



An
Bord
Pleanála

Inspector's Report

ABP-311808-21

Development	Change of use from retail unit to takeaway and cafe
Location	Ground Floor, Unit 4, Church Street, Skerries, Co. Dublin, K34 C525
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0155
Applicant(s)	Sean Ventre
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	(1) Sondra and Sean Butler (2) Ross McCoy (3) Karl Mackle (4) Paul O'Loughlin
Date of Site Inspection	12 th April 2022

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.006995 hectares, is located in Skerries town centre at no 4 Church Street. The site is occupied by a two-storey structure with a retail unit at ground floor level and office use on the first floor. Adjoining uses include no 3 to the north west, which is split into 2 no. two-storey terraced dwellings (3A and 3B). To the south east is a part three-storey and part two-storey structures making up the Redbank Guesthouse (no.s 5 -7). To the rear of the site (north east) is a development site with 2 no. dwellings under construction (ABP-308074).

2.0 Proposed Development

- 2.1. Permission is sought for...
- (a) Change of use from existing retail use to takeaway and café use comprising 70sqm.
 - (b) Internal modifications and provision of extract flue to the rear elevation.
 - (c) Installation of non-illuminated front elevation fascia signage and
 - (d) all associates site works.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 13 conditions. Of note are the following conditions...

Condition no. 5: Opening hours specified.

Condition no. 8: Noise emission limits.

Condition no. 12: Special contribution in lieu of parking.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (12/05/21): Further information including details of type of takeaway, open hours and details of ownership/consent, details of extraction method and odour management, and details of design of signage.

Planning report (11/08/21): Clarification of further information including details of consent form owner to make the application, and details regarding extraction and contextual photographs of the rear of the property.

Planning report (05/10/21): the proposal was considered to be acceptable in the context of the proper planning and sustainable development of the area and a grant of permission was recommended subject to the conditions outlined above.

3.2.2. Other Technical Reports

Irish Water (18/04/21): No objection.

EHO (22/04/21): Further information required including details of opening hours, type of food service, extraction method and details of odour management.

Transportation (26/04/21): No objection subject to condition including a special contribution.

Conservation Officer (30/04/21): Details of signage required.

Transportation (04/08/21): No objection subject to condition including a special contribution.

Water Services (28/07/21): No objection subject to condition.

Conservation Officer (04/08/21): Signage design considered acceptable.

3.3. Prescribed Bodies

None

3.4. **Third Party Observations**

11 submissions were received. The issues raised can be summarised as follows...

- Impacts on adjoining amenity through noise, disturbance, odour and litter, proliferation of takeaways/cumulative effect, anti-social behaviour, impact on character of the area, proximity to schools. Public health issues regarding bin storage, grease, traffic safety, condition of reg ref no. F02A-1400 precludes takeaways.

4.0 **Planning History**

Appeal F02A/1400: Permission granted for change of use of ground floor from retail outlet to a bookmakers.

Adjoining sites...

ABP-308074 (F20A/0279): Permission granted for 2 dwellings on the site to the north east.

F18A/0370: Permission granted for change of use of existing public house to 2 no. terraced dwellings.

5.0 **Policy Context**

5.1. **Development Plan**

The relevant development plan is the Fingal Development plan 2017-2023. The appeal site is zoned 'TC-Town and District centre' with a stated objective to 'protect and enhance the special physical and social character of town and district centres and provide and/improve urban facilities'.

The site is located within an Architectural Conservation Area (ACA)

The site is located within the Skerries Urban Framework Plan.

Objective ED53: Control the provision of non-retail uses, especially at ground floor level, in the main streets of towns and villages, shopping centres and local centres to ensure that injury is not caused to the amenities of these streets and centres through the loss of retail opportunities.

Objective ED54: Prevent an over-supply or dominance of fast food outlets, takeaways, off licences, and betting offices in the main streets of towns and villages, shopping centres and local centres to ensure that injury is not caused to the amenities of these streets and centres through the loss of retail opportunities.

Objective DMS107: Development proposals for fast food/takeaway outlets will be strictly controlled and all such proposals are required to address the following:

- The cumulative effect of fast food outlets on the amenities of an area.
- The effect of the proposed development on the existing mix of land uses and activities in an area.
- Opening/operational hours of the facility.
- The location of vents and other external services and their impact on adjoining amenities in terms of noise/smell/visual impact.

Objective DMS108: 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/takeaway outlets in close proximity to schools so as to protect the health and wellbeing of school-going children.

5.2 Natural Heritage Designations

None within the zone of influence of the project.

5.3 EIA Screening

The proposed development is not of a class (Schedule 5, Part 2(10) of the Planning and Development Regulations, 2001 (as amended)). No EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by Sondra and Sean Butler, 3B Church Street, Skerries, Co. Dublin. The grounds of appeal are as follows...

- The site is predominantly residential area and the proposed use would be detrimental to the amenities of such.
- Inadequate consideration of the level of existing takeaway restaurants and a number of permitted operations were omitted from the list submitted. There is no need for an additional takeaway given the level in close proximity and the proposal is also in close proximity to a school. The proposal would be contrary development plan policy in relation to takeaways.
- The appellant refers to a precedent decisions for refusal of takeaways in close proximity to residential development with the proposal similar to these cases.
- The existing configuration and layout of the street and footpaths is not suitable for queuing, delivery pick-ups and the increased activity would be detrimental to residential amenity.
- There is a specific objective regarding improved cycle path facilities. The nature of the use and its traffic generation would hamper implementation of this objective.
- The site is located in an ACA and the proposed use would be detrimental to the character of such with operational issues such as litter. Its location in an ACA and adjacent a protected structure is inappropriate.
- The operating hours will still cause disruption to the residential amenities of the appellants' property.

- The bin storage area identified for the proposal is inadequate in size and poor waste management has the potential to have an adverse impact on adjoining residential amenity. Precedent decision referred to in this regard.
- The location of the extract flue has the potential to have severe impact on residential amenity due to its location and potential odour emissions. Such is located on a third party property with no demonstration of consent for such.

6.1.2 A third party appeal has been lodged by Ross McCoy, The Redbank Guesthouse, 5-6 Church Street, Skerries, Co. Dublin. The grounds of appeal are as follows...

- Inappropriate location due to level of existing residential development in the vicinity and adjoining the site as well as proximity to a school.
- The appellant has no given consent for the placement of an extract flue against their property and the potential impact of such on adjoining residential property is identified.
- Inadequate consideration of cumulative impact of such uses and contrary Objective DMS106 of the Development Plan.
- Existing footpaths is inadequate in width.
- Inadequate provision of waste storage on site.

6.1.3 A third party appeal has been lodged by Karl Mackle, Avalon, 3A Church Street, Skerries, Co. Dublin. The grounds of appeal are as follows...

- The town is oversubscribed with takeaway outlets and the proposal would be contrary development plan policy in this regard.
- The existing street configuration is incapable of catering for the traffic, both pedestrian and vehicular traffic likely to be generated.
- The proposal would generate noise and disturbance that would be detrimental to existing residential amenity.

- The proposal would generate odour through extraction and waste storage due to proximity to existing residential development and inadequate level of waste storage facilities on site.
- The proposal would be detrimental to the character of the ACA and existing protected structures in the vicinity.

6.1.4 A third party appeal has been lodged by Paul O'Loughlin, My Mind Property Ltd. The grounds of appeal are as follows...

- The appellant is constructing 2 no. dormer dwelling on the site to the rear of the appeal site.
- The proposed extract system would have an adverse impact on the amenities of the properties the appellant is constructing.
- There is a lack of details of drainage infrastructure serving the proposal, with existing drainage serving the site traversing the appellant's property.
- The proximity of bin storage to the appellant's property is noted with concern regarding odour and hygiene standards.
- The proposal would have an adverse impact on the amenities of the residential properties under construction through noise and disturbance.
- The proposal is contrary development plan policy Objective ED53, Objective ED54, Objective DMS107 and Objective DMS108.

6.2. Applicant Response

No response.

6.3. Planning Authority Response

6.3.1 Response by Fingal County Council.

- In the event of grant of permission being upheld the PA request that condition no. 12 be included.

6.4. Further Responses

6.4.1 Response by Sondra & Sean Butler, 3B Church Street, Skerries, Co. Dublin.

- The response indicates support regarding the issues raised in the other appellants and agrees with the views expressed regarding car parking, extraction and lack of consent for such and drainage issues.

6.4.2 Response by Karl Mackle, 3A Church Street, Skerries, Co. Dublin.

- The response indicates support regarding the issues raised by the other appellants and note the issues regarding the extract flue and lack of consent to attach it to the side of no. 5.

7.0 Assessment

7.1 Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Development plan policy

Adjoining Amenity

ACA/Architectural Heritage

7.2 Development Plan Policy:

7.2.1 The appeal site is located in the town centre and on a site zoned 'TC-Town and District centre' with a stated objective to 'protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities'. Restaurant and café use is indicated as being 'permitted in principle' within this zoning objective.

7.2.2 There are a number of other policies regarding town centres and uses such as takeaways. The development description is change of use to a takeaway and café. The proposal includes indoor seating. The policies in the development plan regarding retail uses include Objective ED53 relating to loss of retail at ground floor in town centres. Objective ED54 relates to over-supply and dominance of fast food outlets. Objective DMS107 relates to cumulative impact of fast food outlets on adjoining amenities and Objective DMS108 relates to consideration of fast food outlets in close proximity to a school.

7.2.3 The applicant was requested to submit details of all takeaway/eateries and educational facilities within 500m of the site. The map submitted identifies 20 food outlets (includes restaurants, cafes and takeaways) and 2 schools within the 500m. The appellants have stated that the list of food outlets omit a number of outlets that are in the process of setting up or opening.

7.2.4 In relation to cumulative impact and nature of use there are two relevant objectives ED53 and ED54. In relation to ED53 (control of non-retail uses), the appeal site although in the town centre Church Street is not the main retail street in the town with the majority of shopping concentrated on Strand Street/Thomas Hand Street. The proposed change of use is also an active ground floor use. I am satisfied that the proposal could be permitted in the context of Objective ED53. In relation to Objective ED54 regarding over-supply or over dominance of fast food outlets and takeaways, there is in excess of 20 eateries/takeaways identified in the town centre. A lot of establishments identified could not be classified as fast food and have varying operating hours. There is no proliferation of fast food outlets in the immediate vicinity with the nearest establishments being the Potager at no. 7 Church Street, a restaurant that operates in evening times, Saburritos at no. 51A Thomas Hand Street, takeaway that operates between 4pm and 11pm and Mollys Café at no. 47-48 Thomas Hand Street, which operates during daytime only. There are other establishments but such are located further down Church Street with some of establishments closer to the appeal site being on other streets. Of the establishments identified by the appellants' as not being listed, only one is located on

Church Street and at no. 43 and is described as a wine bar. I would be of the view that there is no case for precluding the development on the basis of Objective ED54.

7.2.5 In relation Objective DMS108 regarding the consideration the location of fast food outlets in the vicinity of schools, I would note that there are existing fast food and takeaway outlets in much closer proximity to the two schools in the area and I would consider precluding the proposed development on this basis would be unerasoanble.

7.2.6 In relation Objective DMS107 there are four criteria that require consideration. In relation to the first of the criteria I have already considered the issue of cumulative effect and consider that the proposal would be acceptable in this regard. In terms of the existing mix of lands uses the proposal is for change of use of an existing commercial use to a different commercial use and subject to having no adverse impact on uses or properties in the immediate vicinity would be acceptable. This aspect of the proposed development including impact of operating hours, extraction, noise and smell will be addressed in a later section this report.

7.3 Adjoining Amenity:

7.3.1 In terms of adjoining amenity there are a number of appeals raising concerns regarding impact of the proposed use on existing amenity. There are existing dwellings adjoining the site with concern regarding noise, disturbance and odour. The appeal submissions raise concerns regarding the impact of the extract flue in terms of odour on adjoining properties. The applicant has submitted details of the extract, which is to be located on gable of no. 5 and has a height of 3.192m above the flat roof section to the rear. The applicant has noted that the extract is designed to dissipate at a high level relative to existing properties and includes carbon filters in terms of odour management. I would be of the view that the location and design of the extract does provide an adequate degree of separation from existing properties in terms of its location and its high level point of extract. I do not consider that the design and location of the extract flue is problematic in terms of its location relative to adjoining properties. The issue is that the extract is to be attached to the gable of no.

5 (Redbank B and B) and it is clear that the applicant does not have consent to do so with the owner of this property being a third party appellant and having clearly stated in their appeal that they do not consent to such. I would note that the applicant has failed to submit response to appeal submissions, which may have attempted to address this matter. I would be of the view in the absence of a clear method and details of extract provision and given the proximity of the development to adjoining uses including residential, that the lack of such would be detrimental to the amenities of adjoining properties and the proposal would be deficient in provision of a proper method of extract.

7.3.2 The appeal submission raise concern regarding the small size of space for waste storage and its proximity to residential properties with concerns regarding odours. The existing retail unit has a small outdoor area at the northern corner of the site. In this case the existing unit has an external/ventilated bin storage and it is well enclosed with existing high boundaries separating it from existing properties. I would be of the view that provision of bin storage is adequate and subsequent to appropriate management of waste and regular disposal would not impinge on the amenities of adjoining properties.

7.3.3 The appellants raise concerns regarding disturbance and noise. As noted above the proposal is in a town centre and is a typical town centre use. Notwithstanding such the applicant is proposing that opening hours are confined to at latest 10pm. I am of the view that such is a reasonable restriction that could be conditioned in the event of a grant of permission. I am satisfied that operation of the proposed development would be acceptable in the context of adjoining amenity.

7.3.4 One of the appellants has raised concern about a drain running from the site into his property where he is developing 2 no. houses and the potential for grease and deposits as a result of the proposed use. I would note that the Council's Water Services section raised no objection to the proposed development. I am satisfied an adequate condition regarding provision of a grease separator or appropriate mechanism would deal with this issue in the event of a grant of permission.

7.4 ACA/Architectural Heritage:

7.4.1 The appeal site is located in an Architectural Conservation Area and adjacent an existing protected structure. The appellant raise concerns about the appropriate to the use for an ACA. The proposal is for a change of use of an existing two-storey structure. In terms of visual impact the proposal is not making a significant alteration to the visual appearance of the structure. The main change will be new signage with the applicant proposing a metal sign above the shopfront with no illumination. The grant of permission includes a condition requiring clarification and agreement of the external finish of the sign fascia board. I would consider that having regard to appropriate signage and a condition requiring agreement of such would be sufficient, the proposal would have an acceptable impact in terms of the character and integrity of the ACA and would not impact the setting of any protected structures on the adjoining site or in the vicinity. The provision of the proposed use subject to appropriate and good quality signage would not be contrary Development Plan policy in relation to ACA's.

7.5 Traffic:

7.5.1 The appellant raise concerns regarding traffic impact noting that the existing street and footpath facilities are inadequate to cater for both traffic and pedestrian movements. The appeal site is located in the town centre of Skerries. There is on street car parking but such is controlled by pay and display. The proposed use is a town centre use indicated as being permitted in principle within the zoning of the site. I do not consider that there are any traffic grounds for precluding the development with traffic/parking control measures in place. I would be of the view that precluding town centre type uses on the basis of their location within a town centre location where there is a limitation on parking and footpath facilities is not logical and that the

proposal is for use of an existing retail unit for a different use typically found in a town centre location such as this.

8.0 Appropriate Assessment

8.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise 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 refusal based on the following reasons.

10.0 Reasons and Considerations

1. The proposal entails attachment of an extract flue to the gable of the adjoining property at no. 5 Church Street. It is clear based on the third party appeal submissions that the applicant does not have consent to attach such to this property and in absence of a confirmed and guaranteed method of extract ventilation and having regard to the proximity of the development to adjoining properties/uses including office use at the first floor level, residential properties to the north west and north, and B and B accommodation to the south east, the lack of concrete plans for such would be detrimental to the amenities of adjoining properties and the proposal would be deficient in provision of a proper method of extract. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
Senior Planning Inspector

14th April 2022

