



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311337-21

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<b>Development</b>	Change of use of existing pharmacy into an Italian chip shop/takeaway, signage and all associated works.
<b>Location</b>	Unit 3, Castleknock Village Shopping Centre, Castleknock, Dublin 15
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	FW21A/0133
<b>Applicant(s)</b>	Maria Marsella
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Eugene Davy
<b>Observer(s)</b>	Declan Mescall & Castleknock Park Residents
<b>Date of Site Inspection</b>	5 November 2021
<b>Inspector</b>	Una Crosse

## 1.0 Site Location and Description

1.1. The unit in question, Unit 3, is located within the Castleknock Village Shopping Centre which comprises a small village centre on the Castleknock Road which is part single/part 2-storey with an awning over the pathway over the units. The unit which has a stated floor area of 61 sq.m is currently in use as a shop, Gift and Gadgets and was previously a pharmacy (Lloyd's Pharmacy), and is adjoined to the northeast by a vacant unit most recently 'The Cutting Crew Salon' (unit 4) and to the southwest by DFM Property Management (Unit 2). There is an area of car parking to the front of the units with a health centre and petrol filling station to the west. To the east of this parade of units there is another retail centre known as the Ashleigh retail centre. Further east of this is a development of residential properties known as Castleknock Park.

## 2.0 Proposed Development

2.1. The proposal relates to the change of use of Unit 3 which has an area of 61 sqm. The change of use comprises converting the unit from pharmacy use to an Italian chip shop/take away. The physical development works to facilitate the change of use comprise the following:

- Provision of a food preparation area, food store room, freezer, staff changing areas and kitchenette, provision of a counter and customer waiting area.
- Installation of an extract vent stack to the rear of the unit (eastern side).
- Provision of ground to ceiling glass windows at front of the unit.
- Signage over the full width above the ground floor unit and above the awning over the unit also for the full width of the unit.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was granted subject to 11 conditions which include the following:

(3)(a) – details of external signage to be submitted with no illumination.

(6) – hours of operation – 10 am to 12 midnight Monday to Saturday and 11 am to 11 pm Sundays and Bank Holidays.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The assessment within the report can be summarised as follows:

- Take-away permitted use in the TC zoning;
- As per DMS107 - not considered excessive concentration of such facilities in Castleknock village centre such that proposal would adversely affect amenities, vitality or viability of the centre;
- No details submitted on opening hours but can be stipulated by condition;
- Applicant will be required to provide a waste bin to serve the premises;
- Concerns regarding proximity to schools and health are noted but regard had to town centre nature where considered reasonable for take-away businesses to seek to operate and to the range of alternative dining and food options available;
- Good mix and range of commercial uses and services within the area noted;
- Proposed signage similar in dimensions to existing on adjacent premises but no specific details submitted which should be agreed with the PA;
- Vent stack proposed not considered to give rise to adverse impacts on visual amenities of the area;
- Noted parking is shared and normally is busy and is managed by a private company with complimentary uses within the centre.
- No pathway to any European Sites with no likelihood of significant effects;
- Proposal not of a scale to require EIA with no characteristics which would require an EIA be undertaken;
- Proposal is acceptable having regard to the zoning and would not unduly affect the visual or other amenities of the area and would accord with the current CDP.

### 3.2.2. Other Technical Reports

- Water Services – no objection subject to condition.
- Irish Water – no objection subject to condition.
- Transportation Planning – no objection.
- Environmental Health – no comment.

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

Number of submissions oppose the proposal in relation to number of take-aways in the area; risk of anti-social behaviour; location of pub in the area and risk of anti-social behaviour from patrons of same; increased litter with inadequate litter bins; negative impact on health of young people.

Number of submissions support the proposal.

## 4.0 Planning History

No recent history.

## 5.0 Policy Context

### 5.1. Development Plan

The site is located on lands zoned – ‘TC’ – the objective of which is to “*protect and enhance the special physical and social character of town and district centres and/or improve urban facilities*”.

Castleknock is considered a level 4 centre within the Fingal Retail hierarchy.

The following objectives in the development plan are of note:

**ED47** – Ensure that the level 4 centres have a retail offer that is sufficient in terms of scale, type and range without adversely impacting on or diverting trade from the higher order retailing locations.

**ED54** – seeks to prevent an over-supply or dominance of fast food outlets, takeaways, off licences and betting office in the main streets of towns, villages, shopping centres and local centres to ensure injury is not caused to the amenities of these streets and centres through the loss of retail opportunities.

Development Management Standards included in the Plan refer to fast food outlets having the potential to cause disturbance, nuisance and detract from the amenities of an area with proposals for new or extended outlets to be carefully considered.

**Objective DMS107** states that development proposals for fast food/takeaway outlets will be strictly controlled in respect of the following:

- Cumulative effect of fast food outlets on amenities of an area;
- Effect of proposal on existing mix of land uses and activities in an area;
- Opening/operational hours of a facility;
- Location of vents and other external services and their impact on adjoining amenities in terms of noise/smell/visual impact.

**Objective DMS108** seeks to give careful consideration to the appropriateness and location of fast food outlets in the vicinity of schools and where considered appropriate to restrict the opening of new fast food/take-away outlets in close proximity to schools so as to protect the health and well-being of school going children.

## 5.2. **Natural Heritage Designations**

None within proximity nor are there pathways.

## 5.3. **EIA Screening**

- 5.3.1. The proposed development is not a project/class of development which falls within either Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal, received from Eugene Davy, are summarised as follows:

- Owners and occupiers of adjoining unit (unit 2);
- Fingal's policy states that fast food outlets have the potential to cause disturbance and detract from amenities of an area with proposals for new or extended outlets to be carefully considered;
- Objective DMS106 and DMS107 outlined noting that none of the considerations within same appear to have been addressed in the application or by Fingal;
- Village centre nearest shopping location to 5 local senior and junior schools (list provided) in the area (2 within 500m) with proposal in contravention of guidelines as laid down covering the location of takeaways near schools and these guidelines should be applied.
- 13 outlets provide take-away food in the centre and adjoining centres so no social need for the change of use;
- Change of use would be detrimental to the over-all balance of trading in the area and long term ambiance and ambition for the village by the Council;
- Proposal would adversely affect viability of the shopping centre decreasing trade diversity;
- Proposed use traditionally attracts anti-social behaviour, gatherings and extra litter;
- As the adjoining premises, will be adversely affected by pollution/smell and odours from cooking, rubbish, anti-social behaviour and restrictions on opening hours with no details supplied or requested to address these issues;
- Believe Fingal have previously declined applications for takeaway food within this area.

## 6.2. Applicant Response

The applicant's response to the appeal are summarised as follows:

- Provides a detailed planning history of the centre and wider area, outlines the relevant Development Plan objectives and extracts from the Planners report.
- Site will have no bearing on the health and wellbeing of school going children with the two closest schools – St Brigid's National School & Castleknock National School 650m and 220m away respectively and while within walking distance, primary pupils do not leave the school during lunch hour. Mount Sackville and Castleknock College Schools 1.7km and 1.1km with distance to and from same unlikely during lunchtime given distance (map provided).
- Objective DMS108 in CDP seeks to mitigate health impacts arising with Planner's report outlining the good range of commercial uses and services within the area providing alternative dining options.
- Shopping centre is a central point of activity within Castleknock servicing large number of residential developments and is likely to be a stopping point after school due to location of bus stop.
- Proposal in line with objectives in Development Plan DMS107 with takeaways a permitted use within town centres.
- Within the shopping centre there are two other units offering takeaway Okra Green & New Mandarin Castle with three in the adjacent Ashleigh Retail Centre – Apache, Wong's Chinese and Millennium 2. Both centres are integral parts of central Castleknock serving an urban population of 23,195 which provides one takeaway per 3,866 persons with none of existing takeaways comprising an Italian chipper.
- Given capacity of location proposal will not create a proliferation of takeaways with no other Italian chipper and with complimentary services nearby such as filling station, grocery stores proposal will enhance and promote town centre activities.
- Proposal will not lead to litter, odour pollution or create anti-social behaviour given the conditions attached by Fingal including (4) provision of litter receptable

within the unit and (6) hours of operation. A vent stack and kitchen are to the rear of the unit limiting potential cooking odours and visual impact.

- Departmental reports found no objections to proposal.

### 6.3. **Planning Authority Response**

The response received from the Planning Authority states that they have no further comments.

### 6.4. **Observations**

Two observations were received which include similar matters and are summarised as follows:

- Fingal Planner did not mention the considered and reasonable environmental objections of the observer to the proposal in their report which is a serious error and no comment from the Environmental Officer to the proposal appalling lack of judgement indicating sloppy and off-hand approach to the application,
- Committee (Castleknock Park Res. Assoc.) long history of trying to correct lack of regulation at planning stage for basic environmental considerations with restaurant kitchens at ground floor alarming with regard to smells issuing over surrounding area.
- Castleknock Park directly downwind of SW and W prevailing winds and only 50m at nearest point to proposed site.
- Huge difference between pharmacy and takeaway when it comes to smells and no mention as to how applicants propose to deal with smell nuisance with experience that commercial kitchens need fans, filters and flues.
- Support considered views of appellant in their grounds of appeal.
- Too many takeaways and food outlets providing takeaway in four shopping centres in Castleknock Village with a further one upsetting the balance of retail stores to detriment of overall shopping amenity for the community;
- Village needs a proper mix of retail opportunities with due regard to this not given as per Objective 54 and DMS108.



- Proposal would add to considerable litter problem with no permanent fixed litter bin in the centre with nearest Council bin insufficient with planning application making no effort to address the matter with internal litter bin of little use as proposal is a takeaway.
- Proposed opening hours not stated with previous pharmacy having restricted hours with any increase in hours to detriment of community given proximity to number of public houses.
- Proposal proximate to a number of schools with chip shop food unhealthy presenting a risk to school pupils many of whom purchase lunch in the village and nearest centre to Castleknock College with pupils gravitating to the facility to detriment of their health with laws in relation to this (Obj DMS108);
- Proposal does not meet zoning objective.
- Owners of shopping centre have little or no regard for upkeep/repair/appearance of centre with list of matters arising set out including blocked drains, uneven footpaths, graffiti not removed, lighting globes broken and highly unlikely that increased litter addressed.
- Neglected centre is an eyesore and visual black spot bordering the Castleknock ACA contributing to decline in footfall and customer numbers and resulting loss in tenants.

## 7.0 Assessment

Having inspected the site and considered the contents of the third-party appeal, observations and response to the appeal in detail, the main planning issues in the assessment of the proposed development are as follows:

- Principle of Proposal and Impact on Existing Mix of Uses
- Impact on Schools
- Cumulative Effect
- Impact on Amenities of Adjoining Uses/Properties.
- Appropriate Assessment

## **7.1. Principle of Proposal and Impact on Existing Mix of Uses**

Firstly, as outlined by the Planning Authority and Applicant, the takeaway use is a permitted use within the subject TC zoning pertaining on the lands. This provides that the proposal is acceptable in principle within this zoning and I consider that the location of this proposal within this village centre is the most appropriate location for such a use.

Some concern has been expressed at the effect the proposal would have on the mix of uses within the centre. I will address cumulative effect of such uses in Section 7.3 below. I note that Objective ED47 within the Plan seeks to ensure that the level 4 centres have a retail offer that is sufficient in terms of scale, type and range without adversely impacting on or diverting trade from the higher order retailing locations. I consider that the current retail offer within the centre is appropriate for a centre of its scale and function. In terms of operating units, there is a neighbourhood retail unit and a delicatessen style unit (Butlers Pantry). In addition, the appellants own office is located closest to the main street. I do not consider that it can reasonably be considered that the proposed takeaway could affect the mix of uses already in existence or lead to a diminution of such uses in the future. A takeaway is considered a reasonable, and given the zoning, a permitted use within such a setting and therefore I consider that the proposal is acceptable in principle and will not negatively affect the mix of uses within this small village centre.

## **7.2. Impact on Schools**

Concern has been expressed in the appeal and in the observations in relation to the proximity of the proposal to local schools and the potential for the proposal to become a magnet for school children in respect of lunch and after school choices. I would refer the Board to Objective DMS108 within the County Development Plan which seeks to give careful consideration to the appropriateness and location of fast-food outlets in the vicinity of schools. It also suggests that where considered appropriate, to restrict the opening of new fast food/take-away outlets in close proximity to schools so as to protect the health and well-being of school going children. Reference is made by the appellant to schools within the locality and while I note same, I would agree with the applicant's agent that the most proximate primary

school children will not be able to use the facility during their lunchbreak as they do not leave the school. In relation to the two secondary schools referenced, Mount Sackville and Castleknock College, the nearest of these schools, Castleknock College, is in excess of 1km from the facility. The objective specifically states schools in close proximity. The applicant has provided a walking map of the proposal in relation to the two schools. A distance of in excess of 1km cannot be considered to be in close proximity to a school which facilitates students leaving at lunchtime. I therefore do not consider that the concerns expressed in respect of the potential effect on schools has sufficient merit to warrant a refusal of the proposal.

### **7.3. Cumulative Effect**

Objective ED54 in the Development Plan seeks to prevent an over-supply or dominance of fast food outlets, takeaways, off licences and betting office in the main streets of towns, villages, shopping centres and local centres to ensure injury is not caused to the amenities of these streets and centres through the loss of retail opportunities. I would also refer to Board to Objective DMS107 which states that development proposals for fast food/takeaway outlets will be strictly controlled in respect of the following – the cumulative effect of fast food outlets on amenities of an area. While I address the impact on amenities of adjoining properties in the following section, in respect of the concerns in respect of the potential over supply or dominance of fast food outlets within this particular centre, while there are take away options from premises within the centre there is no traditional chip shop takeaway. I note this is referenced by a number of observers who made submissions to the planning authority in support of the proposal. While there are other types of takeaway options within the combined Castleknock and Ashleigh retail centres the type of takeaway proposed in the instant application is not currently available and in this regard I do not consider that the proposal would lead to an over-supply or dominance of outlets within this centre.

### **7.4. Impact on Amenities of Adjoining Uses/Properties**

The potential for the proposal to impact on the amenity of the adjoining commercial business or the most proximate residential properties are central concerns expressed in the appeal and observations. I would note that the nearest properties

within Castleknock Park are in excess of 60metres from the proposal and are separated from same by the Ashleigh Retail Centre. The closest property in Castleknock Lodge is c. 40 metres and is separated from same by the Castleknock Road. The concerns relate primarily to anti-social behaviour and attendant noise, litter and the potential for odours emanating from the facility which would impact adjoining properties. Objective DMS107 as set out in the Development Plan states that development proposals for fast food/takeaway outlets will be strictly controlled in respect of the following:

*“Opening/operational hours of a facility; and the location of vents and other external services and their impact on adjoining amenities in terms of noise/smell/visual impact”.*

In relation to anti-social behaviour, while it is unfortunate that the applicant’s agent did not propose operational hours within their application documentation, I do not consider it is fatal to the process as it is a matter that can be appropriately conditioned as was proposed by the Planning Authority in their Notification of Decision. If the Board are minded to grant the proposed development I would recommend that the hours of operation proposed by the Planning Authority are conditioned. This is a village centre with a town centre zoning objective where takeaway uses are permitted in principle and where night time uses are facilitated. Therefore, I consider that the use is appropriate within this location notwithstanding the appellants concerns which I note, in respect of anti-social behaviour, are a matter for the Garda Siochana.

In relation to litter, while I would concur with the considerations that a bin within the facility may not facilitate those who leave the premises, I would also suggest that it is appropriate in the context of facilitating litter collection associated with the premises while the premises is open. However, I consider that it would be appropriate that a scheme of litter control should be agreed with the planning authority prior to the commencement of operation of the facility and I recommend a condition in this regard is attached.

Finally, in relation to the potential for deleterious odours emanating from the proposed development, I would note that the subject site backs the Ashleigh Retail Centre. The unit would not directly adjoin any residential property. The closest residential properties are at a considerable remove from the proposal with other units

creating effective barriers between same. The proposal includes for an extract vent stack to the rear of the property in order to control the emission of odours. This is satisfactory given the nature of the proposed development. I do not consider, nor has any evidence been submitted to support the contention, that the appellants commercial premises which adjoins the unit would be adversely impacted by same particularly given the location of the proposed stack and the relatively minor scale of the proposal.

#### **7.5. Appropriate Assessment**

Having regard to the nature and scale of the proposed development, which is a change of use with minimal physical changes, outside of and not connected to any Natura 2000 sites, I do not consider that any Appropriate Assessment issues arise and I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

#### **8.0 Recommendation**

8.1. I recommend that permission for the proposed development is granted.

#### **9.0 Reasons and Considerations**

Having regard to:

- a) the policy and objectives of the planning authority as set out in the Fingal County Development Plan 2017-2023 including the zoning of the site,
- b) the location of the site within an established village centre,
- c) the distance of residential properties within the vicinity of the site to the proposed development,
- d) the distance of schools within the wider Castleknock area to the proposed development

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities

of the area, would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The takeaway facility shall operate from 10.00 AM to 12.00 midnight Monday to Saturday and from 10.00 AM to 11.00 PM on Sundays and Bank Holidays</p> <p><b>Reason:</b> In the interest of orderly development and to protect the amenities of adjoining properties.</p>
3.	<p>(a) Prior to occupation of the unit, the developer shall submit for the written agreement of the Planning Authority, full details of all proposed external signage.</p> <p>(b) No illumination shall be provided to the signage.</p> <p>(c) Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>

4.	<p>Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to the operation of the development. This scheme shall include the provision of litter bins and refuse storage facilities.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
5.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>

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Una Crosse  
Senior Planning Inspector

8 November 2021