having regard to the location of the site in a neighbourhood centre and considers that the proposal for extended hours would result in harm to the residential amenities of neighbouring properties.

3.2.2. Other Technical Reports

Transportation Planning Report: No objection.

Drainage Planning Report: No objection.

Environmental Health Office: This application is acceptable subject to:

1. The cumulative noise effect from any activity associated with the operation of this development shall not cause significant impairment or interference with amenities or the environment beyond the site boundary.

3.3. **Prescribed Bodies**

3.3.1. No reports.

3.4. **Third Party Observations**

3.4.1. None.

4.0 Planning History

PA D18A/1172

Permission granted for change of use from previously approved retail use (c.108.2 sq. m.) (Prev. Reg. Refs. D06A/0714 and D07A/0396) to proposed restaurant with ancillary take away use (c. 108.2 sq. m.) and associated site works.

5.0 Policy Context

5.1. Development Plan

The site is zoned as 'NC' which seeks 'to protect, provide for or improve mixed use neighbourhood centre facilities.'

The following policy is relevant:

Section 3.2 - Retail and Major Town Centre.

Section 3.2.2.6 – Policy RET6 – Neighbourhood Centres.

It is Council policy to encourage the provision of an appropriate mix, range and type of uses – including retail and retail services – in areas zoned objective 'NC' subject to the protection of the residential amenities of the surrounding area.

Section 8.2.6.5 of the Development Plan sets out the criteria for assessment of takeaways.

5.2. Natural Heritage Designations

5.2.1. None relevant.

5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can,

therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows:

- The unit has been vacant for 13 years.
- It is unviable without a take away element with extended delivery hours due to its limited size.
- By the very nature of delivering hot food, drivers come and go quickly.
- The Board are invited to consider the benefit of using hybrid and electric vehicles which are much quieter than petrol or diesel powered vehicles.
- The Board didn't attach a condition limiting take away hours for a café granted under PL06D.233416 within the same complex at Belarmine Plaza.
- If the Board considers that it would further reduce any impact on residential amenity, the appellants would accept a condition that requires the use by delivery vehicles after 11pm of the set down area at the side of Belarmine Pharmacy as there are fewer residences at this location.

6.2. Planning Authority Response

- The Board is referred to the previous planner's report. It is considered that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

6.3. Observations

- None.

7.0 Assessment

7.1. I have read the entire contents of the file, have had particular regard to the issues raised in the grounds of appeal and visited the site and its surroundings. I consider that the issues can be dealt with under the following headings:

- Impact on Residential Amenities
- Appropriate Assessment

7.2. Impact on Residential Amenities

7.2.1. Permission was granted under D18A/1172 for the change of use from previously approved retail use (c.108.2 sq.m.) to proposed restaurant with ancillary take away use. Condition two was as follows:

'The restaurant and ancillary take away shall close no later than 2300hrs on Thursdays, Fridays and Saturdays and no later than 2230hrs on any other day. No ancillary food delivery or collection services shall operate from the premises after these closing times.'

Reason: In the interest of safeguarding amenities.

- 7.2.2. Under the current application, permission is sought to extend opening hours for **delivery only** up to 12.30 am each day.
- 7.2.3. Permission was refused by the Planning Authority for one reason relating to the negative impact on the residential amenity of adjoining dwellings by way of increased disturbance late at night.
- 7.2.4. The appeal submitted on behalf of the applicant states that permission was previously granted for a restaurant with ancillary take away at the 'Fire and Stone' restaurant within the complex without any restrictive opening hours. It is stated that the unit has been vacant since it was first built 13 years ago. Apache Pizza have signed a lease for Unit 28 but the unit is only viable when the delivery element is able to operate until certain times and will not take occupation if the extension to delivery only hours is not granted.
- 7.2.5. The appeal considers that the additional delivery time would result in a limited number of delivery vehicles using the car park. The Board is invited to consider

mitigation measures including the use of less noisy hybrid and electric vehicles and/or an alternative set down area at the side of Belarmine Pharmacy.

- 7.2.6. The site is located on lands under land use objective NC, 'To protect, provide for and/or improve mixed use neighbourhood centre facilities'. Takeaway is not listed in Table 8.3.6 as either a 'permissible' or an 'open for consideration' use under this zoning objective. Section 8.3.7 of the Development Plan refers to the consideration of other uses, not included in the land use table, on a case by case basis.
- 7.2.7. Section 8.2.6.5 of the Development Plan sets out the criteria for assessment of takeaways. Of particular relevance to this application include the requirement to retain the retail mix in the area, the cumulative effect on the amenities of the area, and the adequacy of existing facilities in the area.
- 7.2.8. In this regard, I note that the existing neighbourhood centre has a wide range of uses and facilities but there are a number of vacant units. There is an existing café/ sit down restaurant which has permission for ancillary take away use but I would be of the view that this would relate to a small amount of business pre-Covid 19. As such, I do not consider that there is an oversupply of take away units in the area.
- 7.2.9. I consider that the primary concern relates to the impact on residential amenities having regard to the zoning objective 'NC'. It is council policy under RET6 to encourage the provision of an appropriate mix, range and type of uses- including retail and retail services- in areas zoned objective 'NC' subject to the protection of the residential amenities of the surrounding area.
- 7.2.10. In my view, the proposed modification of the delivery hours from 2300hrs on Thursdays, Fridays and Saturdays and from 2230 hours every other day to 12.30 am each day would have a negligible impact in terms of the overall noise environment. As permission is not sought for any changes to the take away element of the development that is already permitted under PA Reg. Ref. D18A/1172, the only additional vehicles using the car park would be delivery vehicles for either 90 or 120 minutes a day depending on the day of the week.
- 7.2.11. This is a mixed use development with a considerable number of apartments on the upper floors. I consider that it is very important that the residential amenities of these properties are not impacted negatively. I consider that the impacts of the extension of the 'delivery only' hours would be much less than extending the opening hours of

the take away use, as by the very nature of delivering hot food, the drivers come and go as quickly as possible in order to keep the food hot and would try and pick up multiple orders at the same time. I note that there were no objections submitted from any parties.

7.2.12. I note that the appeal invited the Board to consider mitigation measures including the use of less noisy hybrid and electric vehicles and/or an alternative set down area at the side of Belarmine Pharmacy. I note that there are a reduced number of apartments in the vicinity of the pharmacy as there is commercial development on both the ground and first floors. I also note that it is further away from Unit and there may be difficulties with enforcement of such a condition if included by the Board.

7.2.13. I consider that the modification to the condition is modest and the impact on residential amenities arising from same would be negligible. I do not consider that the mitigation measures set out above would be warranted in this instance. Having regard to the above, I do not have any objection to the revised delivery hours as set out in the site and newspaper notices.

7.3. Appropriate Assessment

7.3.1. 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. I recommend that permission is granted in accordance with the following:

9.0 Reasons and Considerations

10.0 Having regard to the zoning provisions of the Dun Laoghaire Rathdown Development Plan 2016-2022, the planning history of the site, to the mix and uses and pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be contrary

to the zoning provisions for the area, would not seriously injure the residential or commercial amenities or depreciate the value of properties in the area, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The delivery hours of the take away and restaurant use shall be extended to 12.30 am Monday to Sunday including bank holidays.

Reason: To protect the residential amenities of the area.

Emer Doyle
Planning Inspector

4th June 2021