



An  
Bord  
Pleanála

## Inspector's Report ABP 313082-22.

### Development

Change of use of a portion of the existing building at 11 Lock Quay from a betting shop to a commercial kitchen for the purposes of food preparation for consumption off the premises only. Permission is sought for the construction of a roof mounted mechanical extract ventilation unit and all ancillary site works.

### Location

11 Lock Quay, Limerick, Co. Limerick.

### Planning Authority

Limerick City & County Council.

### Planning Authority Reg. Ref.

211293

### Applicant

Afro Delight Limited

### Type of Application

Permission

### Planning Authority Decision

Grant permission

### Type of Appeal

Third Party

### Appellant

Michael Portley

### Observers

None

**Date of Site Inspection**

16<sup>th</sup> of June 2022

**Inspector**

Siobhan Carroll

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## **1.0 Site Location and Description**

- 1.1. The subject site is located at 11 Lock Quay, Limerick, Co. Limerick. Lock Quay is situated to the southern side of the Abbey River which is distributary arm of the River Shannon. Baal's Bridge which links Mary Street and Broad Street is located to the west of the site. The bridge linking Sraide Seamus O'Cinneide and Quay Lock is located to the east of the site.
- 1.2. The surrounding buildings comprises predominately three and four storey properties. There are a mix of uses including office, commercial, services and residential in the vicinity of the site. Portleys bar, the appellant's property adjoins the appeal site to the west. It is a three-storey redbrick building. It is located at the junction of Lock Quay and Broad Street. The adjoining building to the eastern side of the appeal site is a three-storey building which contains the Gate Bar. The premises adjoining that contains a nail bar and salon and the four-storey building at the corner of Lock Quay contains an orthodontic centre. There are residential properties to the south of the site.
- 1.3. The appeal site has a stated area of 65.92m<sup>2</sup> it is roughly rectangular in shape. It has frontage of 6m onto Lock Quay. The site extends back from circa 14m and contains a single storey unit.

## **2.0 Proposed Development**

- 2.1. Permission is sought for the change of use of a portion of the existing building at 11 Lock Quay from a betting shop to a commercial kitchen for the purposes of food preparation for consumption off the premises only. Permission is sought for the construction of a roof mounted mechanical extract ventilation unit and all ancillary site works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Permission was granted subject to 8 no. conditions.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

Further Information was requested by the Planning Authority relating to the following;

1. Having regard to the proximity of residential properties the applicant is requested to submit a full specification for the existing/proposed ventilation and extraction system with particular reference to the requirement to ensure that odour or noise nuisance is not visited on the occupants of neighbouring premises. Submit revised drawings including plans and elevations including (a) any filter system used (b) any odour counteractant or neutralising systems used (c) flue design
2. Applicant shall clarify the nature of the business in a planning statement, will it operate as a takeaway as well delivery of food? The hours of operation shall be outlined.
3. (a) Full details of the proposed waste management regime including the location of refuse bins shall be provided, access to the rear is required to ensure secure off street storage of refuse bins. (b) A Vermin Control Plan is also requested.
4. The site is located in Flood zone B as per the Draft Limerick Development Plan flood maps. The proposed development would come within the scope of section 5.28 Assessment of minor proposals in areas of flood risk as identified in the Flood Risk Assessment Guidelines. A flood risk assessment or a commensurate report which includes flood resistant and resilience measures is required e.g. Mitigation measures including demountables, raised sockets should be included.
5. Details of the grease traps to be submitted including the location on a site layout drawing. The grease traps should be designed and in accordance with IS EN 1825 (manual grease trap) or PDI G101 (automatic grease trap).
6. The applicant shall provide details as to where all waste generated on these premises will be stored, including general waste, food waste and fats, oils and greases and how they will be disposed of legitimately.

3.2.2. The Planning Authority sought clarification of further information in relation to the following;

1. The removal of the old extraction unit is welcomed, the specification for the new air extraction system is limited a brochure is not sufficient. Information on specific noise levels attributable to the operation of the proposed extraction apparatus has not been provided. A detailed specification as per the original request is required to ensure noise and odour nuisance is not visited upon the occupants of adjacent properties. The specification should include details of;
  - (a) Any filter system used,
  - (b) Any odour counteractant or neutralising systems used,
  - (c) Flue design
2. In relation to the response submitted, grease traps are required. Therefore, the applicant is requested to submit details of the grease trap including the location on a site layout drawing. The grease traps should be designed and in accordance with IS EN 1825 (manual grease trap) or PDI G101 (automatic grease trap)
3. The response in relation to commensurate report is noted, it is prudent to provide for the use of demountables in such locations.
  - Following the submission of a response to the further information and clarification of further information the Planning Authority were satisfied with the details provided and permission was granted.

### 3.2.3. Other Technical Reports

Environment Section – Further information requested in relation to the extractor fan and grease traps.

Fire Service – No objection.

Environmental Health Officer – The report set out specifications in relation to food control and drinking water legislation, ventilation and drainage. In relation to the issue of refuse it is stated in the report that the storage of refuse bins internally while not ideal is acceptable once the area is kept clean and the refuse is removed daily.

### **3.3. Prescribed Bodies**

3.3.1. Irish Water – No objection.

### **3.4. Third Party Observations**

3.4.1. The Planning Authority received one submission/observation in relation to the application. The issues raised are similar to those set out in the appeal.

## **4.0 Planning History**

- None

## **5.0 Policy Context**

### **5.1. Limerick City Development Plan 2010-2016 (as extended)**

5.1.1. The site is located in an area zoned City centre area. Under the City Centre zoning objective take away is open for consideration.

5.1.2. Section 16.36 refers to Takeaway/Off license/Amusement Centre/Gaming Zone

5.1.3. In order to maintain an appropriate mix of uses and protect night time amenities in a particular area, it is the objective of Limerick City Council to prevent an excessive concentration of takeways, off-licenses, amusement centres or gaming zones and to ensure that the intensity of any proposed use is in keeping with both the scale of the building and the pattern of development in the area.

5.1.4. The provision of such facilities will be strictly controlled, having regard to the following, where considered 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 of such facilities in the area.



- Litter control measures.
- With regard to takeaways the need to integrate the design of ventilation systems into the design of the building.

## **5.2. Limerick City and County Development Plan 2022-2028**

- 5.2.1. The Limerick Development Plan 2022-2028 was adopted by the Elected Members of Limerick City and Council's at a Special Meeting on the 17th of June 2022. The Plan comes into effect six weeks from the date of adoption on the 29th July 2022.
- 5.2.2. Under the provisions of the plan the appeal site is located on lands which are zoned 'City Centre'. The Objective seeks – to protect, consolidate and facilitate the development of the City Centre commercial, retail, educational, leisure, social and community uses and facilities.
- 5.2.3. Purpose: To consolidate Limerick City Centre through densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses and urban streets, while delivering a high-quality urban environment which enhance the quality of life of residents, visitors and workers alike.
- 5.2.4. Under the City Centre zoning objective fast food outlet/take away and café/restaurant is generally permitted.
- 5.2.5. Objective EH O30 refers to Odour – It is an objective of the Council to protect the public from odour nuisance issues through odour abatement solutions.

## **5.3. Natural Heritage Designations**

- 5.3.1. Lower River Shannon SAC (Site Code 002165) is located 24m from the site.
- 5.3.2. River Shannon and River Fergus Estuaries SPA (Site Code 004077) lies to the west of the appeal site at the closest point it is located circa 1.1km from the site.

## **5.4. EIA Screening**

- 5.4.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

A third party appeal was submitted by O'Neill & Co. Solicitors on behalf of the appellant Michael Portley. The issues raised are as follows;

- The Board is referred to a copy of the photograph attached to the appeal. It is noted that this is a photograph of a development which took place prior to planning permission being granted. It is noted that some of the development was removed, however it was not done in its entirety. The appellant considers that the applicant should have sought retention permission for the subject development.
- In relation to the change of use from a betting shop to a commercial kitchen for consumption off the premises only, the conditions attached to the grant of permission states that a daily refuse collection system shall be operated from the premises. It states that the laneway adjacent to the premises shall not be used for storage of any food waste. It is stated that the appellant is not aware of any refuse collector operating on a daily basis from this area. Therefore, it is not considered feasible that the applicant could comply with this condition. The applicant's property has no external area attached to it and all refuse bins will have to be stored internally. This is not considered conducive to proper hygiene standards.
- There is reference to the applicant having an access lane to the rear of the premises on the site location map. It is submitted that the applicant does not have any access at the side to access the premises to the rear of the property. It is noted that the applicant's consulting engineers provided a letter dated 24<sup>th</sup> of November 2022<sup>1</sup> which stated that a revised plan was attached drawing no: 21123-P03. The appellant did not view this plan. They consider

that the information provided to the Planning Authority was not sufficient to make a decision to grant permission.

- It is stated that the Planning Authority does not seem to have taken into consideration the closure of other takeaway units in the vicinity of this premises in the last twelve months. It is stated that if there were demand for takeaway and food delivery outlets such as the one proposed then why have these premises ceased trading. The appellant considers that the Planning Authority did not consider this in their decision. The appellant also questions the suitability of the site for the type of activity proposed.
- Section 9 of the Planning Appeal form submitted with the subject appeal refers to Oral hearing request. The appellant confirmed in a ticked box that they wished to request an oral hearing in relation to the appeal.

## **6.2. Applicant Response**

- None received

## **6.3. Planning Authority Response**

- None received

## **7.0 Assessment**

The main issues in this appeal are raised in the grounds of appeal. Appropriate Assessment also needs to be addressed. I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Principle of development
- Adjoining amenity
- Appropriate Assessment

## **7.1. Principle of development**

- 7.1.1. The proposal before the Board entails the change of use of a portion of the existing building at 11 Lock Quay from a betting shop to a commercial kitchen for the purposes of food preparation for consumption off the premises only. Under the provisions of the Limerick City Development Plan 2010-2016 (as extended) the site is zoned City Centre. As per Map 1A it is located within Objective ZO.1(C) Inner City Residential Neighbourhood. As detailed on Figure 15.1 of the Plan which refers to Land-Use Zoning Matrix a restaurant/café is permitted in principle and a take-away is open for consideration.
- 7.1.2. In relation to the provisions of the Limerick Development Plan 2022-2028 the appeal site is located on lands which are zoned 'City Centre'. The Objective seeks to protect, consolidate and facilitate the development of the City Centre commercial, retail, educational, leisure, social and community uses and facilities. As per the Land Use Zoning Matrix detailed in Chapter 12 of the Plan a restaurant/café is permitted in principle and a fast food outlet/take-away is permitted in principle.
- 7.1.3. The proposed use a commercial kitchen for the purposes of food preparation for consumption off the premises only. Therefore, the proposed use would differ from a restaurant café where food is prepared on the premises and consumed by customers on the premises, and it would also be different to a take away use which involves the preparation of food on the premises with customers visiting the premises to order and collect food. The proposed use would involve the preparation of food on the premises for delivery and therefore would not generate footfall or traffic from customers.
- 7.1.4. Accordingly, given that both restaurant/café and fast food outlet/take-away are permitted in principle under the provisions of the Limerick Development Plan 2022-2028, and that under the provisions of the Limerick City Development Plan 2010-2016 (as extended) that a restaurant/café is permitted in principle and that a take-away is open for consideration, I consider that the proposed use would be in accordance with the development plan provisions and zoning objectives for the area and would a viable and sustainable use at this city centre location.
- 7.1.5. It is stated in the appeal that the Planning Authority did not take into consideration the closure of other take-away units in the vicinity. The third party also questioned

the suitability of the site for the proposed use. In relation to these matters, I note that the report of the Planning Officer which sought further information including that the applicant provide details regarding the nature of the business proposed. In the response submitted by Hutch O'Malley Consulting Engineers on behalf of the applicant Afro Delight Limited stated that the nature of the business is as described in the public notice and site notice as 'a commercial kitchen for the purposes of food preparation for consumption off the premises only'. They confirmed that customers would not be on the site as take away services would not be provided to the public. The proposed hours of operation were confirmed as Thursday to Sunday 4pm – 10pm.

- 7.1.6. In relation to the matter of the concentration of restaurants/takeaways in the area and the suitability of the site for the proposed use, having inspected the site and environs, I do not consider that there is an overconcentration of such uses within the surrounding area. The subject use involves the operation of a food business with food being prepared on the premises for consumption off the premises. I would note that this type of food business has become more popular and prevalent in recent years and particularly came to the fore during the periods of lock down during the pandemic. The advent of customers ordering using Food Apps has also contributed to this. I would not concur with the assertion of the appellant that the site would not be suitable. The proposed city centre location with a mix of commercial and residential uses provides an entirely suitable location for such a business to operate subject to all other relevant planning considerations being satisfactorily addressed.
- 7.1.7. In conclusion, therefore, I consider that the proposal would be in accordance with the development plan provisions and zoning objectives for the area and would not be contrary to the proper planning and sustainable development of the area.

## **7.2. Adjoining amenity**

- 7.2.1. The matter of inadequate provision of waste storage and waste collection was raised by the appellant. Having regard to the nature of the proposed use and the location of residential properties in the vicinity, I consider that it is appropriate to assess the matters of noise and odour also. The unit which is the subject of the proposed change of use is a single storey ground floor unit which was previously in use as a betting office.

- 7.2.2. Regarding waste storage and waste collection the Planning Authority in their assessment of the proposal sought further information on the matter. They requested that full details of the proposed waste management regime including the location of refuse bins to be provided and they advised that access to the rear is required to ensure secure off street storage of refuse bins. In response to the matter the applicant confirmed that no access to the rear is proposed or is necessary. They propose to provide integrated pull out waste bins which will be used throughout the working day. The applicant confirmed that the bins will be collected daily by a local bin service provider from the existing entrance. The location of the proposed bin storage area within the building is indicated on the revised plan Drawing no: 21123-P03. As detailed on this drawing the waste bins are proposed to the rear of the premises behind the food preparation area. In relation to this layout and arrangement I note that the Planning Authority had no objection subject the attachment of a condition specifying that a daily refuse collection system shall be operated from the premises and that the laneway adjacent to the premises shall not be used for the storage of any food waste.
- 7.2.3. The appellant questioned whether a daily refuse collection was feasible. In response to this matter, I would note that the applicant is proposing this waste collection arrangement and that the Planning Authority were satisfied with this proposal. Accordingly, given that the waste generated within the premises would be stored in waste bins internally located within the building I would concur with the Planning Authority that a daily collection of waste would be necessary. Furthermore, I note the report from the Environmental Health Officer which stated in relation to the issue of refuse, that the storage of refuse bins internally while not ideal is acceptable once the area is kept clean and the refuse is removed daily.
- 7.2.4. Therefore, should the Board decide to grant permission for the proposed development I consider that it would be appropriate to attach a condition requiring the collection of waste on a daily basis when the premises is operating.
- 7.2.5. In relation to the matter of odour it is proposed to install an extraction system and use a vent located in roof above the location of the oven. The Planning Authority in their assessment of the proposal sought further information in respect of the existing/proposed ventilation and extraction system with particular reference to the

requirement to ensure that odour or noise nuisance does not unduly impact on the occupants of neighbouring premises.

- 7.2.6. The Planning Authority welcomed the proposal to remove the old extraction unit, they required clarification in relation to specific noise levels attributable to the operation of the proposed extraction apparatus and sought proposals for any odour counteractant or neutralising systems.
- 7.2.7. In response to the matter the applicant stated that the proposed extractor canopy shall incorporate 4 no. 495mm x 495mm stainless CF50 model steel baffle filters which operate a four stage filtration process in order to filter and remove air impurities, small particles, grease, smoke, excess heat and odour away from the air stream before it enters the kitchen ventilation ductwork system to systematically minimise fire risk and odour. The proposed ventilation system will discharge vertically through the existing roof. Regarding the noise which the ventilation system would generate the applicant stated that the system in full use operates at 40db. In relation to the proposed ventilation system, I note that the Planning Authority attached a condition which specified that the existing extractor fan shall be removed in its entirety. The condition also specified that the rating level of noise from the site shall not be greater than +10dB above the measured background noise level at the site boundary and +5dB above the background noise level at 3.5m from the façade of any noise sensitive building. Accordingly, subject to the attachment of a condition in respect of the installation of the proposed ventilation system and also in relation to noise generated by the system, I am satisfied that sufficient measures are proposed for odour control.
- 7.2.8. In conclusion, I am satisfied based on the above that the provisions to prevent nuisance from odour, noise or waste are adequate and the proposal would be satisfactory in the context of adjoining amenity.

### **7.3. Appropriate Assessment**

- 7.3.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the 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.

## **8.0 Recommendation**

- 8.1. It is recommended that permission be granted subject to conditions for the reasons and consideration set out below.

## **9.0 Reasons and Considerations**

- 9.1.1. Having regard to the city centre location of the proposed development and the centre zoning objective relating to the site it is considered that, subject to compliance with the conditions set out below, the proposed change of use from betting shop to a commercial kitchen for the purposes of food preparation for consumption off the premises only, would not be prejudicial to public health and would add to the vitality and vibrancy of the city centre. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 25<sup>th</sup> day of November 2021 and on the 2<sup>nd</sup> day of February 2022, 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.

**Reason:** In the interest of clarity.



2. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

3. A daily refuse collection system shall be operated from the premises when the premises is in operation. The laneway adjacent to the premises shall not be used for the storage of any food waste.

**Reason:** In the interest of public health and orderly development.

4. A plan containing details for the management of waste (and in particular recyclable materials) within the development, including the provision of a facilities for the storage, separation and collection of waste and, in particular recycle materials and for the ongoing operation of these facilities within the premises shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and in particular recyclable materials in the interest of protecting the environment.

5. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of public health and to protect the amenities of the area.

6. a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location or at any point along the boundary of the site shall not exceed:-
- (i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.
  - (ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

7. Details of the external shopfront and signage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the development.

**Reason:** In the interest of visual amenity.

8. The hours of operation shall be between 1600 hours and 2200 hours Thursdays to Sundays unless otherwise agreed in writing with the Planning Authority.

**Reason:** In the interest of protecting the amenities of property in the vicinity.

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Siobhan Carroll  
Planning Inspector

27<sup>th</sup> July 2022