



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311833-21

<b>Development</b>	Change of opening hours from 11am to 11pm daily, to 12pm to 12am Monday to Thursday and 12pm to 1am Friday to Sunday.
<b>Location</b>	Unit 2, The Goulding, Santry Cross, Ballymun, Dublin 9
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	3310/21
<b>Applicant(s)</b>	Vladimir Percuin
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party v Refusal
<b>Appellant(s)</b>	Vladimir Percuin
<b>Observer(s)</b>	(i) Santry Cross Residents Services (ii) Donal Donohoe and others
<b>Date of Site Inspection</b>	January 16 <sup>th</sup> 2022.

**Inspector**

Paul Caprani

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## 1.0 Site Location and Description

- 1.1. The subject site occupies two units at ground floor level of the Goulding Apartment building in Ballymun, c7 km due north of Dublin City Centre. The Goulding Apartment Block is located on the eastern side of the Ballymun Road, c210 m south of its junction with the Santry Road. The Claremont Apartments and the Metro Dublin Airport Hotel are located to the immediate north of the site. The Malestone Apartments are located directly opposite the site. The Ballymun Road is an important radial route and a dual carriageway with a central median. It links up with junction 4 of the M50 to the north.
- 1.2. The Goulding Apartment block comprises of a five storey block with commercial units at ground floor level and residential apartments above. The ground floor of the building is occupied by a takeaway (subject of the current application) and a solicitor's office. Two of the units at ground floor level are currently vacant.
- 1.3. The existing takeaway facility occupies an area of 127.5 sq.m

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the alteration of opening hours of the existing takeaway facility, currently permitted under condition no.2 of extant permission reg.ref 4297/16. Under the original permission the opening hours were restricted to 11.00 am to 23.00 pm 7 days a week. Permission is sought under the current application to alter the daily opening hours from 12.00pm to midnight Monday to Thursday and between 12pm to 1.00 am from Friday to Sunday inclusive.

## 3.0 Planning Authority Decision

### 3.1. Decision

Dublin City Council refused planning permission for a single reason which is set out in full below:

*The proposed extension of permitted opening hours would, by reason of associated late night activity, noise, general disturbance and litter, result in excessive disturbance to adjacent properties and would seriously injure the amenities of*

*properties above and in the immediate vicinity of this subject site. The extended hours would be contrary to section 16.25 'Takeaways' of the Dublin City Development Plan 2016 – 2022. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area.*

### **3.2. Planning Authority Reports**

3.3. A covering letter submitted with the application sets out the planning history associated with the development. It is argued that the development is unsustainable presently due to the restriction in business hours particularly as competitors in the area enjoy later opening hours.

3.4. The planners report notes that the development is permissible under the land use zoning provisions. However, the planning authority has serious reservations regarding the proposed change in opening hours having regard to the quantum of residential development in the vicinity, including immediately above the subject site. Takeaway activities give rise to serious noise generation and late-night activity.

3.5. Other takeaway premises in the wider area have extended opening hours, however the planner's report notes that these applications were determined under a previous development plan and are located in key district centres. It is considered that the existing opening hours are reasonable. On this basis a refusal of planning permission is recommended.

### **3.6. Prescribed Bodies**

None

### **3.7. Third Party Observations**

A letter of objection was submitted by the Sentry Cross Residents Group, the contents of which has been read and noted.

## **4.0 Planning History**

Under **Reg. Ref. 1045/05** planning permission was granted for a change of use from retail unit to book-makers office.

Under **Reg Ref 3673/11 / (ABP Ref. PL29.240297)** planning permission was granted for a change of use from Bookmakers to a fast-food takeaway or shop. Condition no.2 limited the life of the permission to 3 years, to June 2015.

Under **Reg. Ref. 4297/16** Retention of planning permission was granted for the continued use of the unit as a hot food takeaway previously granted under 3673/11 (PL 29N 240297). Condition no.2 required that the opening hours shall be restricted to 11.00 to 23.00 hours daily.

## 5.0 Policy Context

### 5.1. Development Plan

The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016-2022. The subject site and the lands surrounding the site are governed by the Z4 zoning objective, '*To provide for and improve mixed use facilities*'. A take-away facility is a permissible use under the Z4 zoning objective. Section 16.25 of the Development Plan specifically relates to take-aways. It is set out below.

*"In order to maintain an appropriate mix of uses and protect night-time amenities in a particular area and to promote a healthier and more active lifestyle, it is the objective of Dublin City Council to prevent an excessive concentration of take-aways and to ensure that the intensity of any proposed take-away is in keeping with both the scale of the building and the pattern of development in the area.*

*The provision of such facilities will be strictly controlled, having regard to the following, where appropriate:*

- *The effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents.*
- *The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.*
- *Traffic considerations.*
- *The number/frequency of such facilities in the area, particularly in close proximity*

to schools.

- *That the operators come to a satisfactory arrangement with Dublin City Council in relation to litter control.*
- *The need to integrate the design of ventilation systems into the design of the Building.*
- *That appropriate cleansing/anti-litter measurements be agreed with Dublin City Council prior to the granting of planning permission.*
- *That all take-aways provide and maintain a suitable waste bin outside their premises during hours of business.*
- *The number and frequency of such facilities within a 1 km radius of the proposed development.*
- *The context and character of the street where the aim is to maintain and improve the vitality of the shopping experience by encouraging a range of convenience and/or comparison retail shops”.*

## **5.2. Natural Heritage Designations**

The site is not located within or contiguous to a Natura 2000 site. The nearest Natura 2000 site is located c.5 km away. It is the South Dublin Bay and River Tolka Estuary SPA (site code 004024).

## **5.3. EIA Screening**

The proposed change in opening times for a take-away is not a class of development for which EIAR is required.

## **6.0 The Appeal**

- 6.1. The decision of Dublin City Council was the subject of a first party appeal. The grounds of which are outlined below.

## 6.2. Grounds of Appeal

- It is argued that there is a significant precedent for other take away facilities operating at later opening times in the wider area. 6 of the 7 takeaways in the Ballymun catchment area are operating at hours later than the 11pm. It is stated that one of the takeaway operations has permission to operate till midnight but chooses to close at 11pm.
- It is argued therefore that the planning authority has permitted, in numerous cases, permission for take-aways in the wider area to stay open beyond 11pm. Details of various permissions granted by the planning authority are set out in the grounds of appeal.
- It is argued that the refusal to extend opening hours puts the appellant at an unfair economic disadvantage and this is contrary to section 2.5.3 of the Retail Planning Guidelines (2012). The Planning Authority should support the objectives of the Retail Planning Guidelines. 11pm to 1pm is a crucial operating time for the take-away business, particularly at weekends.
- It is noted in the Ballymun Local Area Plan that Ballymun Main Street has a high percentage of vacant units. The extended trading houses will support the overall retail health of Ballymun Main Street.
- The proposed use is fully in accordance with the Z4 Land-use zoning objectives where take-away uses are acceptable in principle.
- The planning authority's concerns in respect of litter are noted. To this end the applicant would be happy to accept a condition requiring a litter management plan to be agreed in writing should planning permission be forthcoming.

## 6.3. Applicant Response

Dublin City Council have not submitted a response to the grounds of appeal.



#### 6.4. Observations

##### **Observation from the Board of Directors of Santry Cross Residents Service GLC.**

- The take-away is already in breach of the opening hours stipulated in the existing grant of permission. This has resulted in late night anti-social behaviour. On foot on an enforcement notice/warning letter issued by the Council, the applicant complied with the condition and anti-social behaviour, noise and litter reduced outside the premises.
- It is contended that more recently, the premises is operating again in breach of its permitted hours. Delivery and operating hours in breach of the hours permitted are advertised in the takeaway's website (details submitted).
- If the extension of opening hours were permitted, it is argued that this would have a detrimental impact on residential amenities through noise, litter and anti-social behaviour and would set a negative precedent for similar opening times in the area.

#### 6.5. Observation by Donal Donohoe

- This observation raises the same concerns regarding breach of existing conditions, disturbance to residents, anti-social behaviour. It is also argued that the proposal is contrary to section 16.25 of the Development Plan and this was relied upon in the Council formulating its decision.
- This observation is signed by many local residents in the area which support a refusal of permission in this instance.

#### 6.6. Further Responses

- None

## 7.0 Assessment

- 7.1. I have read the entire contents of the file, have had particular regard to the grounds of the first party appeal, and the observations contained on file. I have also visited the subject site and its surroundings.
- 7.2. The grounds of appeal suggest that there are numerous precedent decisions in the wider area which would allow for longer opening hours for the takeaway. It is acknowledged that there are numerous takeaway facilities in the wider area which are permitted to open for longer hours than the premises in question. Some of these facilities are located on more established district and commercial centres which host a range of commercial and retail outlets such as the main district /town centre at Ballymun to the south of the site, or the district centre at Finglas east. Both these district centres accommodate other late night uses such as pubs, restaurants and hotels.
- 7.3. The subject site however, notwithstanding its Z4 zoning objective, is not situated within such an established commercial and retailing area. The area in which the site is located is almost exclusively residential with the only ground floor commercial activity being solicitor's offices. It is considered therefore that a late-night takeaway at this location has a greater potential to give rise to late night disturbance and therefore adversely impact on the residential amenities of the area.
- 7.4. It is fully acknowledged and accepted that the proposed use as a takeaway is a permitted use and is fully compliant and is a permitted use under the Z4 zoning objective. The use as a takeaway has already been established on site. However, it is my considered opinion that the extension of hours will undoubtedly result in later noise disturbance for both residents in the vicinity of the site and immediately above the premises. This is contrary to Section 16.25 of the development plan which seeks to strictly control the effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents.
- 7.5. The applicant argues that the proposal will result in an unfair competitive disadvantage to other takeaway facilities in the area. This in turn, it is argued is contrary to the Retail Planning Guidelines. However the Board in adjudicating on the application must ensure that any competitive disadvantage or otherwise is balanced against the impact the proposed development will have on the residential amenities

of occupants living in the vicinity. Any adverse impact on amenity should in my view take precedent in order to improve and maintain the well-being and the amenities of the existing residential community in the vicinity.

## **8.0 Appropriate Assessment**

Having regard to the minor nature of the proposed development and the location of the site in a serviced urban area together with the separation distance 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. On the basis of the above therefore, I would recommend that the Board uphold the decision of Dublin City Council and refuse planning permission for the extension of the opening hours of the takeaway facility.

## **10.0 Reasons and Considerations**

The proposed extension of permitted opening hours would, by reason of late-night activity, noise, and general disturbance, in a predominantly residential area, would result in an late night environment which would seriously injure the residential amenities of the area and would be contrary to Section 16.25 of the development plan 2016-2022 which seeks to, inter alia to reduce the effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents. The proposal would therefore be contrary to the proper planning and sustainable development of the area.

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Paul Caprani  
Senior Planning Inspector

January 31st 2022