



An  
Bord  
Pleanála

## Inspector's Report ABP-310079-21

<b>Development</b>	Construction of 1 enclosed outdoor dining area to the front of Kanoodle, and enclosed outdoor dining area to the front of Fishbone,
<b>Location</b>	322 & 324, Clontarf Road, Dublin 3.
<b>Planning Authority</b>	Dublin City Council North.
<b>Planning Authority Reg. Ref.</b>	3905/20.
<b>Applicant(s)</b>	D. Murnane & S. Costello.
<b>Type of Application</b>	Planning Permission.
<b>Planning Authority Decision</b>	Grant with conditions.
<b>Type of Appeal</b>	Third Party.
<b>Appellants</b>	John Craddock & Others.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	4 <sup>th</sup> day of June, 2021.
<b>Inspector</b>	Patricia-Marie Young

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## **1.0 Site Location and Description**

- 1.1. No. 322 and No. 324 Clontarf Road, the irregular shaped appeal site has a given 553m<sup>2</sup> site area and these premises form part of a mixed-use terrace group of four 2-storey commercial units that date to c1950s that are setback from the northside of the heavily trafficked Clontarf Road (R807) roadside carriageway (Note: c12m). The site is located c55m to the east of the Clontarf Road's T-junction which immediately serves Kincora Drive and c138m to the west of Clontarf Road's T-junction which serves Seafield Road East, in the Dublin city suburb of Clontarf.
- 1.2. At the time of inspection both properties had incorporated the setback area between the pedestrian footpath and the front building line as part of their operational activities. The setback area of No.s 326 and 328 to the east, is laid out for off-street car parking which is facilitated by a drop-down kerb incorporated into the adjoining pedestrian footpath.
- 1.3. The existing development to the immediate east and west are residential in function and character as well as predominantly 2-storey in built form with consistent setback front building lines from the Clontarf Road.
- 1.4. The opposite side of Clontarf Road is highly picturesque with views out over a wooden bridge that connects to Bull Island, Dollymount Strand, Dublin Bay with the Dublin Mountains including the Sugar Loaf Mountain visible in the background. Running alongside the pedestrian pathway on the southern side of the Clontarf Road there is a linear public amenity space that runs alongside the waterfront edge which contains cycle and pedestrian pathways alongside green spaces.
- 1.5. The adjoining road at this point contains a signalised road junction which includes a pedestrian crossing. In close proximity to the east of the terrace group is a Dublin bus stop.

## **2.0 Proposed Development**

- 2.1. On the 10<sup>th</sup> day of December, 2020, planning permission was submitted for the following:

- Construction of 1 no. 35m<sup>2</sup> (8m by 4.4m) enclosed outdoor dining area to the front of a restaurant with the given name of 'Kanoodle' accessed internally from the main restaurant (Note: No. 332 Clontarf Road);
- Construction of 1 no. 32m<sup>2</sup> (8m by 4m) enclosed outdoor dining area to the front area of a restaurant with a given name of 'Fishbone' accessed internally from the main restaurant (Note: No. 324 Clontarf Road).
- The provision of a fire escape door onto the pedestrian footpath for each.
- All associated site works and services.

The planning application form indicates that the proposed structures will be finished with lightweight aluminium frames, fixed glass side panels, adjustable louvre vents on the roof.

2.1.1. On the 5<sup>th</sup> day of March, 2021, the applicant submitted their further information response to the Planning Authority. This response revised the design of the proposed outdoor dining area proposed to serve the restaurant units of No.s 322 and 324 Clontarf Road. It includes the following amendments:

- Additional 2m setback from the public footpath which results in a total setback of 3.4m.
- The provision of a 'lean-to' retractable roof with a maximum height of 3.5m and which reduces to 2.4m in height to the front of both restaurant units.
- A reduction in the depth of the proposed dining structure by 2.1m. Thus, giving rise to a reduced depth of 5.9m.
- The replacement of the previously proposed 2 dining structures to one dining structure serving both restaurant units with access to the two restaurant units provided through this structure.

In addition, it is contended that the consent of the landowner to make this application has been provided with the initial planning application submitted and that the legal ownership extends over the area where the dining area is proposed. It is also contended that both properties have used the areas to the front, rear, and side of their properties for a significant period of time.

### 3.0 Planning Authority Decision

#### 3.1. Decision

- 3.1.1. The Planning Authority decided to **grant** planning permission for 9 no. conditions. Including:

Condition No. 2:	Section 48 contribution.
Condition No. 3:	Revisions to the design.
Condition No. 4(a):	Restricts the hours of use of the covered outdoor dining area alongside does not permit loudspeakers, music, or television to be provided in this area.
Condition No. 4(b):	Restricts the provision of commercial advertising save for the name of the restaurant/takeaway.
Condition No. 4(c):	Restrictions on the enclosed structure.
Condition No. 4(d):	Sets out requirements for external heating and lighting once the retractable awning structure is removed.
Condition No. 5:	Drainage.
Condition No. 6:	Requires compliance with the requirements of the Codes of Practice from the Drainage Division, the Transportation Division and the Noise Air and Pollution Section.
Condition No. 7:	Restrictions on Construction.
Condition No. 8 & 9:	Construction Works.

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

The **final Planning Officer's report** included the following comments:

- While the revised proposed seating areas are substantial in terms of depth and area, it is considered that the structure is more in keeping with the traditional covered seating areas serving restaurants in the surrounding area.

- The visual impact of the structure to facilitate outdoor dining its reduction in height and depth has been reduced. It is not considered that it would adversely impact upon the visual amenities of the area.
- Concerns are raised in relation to the scale of the block wall. This component of the design would be visually obtrusive particularly when the awnings are retracted.
- It would be more appropriate that the structure in its entirety be constructed by a steel structure.
- The nature of the use has the potential to generate substantial noise nuisance.
- It is reasonable to restrict hours and to provide conditions to deal with nuisances that would arise.
- This area is frequented by a high number of visitors to Bull Island/Dollymount Strand and the Clontarf promenade and cycleway, and Clontarf Road could be considered as being heavily trafficked.
- The applicant has indicated that entirety of the redline area is in the ownership and control of the owners of No.s 322 and 324 Clontarf Road.
- No legal right of way exists across the front of the property.
- Reference is made to Section 34(13) of the Planning and Development Act, 2000, as amended.
- The proposed development is considered acceptable subject to safeguards.

The **initial Planning Officer's report** included the following comments:

- Concerns are raised in relation to the design, scale, and extent of the outdoor dining area.
- The two structures proposed will project significantly beyond the front building lines of neighbouring dwellings to the south-west and north-east, which would detract from the visual amenities of the area.
- Depending on the permanency and solidity the structures would create a *de facto* new building line. This would set a negative precedent for the surrounding area.
- Concerns of third parties are noted.

- Concerns are raised in relation to the matter of visual clutter and the impact this would have also on this commercial terrace group.
- It is recommended that the structures be significantly reduced in depth to 4m and lowered, if possible, in relation to fascia levels.
- It is recommended that the proposed materials be altered to lessen the visual impact of the development and it is recommended that the materials chosen should be more transparent in their appearance and nature.
- The loss of car parking is not significant.
- In conclusion, further information recommended on the following items:

Item No. 1: Considers the enclosed seating area to be excessive in scale and overly prominent in the streetscape. It requests that the depth be reduced to 4m from the front elevations, height lowered through to the materials be amended to reduce the visual impact of the structures as appreciated from the streetscape.

Item No. 2: Seeks clarification on legal interest to carry out works within the redline boundary.

### **3.3. Other Technical Reports**

3.3.1. **Drainage:** No objection subject to safeguards.

### **3.4. Prescribed Bodies**

3.4.1. None.

### **3.5. Third Party Observations**

3.5.1. Several 3<sup>rd</sup> Party observations sharing similar concerns to that expressed by the appellants in this appeal case. In addition, the following concerns are raised:

- This development would set a precedent in this immediate area where car parking is an issue.
- The outdoor dining areas sought are excessive.

- Concerns are raised that the seating area to the front of the premises were substantially taken down in advance of site inspections for this application.
- Various traffic hazard and road safety concerns raised.
- The proposed structures will block visibility of the signage board provided for this commercial terrace as viewed on an easterly approach as well as would block visibility of signage on the commercial premises of No.s 326 and 328 Clontarf Road.
- There is a lack of surface water drainage provision for the development sought.
- Adverse amenity impact on setting.

## 4.0 Planning History

### 4.1. Site and Setting:

- 4.1.1. This appeal site has a substantive planning and enforcement history which has been fully set out in the Planning Authority's Planning Officer's reports. The following sets out the relevant planning history of each of the subject premises to which this application relates.
- 4.1.2. In the vicinity of the site there is no relevant Board decisions.
- 4.1.3. Notwithstanding, having examined some of the planning decisions made by the Planning Authority parking does appear to be a substantive issue in this area and along Clontarf Road particularly since the road works of 2017 were carried out with these restricting on-street car parking. In addition, these road improvements have resulted in double yellow lines along the roadside edge of the subject terrace group, and it would appear a loss of on-street car parking spaces in the immediate vicinity.

- **No. 322 Clontarf Road**

**P.A. Ref. No. 3475/13:** Permission was granted for external seating area and revised parking layout to the front of existing restaurant/takeaway. Of note to this appeal are the requirements of the following conditions:

Condition No. 3: *"The outdoor seating shall be omitted from this retention permission and the seating shall be removed no later than four weeks after the decision date for the final grant of permission and the site returned to its previous state."*

*Reason: In the interest of residential amenity of neighbouring properties.”*

Condition No. 4: *“The windbreakers shall display no commercial advertising save for the name of the restaurant/takeaway.*

*Reason: In the interests of visual amenity.”*

Condition No. 7: *“The relocated two car parking spaces shall be formally laid out with permanent markings and shall be in line with the parking spaces serving No. 324 adjacent.*

*Reason: In the interest of orderly development.”*

**P.A. Ref. No. 3535/12:** Permission was granted for the retention of alterations to existing restaurant/takeaway incorporating new shopfront, signage and associated lighting, revised extract duct to the side and rear, and outdoor seating area to the front.

I note the requirements of Condition No. 4. It states: *“the outdoor seating shall be omitted from this retention permission and the seating shall be removed no later than four weeks after the decision date for the final grant of permission and the site returned to its previous state”*. The stated reason given is: *“in the interest of residential amenity of neighbouring properties”*.

**P.A. Ref. No. 0749/00:** Permission was granted for a first-floor extension over part of existing balcony, new second floor extension with dormer windows and minor alterations to ground floor layout, all to provide additional living accommodation at rear.

**P.A. Ref. No. 2144/192:** Permission was granted for the construction of first floor extension at rear and alterations to living accommodation and new toilets to restaurant.

- **No. 324 Clontarf Road:**

**P.A. Ref. No. 3994/17:** Permission for the continuation of use of first-floor level as restaurant (to be used in conjunction with existing ground-floor restaurant). This use was previously granted a temporary 2-year permission for change of use from commercial to restaurant, under P.A. Reg. Ref. 3944/15. Of note Condition 2 required that the developer comply with the terms and conditions of P.A. Ref. No. 3944/15, except where modified by this permission. (Note: decision date was the 15<sup>th</sup> day of January, 2018).

**P.A. Ref. No. 3944/15:** Retention permission & planning permission was granted for a development consisting of the following: i) Retention permission is sought for external door to rear elevation at ground floor level and change of use of unit at first floor level from commercial to restaurant to be used in conjunction with existing ground floor restaurant. ii) Permission is sought for alterations to front elevation at ground floor level to facilitate a revised entrance to the restaurant, reconfiguration of restaurant storage area at first floor level to provide toilet, staff and storage facilities and all associated site works necessary to facilitate the development. Of note are the following conditions:

Condition No.3: *“The use of an area designated as the 1st floor restaurant dining/seating area shall be retained for a maximum period of 2 years only and then shall revert to the pre-existing permitted use unless a further permission has been granted before the expiry of the 2-year period.*

*Reason: In the interests of orderly development, and so the effect of the development may be reviewed having regard to the circumstances prevailing.”*

In relation to this condition, I note that the decision date was the 16<sup>th</sup> day of February, 2016.

Condition No. 4: *“Only those areas of the premises designated as restaurant dining/seating areas shall be used as such.*  
*Reason: In the interests of orderly development.”*

Condition No. 5: *“The subject proposal shall adhere to the previous conditions attached to Reg. Ref. 2234/09 save as amended by details and conditions attached to the subject application.*

*Reason: In the interests of orderly development.”*

**P.A. Ref. No. 2234/09:** Retention permission was granted for amendments to a previously granted planning permission, (PA ref no. 3300/07), for the retention of the change of use from commercial and delicatessen/coffee shop to commercial/restaurant use, outdoor seated area with surrounding screens and fixtures

and fittings to front of restaurant with retractable awning cover, revised location of mechanical extract to rear of building, modifications to internal layout and front elevation, storage facilities for restaurant at first floor and associated site works. Of note are the requirements of the following conditions:

Condition No. 3: *“Light canvas windbreaks shall be used to screen the outdoor dining area to the front of the restaurant. No advertising, signage or logos shall be placed on them, and they shall be demounted and stored away from the frontage of the site outside of permitted opening hours. Reason: In the interests of visual amenities.”*

**P.A. Ref. No. 2551/07:** Permission was granted for amendment to a previously granted planning permission (P.A. Ref no. 6137/06) for change of use from commercial to Delicatessen / Coffee Shop, extract for mechanical ventilation to rear roof and associated site works.

## 5.0 Policy & Context

### 5.1. Development Plan

- 5.1.1. The Dublin City Development Plan, 2016 to 2022, is the applicable development plan. Under this plan the site forms part of a small parcel of zoned land that relates to the subject mixed-use terrace unit that the appeal site forms part of from the terraces front building line extending to where the plots relating to No. 322 to 328 finish that is zoned ‘Z3’. The stated land use zoning objective for such land is: *“to provide for and improve neighbourhood facilities”*. Under this land use restaurant land uses are deemed to be acceptable subject to safeguards.
- 5.1.2. Policy CEE18(i) of the Development Plan seeks: *“to identify and support new and growth economic development and employment sectors in the city”*.
- 5.1.3. Policy CEE18(iv) of the Development Plan seeks: *“to recognise the major economic potential of the café/restaurant sectors, including as an employment generator; making the city more attractive for workers, residents, and visitors; providing informal work and business meeting spaces; to be a part of the city’s innovation ecosystem”*.

- 5.1.4. Policy CHC40 of the Development Plan seeks: *“to support existing, and encourage the growth of emerging, cultural clusters and hubs in the city, which bring together cultural activities with supporting uses such as restaurants, retail outlets etc. to create vibrant and innovative cultural experiences”*.
- 5.1.5. Section 16.29 of the Development Plan acknowledges the positive contribution of café and restaurant uses and the clusters of such uses to the vitality of the city. It also sets out in considering applications for restaurants the following matters will be taken into consideration:
- The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby restaurants.
  - 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.
- 5.1.6. Section 16.30 of the Development Plan deals with the matter of Street Furniture and recognises that certain uses in the public realm, including elements of street furniture can result in problems of visual clutter and to obstruction of public footpaths for pedestrians. It also indicates that it is an objective of the Council to control the location and quality of these structures in the interests of creating a high-quality public domain. It indicates that all outdoor furniture provided by private operators including restaurateurs should be of the highest quality *“preferably of good contemporary design avoiding poor historic imitation and respect the overall character of the area and quality of the public realm and be so located to prevent any obstruction or clutter of all footpaths and paved areas including landings”*.

## **5.2. Natural Heritage Designations**

- 5.2.1. The appeal site is located in the immediate vicinity of the following European sites:
- The North Bull Island SPA (Site Code: 004006) is situated c9.7m from the southern most boundary of the site. However, there appears to be a mapping overlay issue

with the boundaries of this SPA at this point with part of the site encompassing the Clontarf Road carriageway.

- The North Dublin Bay SAC (Site Code: 000206) is situated c14.7m from the southernmost boundary of the site. Like the previous European Site there appears to be a mapping overlay issue with the boundaries of this SAC at this point.
- The South Dublin Bay & River Tolka SPA (Site Code: 004024) is situated c 58m to the southwestern most boundary of the site.

### **5.3. EIA Screening**

- 5.3.1. Having regard to the existing development on site, the nature and scale of the proposed development and the location of the site, 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 this 3<sup>rd</sup> Party Appeal, has been prepared by Peter P. Gillet & Associates on behalf of:
- John Craddock and Anthony Collier. Both with an address of No. 326 Clontarf Road, Dublin 3; and,
  - Mark Dowling, of No. 328 Clontarf Road, Dublin 3.

The grounds of appeal can be summarised as follows:

- The applicants do not have legal interest sufficient to make this application.
- If permitted this development would exacerbate an existing parking problem at this location, and it would be injurious to the visual amenity of the area as well as would detract from the visibility, viability, and operation of the rest of the commercial terrace group it forms part of.

- The site forms part of a small neighbourhood terrace of four no. 2-storey dwellings that contain shops at ground floor and mainly offices above. There is also a 3-bedroom residential unit at No. 322 Clontarf Road. This terrace is served by a common forecourt to the front that is 8.5m in its depth and there is right of way to the rear of all premises along the side of No. 322 as well as a right of way to the front of No.s 322 and 324 to access the rear of the building.
- The terrace is served by the heavily trafficked Clontarf Road and is located at a busy road junction to Bull Island.
- The immediate road setting has recently lost 11 on-street car parking spaces and there are no public parking provisions along this immediate stretch of road. Therefore, this terrace group is dependent on the setback area for car parking.
- Due to the works carried out in the setback area of No.s 322 and 324 car parking for staff, customers and owners are now confined to the fronts of the appellants properties. With double parking to the front now also becoming an issue as well as the use of patrons and operators of the remaining car parking spaces.
- Concerns are raised in relation to the adequacy of the information provided.
- An overview of the planning and enforcement history of the site is given.
- The area in which the outdoor dining has been provided is not zoned.
- The acceptance of the revised proposals by the Planning Authority gives rise to legal questions.
- The decision of the Planning Authority is unbalanced and the interests of the appellants as well as their businesses have been severely damaged by it.
- The subject area has been in use as a communal space from 1953 up until its partial use for seating in 2013.
- Neither applicant have any legal right to any title on the square and they have provided no proof to show otherwise.
- The rights of way are for the benefit of each landowner in this terrace group.
- This development is permanent in its nature, and it will cause an onerous impact on adjoining premises in terms of their operation and their visibility from the road.

- This terrace requires sufficient provision of car parking for its customers, staff but also for deliveries relating to the business operations as well as residential unit it contains.
- This development effectively results in the loss of 4 car parking spaces and makes no provision for any car parking to serve the needs of either restaurant.
- No review of the car parking impact has been carried out to support the assertion that the loss of car parking would not be significant.
- A study of the parking situation has been commissioned and is attached.
- By the Planning Authority requesting that the development be reduced in scale there was an opportunity to create parking to the front.
- This development would result in a visually discordant and obtrusive feature in this streetscape.
- This development would detract from the architectural integrity and appearance of the terrace group it forms part of. It would also be visually overbearing in this context.
- The further information response has not lessened the visual amenity impact of this development.
- The development consists of significant amount of visual clutter.
- No consent for maintenance of this development that has been built up to the boundary with No. 326 has been obtained.
- This development affects the appellants livelihoods.
- This development is not compatible with the land use zoning of the terrace group.
- The Board is requested to overturn the decision of the Planning Authority.

## **6.2. Planning Authority Response**

6.2.1. None received.

## **6.3. Applicant's Response**

6.3.1. The First Party's Response can be summarised as follows:

- The proposed development accords with the proper planning and development of the area.
- The proposal as granted consists of a singular structure that projects 5.9m from the front elevation of the building, with a lean-to type roof which measures 2.4m in height closest to the footpath.
- The applicants have demonstrated previously in the course of this application that they have sufficient legal interest in the subject site.
- There are no formal rights-of-way to the front of these properties.
- An informal arrangement of allocating the area to the front of the building line has occurred at this location benefitting each of the properties in the terrace group. There is no free for all.
- Land ownership is a civil matter.
- The appellants have exacerbated the car parking problems at this location.
- This application seeks to regularise development on site.
- Due to the restaurant nature of Kanoodle and Fishbone the space to the front of these premises is best used as outdoor dining space.
- Kanoodle and Fishbone customers generally live in the vicinity.
- This development does not impact negatively on No.s 326 and 328 Clontarf Road.
- The applicant does is not reliant upon the car parking spaces to the front of No. 326 and 328 Clontarf Road.
- The Board is requested to have regard to the positive impacts this development would have on the surrounding area.
- The physical and visual impacts of the development have been deemed to be positive by the Planning Authority following on from the applicant's revisions set out in their further information response.
- The function of a neighbourhood centre is to provide a multitude of uses.
- The Board is requested to uphold the Planning Authority's decision.

## 7.0 Assessment

### 7.1. Preliminary Comment

7.1.1. Having carried out an inspection of the site and its setting, together with having read all documentation on file and having had regard to all relevant planning provisions for the type of development proposed at this location, I consider that the main issues in this appeal are those that are raised in the grounds of appeal by the Third Party. These I propose to deal with under the following broad headings in my main assessment below:

- *Principle of the Proposed Development*
- *Civil Matters/Landownership*
- *Car Parking*
- *Visual Amenities*
- *Oversailing*

7.1.2. I also consider that the matter of 'Appropriate Assessment' requires examination. This I have dealt with under a separate heading that follows on from my main assessment below.

7.1.3. For clarity I note to the Board that the applicant submitted revised proposals to the Planning Authority on the 5<sup>th</sup> day of March, 2021, which sought to address mainly the visual amenity concerns of the proposed development raised by the Planning Officer in their initial report alongside seeking clarification that the applicants had sufficient legal interest and/or consent to make this application to the front of the building line of No.s 322 and 324 Clontarf Road. There was no decrease in dining area associated with the applicant's further information response and the proposed development still sought the provision of an enclosed outdoor dining area of 67m<sup>2</sup> in total floor area for the use of the two separate restaurant units at No.s 322 and 324 Clontarf Road, i.e., 'Kanoodle' and 'Fishbone'. In total it sought an additional seating of 32 covers for 'Kanoodle' and 24 covers for 'Fishbone' in the revised enclosed dining area.

7.1.4. I consider that this revised design puts forward a visually less dominant enclosed structure to the front of the building line of No.s 322 and 324 Clontarf Road as appreciated from the public domain. On this consideration I therefore generally concur

with the Planning Authority that this revised design subject to the omission of the brick wall division and for the main enclosure structure to be demountable when not in use for extended periods of time is a positive improvement over that of the original design. In addition, the I concur that the reduction in depth of the enclosed structure extension to 5.9m as measured from the front building line of No.s 322 and 324 Clontarf Road together with the proposed now 'lean-to' type enclosure's reduction in height through to its use of a more light-weight materials would altogether have a less negative visual impact on its streetscape scene. With its less permanent in built form and appearance structure it would not overly diminish the building line of this terrace group or indeed of properties in its setting as these are quite harmonious in terms of their setback in this stretch of the Clontarf Road.

- 7.1.5. For these reasons and for clarity purposes my assessment below is therefore based on the revised design due to the considerations I have set out.
- 7.1.6. I do not, however, consider, that the revised design would lessen the potential of this proposals impact on adjoining and neighbouring residential properties in the vicinity of the subject properties, including the amenities of the dwelling unit in No. 322 Clontarf Road.
- 7.1.7. Such land uses in my view would be highly sensitive and vulnerable to changes in their surrounding setting, despite this setting being one that has been a highly suburbanised for a significant period of time in terms of the evolution of the city with impacts already arising at this location from the heavy traffic of the Clontarf Road and the recreational amenity spaces on the opposite side of this road.
- 7.1.8. I acknowledge that restaurant land uses in this context, particularly in the context of an established parcel of land where such uses are deemed to be acceptable can add to the amenities and services on offer for residents, those using the recreational and amenity area opposite through to tourists visiting this immediate area to make access onto Bull Island.
- 7.1.9. Notwithstanding, given that this small parcel of 'Z3' zoned land is bound on all three sides by residentially zoned land 'Z1' (Sustainable Residential Neighbourhoods) with the land use zoning objective of protecting, providing, and improving residential amenities cognisance has to be had that in terms of land use it has a transitional character.

- 7.1.10. I note that Section 14.7 of the Development Plan which deals with the matter of boundaries between land use zones indicates that it is important to avoid abrupt transition in scale and uses. It also indicates that it is necessary to avoid developments that would be detrimental to the more environmentally sensitive zones.
- 7.1.11. As this development, if permitted, would significantly change the context of the unzoned land to the front building line of land zoned 'Z3' by way of providing an enclosed outdoor dining area of 67m<sup>2</sup>. With such a use having the potential to give rise to significant additional nuisances in comparison the limited outdoor dining spaces permitted in the past in this area, with the remaining area between the permitted outdoor dining areas and the public footpath in use as an area of off-street car parking.
- 7.1.12. In terms of nuisances not only would this use give rise to increased intensification of both restaurant functional uses due to it increasing its cover capacity, i.e., customer numbers to be facilitated for dining on site. But the outdoor dining areas themselves are not as easy to provide permanent mitigation measures to abate nuisances like noise, vibrations, and other type of nuisances that would normally be associated with such land use.
- 7.1.13. These nuisances depending on the hours and overall intensity of operation during the week, into the weekend and public holidays, together with I note these restaurants already offering delivery services which would already give rise to an increased movement of traffic and persons in their vicinity over and above that of a restaurant that did not provide such services have significant potential to diminish materially the amenities of residential properties adjoining and neighbouring them.
- 7.1.14. Moreover, the increase in cover area together with the loss of 4 car parking spaces, in context where there is limited car parking in the immediate vicinity of the subject terrace would give rise to greater potential for the car parking generated by the additional covers of both restaurants, but which cannot be accommodated by the restaurants to seek car parking space solutions in the immediate vicinity. Such as parking in the modest residential streets of Kincora Road, Seafield Downs, through to in adverse situations car parking onto the pedestrian footpath of Clontarf Road. The latter which is not acceptable and would impact on the safe movement of vehicles along this heavily traffic and recently narrowed road. These latter matters are

discussed in more detail in my main assessment below under the separate heading of 'Car Parking'.

- 7.1.15. Given the likelihood of this development to give rise to significant additional nuisances for adjoining and neighbouring residential properties in the vicinity, including the occupied residential unit above No. 322 Clontarf Road. It is reasonable in my view in the event that the Board decides to grant permission for the development sought under this application that it gives due consideration to imposing appropriate that mitigate against any serious injury to residential amenities arising. The provision of such condition is consistent with the considerations set out under Section 16.29 of the Development Plan, which deals specifically with restaurant land uses.
- 7.1.16. The Board may consider this a **new issue** in the context of this appeal as this was not a substantive matter of concern raised by the appellants in their appeal submission.
- 7.1.17. I also consider it appropriate to make comment on procedural concerns raised in relation to the Planning Authority's handling of this planning application, the Board does not have an ombudsman role on such issues.
- 7.1.18. Further, in terms of the enforcement concerns raised and the unauthorised uses contending to be occurring on the appeal site, whilst I am cognisant that enforcement is a matter of the Planning Authority to deal with as it sees fit and it is evident from inspecting the site alongside the history of the site that there are existing issues in relation to the same.
- 7.1.19. Whilst this application is in part seeking retrospective permission for the extension of the outdoor dining area and whilst I am cognisant that these works are proposed to be carried out in a different manner to what exists on site. Therefore, I do raise it as a significant concern that the public notices as provided make no mention of retention of outdoor dining area or the basic incorporation of permitted off street car parking to the front of both restaurants. This physical development and change of land use function by and large appears to correlate with the same area initially proposed for the outdoor dining enclosure sought under this application. Arguably from site inspection it would appear to be slightly deeper in its depth from the front building line of both premises. I can find no grants of permission or retrospective grants of permission for the same.

7.1.20. I am therefore of the opinion having inspected the site, the planning history of the site and the documentation on file that the public notices provided with this application are not adequate. In that whereas the enclosure that is proposed is not present but the outdoor dining area and extension of both restaurants in their functional commercial day to day operations into the depth of the dining area sought under this application is a change of use of land that has already occurred. And as said does not the benefit from permission prior to the making of this application. This I consider is a significant concern and a concern that I consider is a **new issue** in the context of this appeal and I would advise the Board that no grant of permission be made prior to seeking public notices that more accurately reflect the nature of the development sought. In the absence of the same this in my view is reason, in itself, to refuse planning permission.

## 7.2. Principle of Development

7.2.1. In addition to the comments already made above on the matter of the principle of development, the appellants are correct in that the area to which this application's development relates is located on land that is not subject to any zoning provisions under the current Development Plan in that they are demarcated as uncoloured in the applicable map in which this site is located. Notwithstanding, they adjoin land that is zoned 'Z3' on their northern side, i.e., alongside the front building line of No.s 322 and 324 Clontarf Road. The land use objective for 'Z3' land seeks to provide for and improve neighbourhood facilities. I am cognisant that restaurant land uses are deemed to be generally acceptable in principle on such zoned land, subject to safeguards. I therefore consider in general that there would be an acceptable land use synergy between the adjoining 'Z3' zoned land which accommodates the footprints of the restaurants for which they are proposed to form part of.

7.2.2. Moreover, subject to appropriate conditions that deal with the nuisances that would arise from a light weight enclosed outdoor dining space there is potential subject to compliance with these conditions that the residentially 'Z1' zoned land would not have their amenities seriously diminished in a manner that would be contrary to their land use zoning objective which seeks: *"to protect, provide and improve residential amenities"*.

7.2.3. In relation to the 'Z9' land use to the southwest, I am cognisant that the stated land use is: *"to preserve, provide and improve recreational amenity and open space and*

*green networks*". Arguably the proximity to restaurant type uses would be an advantage to such zoned land subject to any development being subject to strict waste management conditions alongside ensuring, particularly in terms of the highly attractive streetscape setting it forms part of, that any such development is of high quality and that matters such as signage as well as other projecting or attachments that could give rise to visual diminishment by way of clutter are appropriately controlled by way of condition and/or conditions as appropriate. This is consistent with the Development Plan guidance on such matters.

- 7.2.4. Taking the above matters into account I do not accept the appellants argument that the general principle of the development is not acceptable in this case.

### **7.3. Civil Matters/Landownership**

- 7.3.1. Of concern the further information sought the applicants to demonstrate that they had sufficient legal interest to make this application or the consent of the landowners. In this case I note that both No.s 322 and 324 Clontarf Road are leasehold properties. This planning application is accompanied by the consent of those who hold the leasehold in these properties to make this application. Of concern, the land to the front of the building line of both properties both fall outside of their leasehold and land title area.
- 7.3.2. This fact has also been demonstrated in evidence provided in relation to No. 322 Clontarf Road and in relation to No. 324 Clontarf Road, which appears to be in receivership. A recent real estate brochure relating to the sale of this property does not include the area to the front of the building line as part of the details on this property, by the appellants. Whilst I am cognisant that there is planning history relating to both properties that appear to have included land outside of the actual land title area. With this planning history including grants of permission through to enforcement history, I am of the view that any decision on the planning application does not purport to determine the legal interests held by the applicants or indeed any other interested party.
- 7.3.3. Moreover, I refer to Section 34(13) of the Planning and Development Act, 2000 as amended. It indicates that "*a person shall not be entitled solely by reason of a permission or approval under this section to carry out a development*". Indeed, I note that this was highlighted by the Planning Authority's Planning Officer in their report.

- 7.3.4. I consider that the Board has no statutory power to adjudicate upon the matters relating to title and ownership of property raised in the grounds of appeal. These matters constitute ‘*civil matters*’ that can only be resolved by agreement between the parties or in the civil courts. The Development Management Guidelines for Planning Authorities makes this clear where under Section 5.13 it states: “*the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution by the courts*”.
- 7.3.5. But it is nonetheless a concern that this application and the works that are proposed in it relates to land that clearly lies outside of the title lands of No.s 322 and 324 Clontarf Road and also that land outside of the title land area for both of these properties have been included in the red line area. Yet there is no clarity or robust evidence provided that support that either applicants or the applicants collectively have the benefit of consent to carry out the development sought under the application they have made. With the outcome of this application also being the significant loss of what has been the historically the hard surfaced area to the front of No.s 322 to 328 that effectively served their staff, customer through to delivery parking needs.
- 7.3.6. Whilst I am of the view that it should not be necessary for the Board to investigate the bone fides of sufficient interest or consent to make the application and on foot of any grant of permission the carrying out of the development sought under the application. However, in this case I am not satisfied based on the information provided that the applicants have robustly demonstrated compliance with the requirements of Section 22 of the Planning and Development Regulations, 2001, as amended, in the documents they have provided.
- 7.3.7. Therefore, they have not demonstrated sufficient legal interest in the land to bring forward the development and their reliance on previous permissions that have permitted development on land outside of the legal interest of the applicants is not sufficient basis to overcome this concern nor do I consider the provisions of Section 34(13) are sufficient as given the concerns with compliance Section 22 of the Planning and Development Regulations, 2001, as amended. This concern compounds the inadequacy of the public notices to describe the actual development sought and I am not certain that this application before the Board relates to a valid planning application.

#### **7.4. Car Parking**

- 7.4.1. Section 16.29 of the Development Plan acknowledges the positive contribution of restaurant uses, including when clustered to the vitality of the city. Given that this planning application seeks an increase in its functional dining area, which in effect gives rise to an intensification of the existing functional land use of both restaurants that the enclosed outdoor dining area proposed will serve. It is appropriate, in my view that consideration is given to the traffic implications of this development, the effect of general disturbances through to the safeguarding of the vitality and viability of area through to maintaining a suitable mix of uses. These considerations are required under the said Section of the Development Plan.
- 7.4.2. Of significant concern in this appeal case is the significant loss of the hard stand to the front of No. 322 and 324 Clontarf Road and the two car parking units that were indicated to have existed having regard to their planning history and functional evolution of the sites since their construction as part of a terrace group c1950s.
- 7.4.3. I am cognisant having examined the planning history that recent grants of permission did allow a modest provision of outdoor dining area to the front of each property. In addition, No. 322 at first floor level contains a six-bedroom dwelling unit which at the time of my site inspection appeared to be in occupation.
- 7.4.4. Irrespective of the fact that despite the development effectively including a component of retention though as said this has not been acknowledged in the public notices provided, it is appropriate in my view, that this application is assessed on the basis as would apply if the development in question had not taken place, i.e. the complete loss of car parking to the front building line of No.s 322 and 324 in the absence of permission or retention thereof. And aligning with this they should be assessed in terms of the development that is sought contribution towards the achievement of the applicable zoning objective, the vision for the zoning objective and its compliance as well as consistency with the relevant policies and objectives set out in the Development Plan.
- 7.4.5. Under the current Development Plan standards, the dwelling unit has a requirement of 1.5 car parking space and the restaurant land uses have a requirement of 1 car parking space per 150m<sup>2</sup> in parking Area 3 (Note: Map J).

- 7.4.6. This application does not clarify the exact total floor area of the restaurant use but it is likely that a minimum of two car parking spaces would be required for the already permitted restaurant uses within the footprint of No.s 322 and 324 Clontarf Road, without any expansion of the number of covers the restaurants could cater for at maximum occupancy.
- 7.4.7. Notwithstanding, this application seeks the permanent removal of all potential for the provision of car parking to meet the permitted quantum of residential and restaurant land uses to the front of No.s 322 and 324 Clontarf Road. Alongside provides no additional car parking to meet the increased dining area proposed.
- 7.4.8. As noted previously the restaurants also include takeaway services for customers and deliveries. However, in car parking Area Zone 3 under the current Development Plan provisions this is the same as restaurant requirements (Note: Table 16.1).
- 7.4.9. In addition, I have previously noted that No.s 322 and 324 Clontarf Road are one of four once matching terrace commercial properties that accommodate a variety of land uses and are effectively reliant upon meeting their car parking needs within the area to the front building line of No.s 322 to 328.
- 7.4.10. This application effectively seeks that the modest remaining car parking provision to the front of No.s 326 and 328 Clontarf Road meet the car parking requirements in its entirety for the restaurant and residential land uses, alongside the intensification of the restaurant land uses at No.s 322 and 324 Clontarf Road. At best without obstruction this can accommodate five car parking spaces, but it would appear that due to the shortage of spaces it has been laid out to provide a second row of car parking spaces that would effectively block the car parking spaces in front of the building if they were all in use. Moreover, in these circumstances there would be potential for increased movements and manoeuvring of cars over the pedestrian footpath.
- 7.4.11. The proposed development would also give rise to visual obstructions to the west of the remaining spaces to the front of No.s 326 and 328 Clontarf Road when in use. This would be in addition to the visual obstructions already present in both directions. As such this development has a real potential to give rise to additional conflicts to arise between vehicle movements and vulnerable users of the pedestrian footpath but also road users of the east bound Clontarf Road carriage which as said is heavily trafficked with the terrace group, in particular No.s 326 and 328 located in close proximity to the

west of a high frequency in use Dublin Bus Stop. In addition, there are additional turning movements on this immediate stretch of the Clontarf Road arising from the fact that the terrace group fronts on to a road junction that provides vehicle, pedestrian, and cyclist access to Bull Island.

- 7.4.12. Moreover, the potential for conflict to arise is magnified by the loss of car parking serving this small pocket of 'Z3' zoned land that this terrace group forms the entirety of at this location. This terrace group includes a mixture of different commercial uses that all have different car parking requirements.
- 7.4.13. In addition to this and as discussed previously there is not a provision of public car parking immediately accessible to the appeal site to absorb the car parking overspill or indeed for meet the car parking requirement for the dwelling unit at No. 322 Clontarf Road. As such it is likely that the overspill of car parking would use residential streets in the vicinity like Kincora Drive and Seafield Downs. It is possible that parking could occur over the double yellow lines and onto the pedestrian footpath in the vicinity of the site. I did observe examples of the same along Clontarf Road which unfortunately when this happens together with the road width reduction that has occurred along this stretch of the Clontarf Road results in additional obstruction for vulnerable users using the footpaths and also for road users.
- 7.4.14. I consider that the Planning Authority's further information request to reduce the depth of the enclosed area to a maximum of 4m had the potential to maintain two car parking spaces to the front of No.s 322 and 324 Clontarf Road. This appears not be acceptable to the applicants and a depth of 5.9m is proposed by them which is not suitable to accommodate car parking and the associated safe movements of vehicles accessing as well as egressing without conflicting with the heavily used pedestrian footpath and adjoining Clontarf Road.
- 7.4.15. I also concur with the appellants in this case that the applicants and the Planning Authority have not made an evidenced based conclusion that the shortfall and loss of car parking that would arise would not be significant in this context; that it would not impact adversely on the safe movements associated with the remaining car parking spaces through to that it would provide a reasonable balance in terms of meeting car parking demands within the hard surface area to the front of No.s 322 and 324 Clontarf Road without placing an unfair burden on the limited car parking spaces to the front of

No.s 326 and 328 Clontarf Road as well as on other commercial interests and the dwelling unit at No. 322 Clontarf Road that would also be dependent on this limited provision. Yet this provision as it currently is set out indicates that the areas to the front of No.s 326 and 328 Clontarf Road are private for their use and as such are not likely to meet any of the car parking requirements of the existing land uses of No.s 322 and 324 Clontarf Road as well as their now proposed intensification of land use.

7.4.16. In this instance the proposed development, if permitted, would likely give rise to a negative impact on traffic safety over and above its existing situation and the lack of any car parking provision to cater for the likely volume of car parking generated by the residential and restaurant land uses at No.s 322 and 324 Clontarf Road is not acceptable having regard to the provisions set out under Section 16.38 of the Development Plan which deals with the matter of car parking. As well as the car parking requirements for the quantum and types of land uses proposed for No.s 322 and 324 Clontarf Road as set out under Section 16.1 of the Development Plan and its accompanying Map J.

7.4.17. Based on the above considerations, I consider that this substantive reason to warrant a refusal of planning permission.

## **7.5. Visual Amenities**

7.5.1. Should the Board be minded to grant permission I concur with the requirements of Condition No. 3(a) of the Planning Authorities grant of permission which requires the omission of the block wall between No.s 322 and 324 and its replacement with a more suitable material. I also concur with the requirements of Condition No. 4(b) which restricts the display of commercial advertising; and, Condition No. 4(c) that requires that the supporting frame be demounted during any extended period of non-use. I also consider that all materials, treatments, and finishes should be subject to prior agreement as well as that a suitable condition be imposed to deal with exterior lighting of this outdoor dining space area. Subject to these conditions I raise no substantive concerns in respect of the visual amenity impact of the proposed development.

## **7.6. Oversailing**

7.6.1. Should the Board be minded to grant permission for the development sought I recommend that it include as an 'Advisory Note' the requirements of Section 34(13) of

the Planning and Development Act, 2000, as amended to deal with the matter of oversailing, encroachment and the like.

## 8.0 **Appropriate Assessment**

- 8.1. Having regard to the development proposed and the nature of the receiving environment despite the sites close proximity to a number of European sites, I consider that no Appropriate Assessment issues arise given that no significant constructions works are proposed that would disturb ground levels through to given that the site is served by public mains drainage which even in the absence of drainage conditions could absorb surface water run-off from the site, 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.

## 9.0 **Recommendation**

- 9.1. I recommend that planning permission be **refused** for the reasons and considerations set out below.

## 10.0 **Reasons and Considerations**

1. On the basis of the submissions made in connection with the planning application and appeal, together with the documentation on file, the Board is not satisfied that the application has been made by a person who has:
  - (a) sufficient legal estate or interest in the land the subject of the application to enable the person to continue the existing use of, or carry out the proposed works on the land, or
  - (b) the approval of the person who has such sufficient legal estate or interest.

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

2. Having regard to the nature, scale and extent of the development, the restricted nature of the site, the site's location in a modest mixed use terrace group in an otherwise residential, recreational and amenity context, the site's location on a heavily trafficked regional road (Clontarf Road – R807), the non-provision of car parking and as a result failing to meet the standards set out under Table 16.1 of the Dublin City Development Plan, 2016 to 2022, together with the development giving rise to negative traffic as well as road safety impacts which would be in conflict with Section 16.38 of the said Development Plan, it is considered that the proposed development would result in substandard overdevelopment of the site. The proposed development would, therefore, seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.

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Patricia-Marie Young  
Planning Inspector

22<sup>nd</sup> day of June, 2021.