



An
Bord
Pleanála

Inspector's Report ABP 310049-21.

Development	Change of use from taxi cab office to restaurant / café (coffee shop) including associated alterations, signage and external seating (39 square metres).
Location	Ballyowen Castle Shopping Centre, (Penny Cabs building).
Planning Authority	South Dublin County Council.
P. A. Reg. Ref.	SD21A/0024
Applicant	Darke Entertainments Ltd.
Type of Application	Permission
Decision	Grant Permission
Type of Appeal	First Party X Condition No 2
Appellant	Darke Entertainments Ltd.
Date of Site Inspection	4 th June, 2021.
Inspector	Jane Dennehy

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
4.0 Planning History.....	4
5.0 Policy Context.....	4
5.1. Development Plan.....	4
6.0 The Appeal	5
6.1. Grounds of Appeal	5
6.2. Planning Authority Response	5
7.0 Assessment.....	6
8.0 Recommendation.....	8
9.0 Reasons and Considerations.....	8
10.0 Revised Condition	8

1.0 Site Location and Description

- 1.1. The application site has a stated area of 552 square metres and is that of a detached structure (stated floor area 35.5 square metres) on the west side of Ballyowen Lane located in the northeast corner of a carpark serving public house, off license and betting shop premises at Ballyowen Castle. To the north-west is a LIDL store with a carpark, to the east is a large neighbourhood shopping centre with a carpark. These premises are located on the east side of Ballyowen Road, (the R 136) and at its junction with Castle Road and Ballyowen Lane. The structure is in use as a taxi-cab office which, according to the application submission was originally provided on the site to facilitate customers of the local businesses. The surrounding area is characterised by residential development and associated facilities such as schools.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for change of use of the taxi-cab office use to use as a restaurant café. The stated area for the external space for outdoor seating is thirty-nine square metres. The proposals also include new signage, associated alterations and external seating and five tables. Changes to the structure include removal of a glass screen and replacement with two new screens enclosing an undercroft. It is stated that it is intended to retain the counter and toilet facilities that serve the taxi-cab office.

3.0 Planning Authority Decision

3.1. Decision

By order dated 1st April, 2021 the planning authority decided to grant permission for the proposed development.

Under Condition No 2, (the appealed condition) there is a requirement for hours of business to be confined to 0800 hrs – 1800 hrs, for reasons of residential amenity and clarity.

Under Condition No 3 the applicant is required to provide written evidence of ownership, or written consent of the owner of the carpark with confirmation of

consent to the removal or conversion of the car spaces in the carpark to facilitate the proposed development.

3.2. **Planning Authority Reports**

3.2.1. It is noted in the report of the planning officer: -

- That the applicant has not sought permission for a takeaway, the facility being a restaurant in which food would be consumed on the premises. However, he notes that some consumption of food off the premises could take place.
- That the site location is transitional; being contiguous to residential development subject to the zoning objective: RES to protect and or improve residential amenity.
- That clarification is necessary with regard to consent/ownership to the use of parking spaces for outdoor seating in the surrounding carpark and,
- That signage details have not been included but that this can be addressed by condition

3.3. The internal technical reports of the Services and Drainage Division and the Environmental Health Officer indicated no objection subject to conditions of a standard nature which can be attached if permission is granted.

4.0 **Planning History**

P. A. Reg. Ref. SD07A/0857: Permission was granted for the existing structure for use as a taxi-cab office and provision for an associated antenna structure providing a radio link and a pedestrian entrance adjacent to a bus stop on the public road.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. The operative development plan is the South Dublin County Council Development Plan, 2016 – 2022 according to which the site is within an area subject to the zoning objective: “*LC: - To protect, improve and provide for future development of Local Centres.*” Restaurant and café use is permissible.

- 5.1.2. The area surrounding the local neighbourhood centre is subject to the zoning objective: *RES – To protect and improve residential amenities.*
- 5.1.3. According to Section 11.1.1. (iv) there should be avoidance of development that would be detrimental to amenities of a contiguous zone at transitional locations

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was lodged by the applicant's agent on 26th April, 2021. The appeal is solely against the restrictions on the hours of operation under Condition No 2 attached to the decision to grant of permission in which the hours of operation are confined to 0800 hrs – 1800 hrs. According to the appeal: -

- The proposed conversion of the taxi-cab office is an opportunity to add to the longevity of the building and the activities of the shopping centre
- The restriction on the hours of operation would be unnecessary and affect commercial viability.
- Several businesses operated at the shopping centre remain open until up to midnight. A list with an accompanying plan and copy of an aerial photograph is provided which includes supermarkets/convenience stores, and food outlets take away premises. which have closing times ranging from 10.pm to midnight.
- The proposed development would not disturb amenities in the surrounding residential areas. There is considerable distance between the site location and the nearest residential properties, to the north-east and to the south. The distances range between 92.6 metres and 13.2 metres.

6.2. Planning Authority Response

6.2.1. In a letter from the planning authority, it is stated that the planning authority reaffirms its decision to grant permission and has no additional comments.

7.0 Assessment

- 7.1. The appeal is solely against condition no 2 according to which the hours of operation are confined to 0800 hrs – 1800 hrs and the reason for these restrictions provided is for protection of amenities of residential areas.
- 7.2. It is claimed in the appeal that the hours of operation should reflect those of other businesses operated at the Ballyowen Shopping Centre. Details of the hours of operation of some takeaway premises and Prego are provided. It is noted, from the internet that “Prego” is a pizza restaurant at Unit No 2 and that food can be consumed in the premises and off the premises. According to the appeal, the closing time at Prego is 11.30 pm
- 7.3. With regard to the concerns of the planning authority as to potential adverse impact on residential amenities in the surrounding area, the nearest residential development is at Colthurst Crescent to the north-east. The rear boundaries of some of these properties are on the road frontage opposite the LIDL supermarket and to the north of the Shopping Centre and at a minimum distance of over ninety metres north-east of the application site.
- 7.4. Although the location relative to Colthurst is somewhat “transitional” having regard to section 11.1.1. (iv) of the CDP, it is considered that the applicant’s case in this regard is reasonable having regard to the hours of operation of the LIDL supermarket which closes at 10.00 pm in the evenings and the later closing times of the various food outlets and Prego in the shopping centre. Furthermore, the outdoor seating area is to be located to the south side of the cab office structure. Any potential adverse impact due to a later closing time on the residential amenities of the properties at Colthurst would be marginal.
- 7.5. Furthermore, the residential properties to the south which are in excess of one hundred metres from the site location are on the opposite side of Ballyowen Road which has a regional route designation and is relatively heavily trafficked. Similarly, it is considered that a later closing time would not adversely affect the amenities of any of these residential properties.
- 7.6. The applicant’s case that the existing cab office and the proposal for the use as a café / restaurant (coffee shop) with outdoor seating is an opportunity to contribute to

the longevity of the structure and the activities of the shopping centre is reasonable. It is noted from the application that it is stated that the original purpose for the provision of the taxi-cab office was to facilitate customers of the public house and other premises. It is considered that proposed development would be of benefit to the range of services and facilities available to the community at the local neighbourhood centre.

7.7. In view of the foregoing, it is considered reasonable that the restriction on the hours of operation should be revised to 0800 hrs – 2100 hrs. These arrangements would ensure that that the outdoor seating area in particular is not operational well in advance of public house closing times.

7.8. Having reviewed the application consideration of the application *de novo*, that is as if the application had been lodged with the Board in the first instance is considered unwarranted in that the proposed development is acceptable in all other respects subject to the conditions attached to the planning authority's decision. It is therefore considered that the appeal in connection with the outstanding issue regarding hours of operation under Condition No 2 can be determined in accordance with the provisions of section 139 of the Planning and Development Act, 2000, as amended.

7.9. **Environmental Impact Assessment Screening.**

7.9.1. Having regard to the minor nature of the proposed development and its location in a serviced inner suburban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.10. **Appropriate Assessment.**

7.10.1. Having regard to the scale and nature of the proposed development and to the serviced inner suburban location, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

In view of the foregoing, it is recommended that the appeal be determined in accordance with the provisions of section 139 of the Planning and Development act, 2000, as amended and that Condition No 2 be revised. Reasons and Considerations and a revised condition follow:

9.0 Reasons and Considerations

- 9.1.1. Having regard to the South Dublin County Council Development Plan, 2016-2022 according to which the site is located within an area subject to the zoning objective, “LC: - To protect, improve and provide for future development of Local Centres.” In which restaurant and café use (coffee shop) is a permissible use, to the surrounding retail, restaurant and retail uses within the area and to the location of the proposed development relative to the surrounding residential area, it is considered that the proposed development, subject to a revision to Condition No 2, providing for hours of operation between 0800 hrs to 2100 hrs., would not seriously injure the amenities of the properties in the surrounding residential areas and would be in accordance with the proper planning and sustainable development of the area.

10.0 Revised Condition

“The restaurant/café (coffee shop) shall be operated between the hours of 0800 and 2100 hrs only.

Reason: *In the interest of clarity, residential amenity and the proper planning and sustainable development of the area.”*

Jane Dennehy
Senior Planning Inspector
5th June, 2021.