



An
Bord
Pleanála

Inspector's Report

ABP-313472-22

Development

Permission for change of use of former launderette 79.sq,m (retail use) to takeaway use and for the erection of a single storey extension 3.3 sq.m to the rear and external signage and all associated site and development works.

Location

6, The Green, Church Street, Finglas, Dublin 11

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3222/21

Applicant(s)

Goldline Foods Limited

Type of Application

Planning Permission

Planning Authority Decision

Refused Permission

Type of Appeal

First Party Appeal

Appellant(s)

Goldline Foods Limited

Observer(s)

None

Date of Site Inspection

2nd March 2023

Inspector

Susan Clarke

1.0 Site Location and Description

- 1.1. The site, measuring 122 sq m, is located at No. 6 The Green, on the junction of Church Street and The Lawn, in Finglas, Dublin 11. It is an end-of-terrace, two storey building, which was formerly used as a laundrette at ground floor with the first floor used for ironing and pressing of clothes. It is within an established neighbourhood level parade of retail units comprising two take-aways, a betting office, financial advising premises and two vacant units (including the subject unit). The site is bound by a funeral parlour to the north, a surface car park to the east, Church Street to the south, and No. 5 (financial advising premises) to the west.
- 1.2. A set of photographs of the site and its environs taken during the course of my site inspection is attached to this Report.

2.0 Proposed Development

- 2.1. The proposed development consists of the change of use of former launderette (79 sq m) to takeaway use, construction of a single storey extension (3.3 sq m) to the rear and erection of external signage, including an internally illuminated sign on the front facade, and all associated site and development works.
- 2.2. There were no amendments made to the proposed development at RFI stage.

3.0 Planning Authority Decision

3.1. Decision

The Local Authority issued a Notification of Decision to Refuse Permission on 12th April 2022 for the following reason:

Having regard to the location of the proposed fast food unit within 250m of a school it is considered that the proposed development would not be in accordance with Policy RD9 of the Dublin City Development Plan 2016-2022 which seeks to restrict further takeaway units within 250m of schools. The proposed development would, therefore, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports (20th September 2021 and 12th April 2022)

Key points to note include:

- The Planning Officer advised that due to the Z4 zoning objective for the area, the principle of the proposal would be acceptable.
- It was considered that the residential development is sufficiently set back to ensure that there would be no detrimental impacts by way of noise/ general disturbance/ fumes. However, if permission is granted it is recommended that air pollution and noise pollution measures be agreed with the Local Authority.
- This area of Finglas has a large population and the total of 21 existing take-aways in this area is not considered excessive. However there are some concerns relating to the number of take-aways in the parade of shops.
- If permission were granted then 50% of the units would be take away units. If this unit were to remain vacant then 33% of the units in the parade would be vacant. The balance to be struck is whether takeaway would have a bigger impact on the vitality of the area than another vacant unit. While it is considered that a mix of 50% of take aways is on the border of acceptability, given the relatively peripheral location of this parade of shops which is cut off from Finglas Village by way of a dual carriageway where footfall has the potential to be relatively low, it is considered that the proposal is acceptable.

On balance it is considered that a second vacant unit on this parade would have a more detrimental impact on the vitality of the area than having an occupied unit which would operate as a fast food outlet. In light of this, it is considered that the proposal would maintain the vitality of the parade of shops and the general area to an acceptable manner.

- The proposed development seeks permission for a fast food outlet within c.133m of a secondary school (St. Michaels Holy Faith). The proposal would therefore not comply with the guidance set out in Policy RD9.
- The signage to the front of the unit is considered to be acceptable.

- The proposed extension is considered to be reasonable and would not have a detrimental impact on the amenity of the area.
- It is recommended that a condition requiring an anti-litter plan (including bins outside the premises) should be included if permission is granted for the proposal.

3.2.2. Other Technical Reports

Drainage Division (13th August 2021): No objection, subject to condition.

Transportation Planning (15th September 2021): No objection, subject to condition.

3.3. Prescribed Bodies

Irish Water: No comments received.

Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs: No comments received.

3.4. Third Party Observations

3.4.1. Seven Third-Party Observations were received by the Local Authority opposing the development. The key points raised include:

- Over intensification of a single use, namely take-away within the small domestic terrace of six buildings, which will contravene the site's objectives and fail to assist in the provision of local services to the community.
- Proliferation of takeout food outlets.
- Proposal is contrary to the Development Plan's policy in relation to the location of takeaways in close proximity to schools.
- Traffic congestion and inadequate car parking
- Insufficient sewer capacity to accommodate the proposal.
- Concerns regarding litter control.
- Need to ensure that the proposal would not impede the future development potential of the adjacent funeral directors.

4.0 Planning History

No permission identified relating to the subject site.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

- 5.1.1. Since the Local Authority issued a Notification of Decision to Grant Permission for the proposed development, a new development plan has been prepared and adopted for the City. The relevant development plan to this assessment is the Dublin City Development Plan 2022-2028, which was adopted on 2nd November 2022 and came into effect on 14th December 2022.
- 5.1.2. The site is zoned Z4 'Key Urban Villages / Urban Villages' which aims to: *To provide for and improve mixed-services facilities*. Takeaway is listed as a permissible use under this zoning objective.
- 5.1.3. Section 15.14.7.3 in the Development Plan relates to Fast Food/Takeaways:

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 impacts and considerations including set down areas and servicing bays.*
- The number/frequency of such facilities in the area within 1km of school sites. Any new outlets will not be permitted within 250m of a school sites.*

- *That the operators come to a satisfactory arrangement with Dublin City Council in relation to litter control and that appropriate cleansing/anti-litter measurements be agreed with Dublin City Council prior to the granting of planning permission.*
- *The need to integrate the design of ventilation systems into the design of the building.*
- *That all take-aways provide and maintain a suitable waste bin outside their premises during hours of business.*
- *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.*

5.1.4. Furthermore, Section 15.14.7.4 outlines the requirements for takeaways in relation to noise, odour, and ventilation.

5.1.5. Section 15.17.5 of the Development Plan relates to Shopfront and Façade Design, including signage.

5.2. Natural Heritage Designations

5.2.1. The site is not located within or close to any European site.

5.3. EIA Screening

5.3.1. Having regard to the modest nature and scale of the development comprising of a change of use from laundrette to takeaway and the construction of a 3.3 sq m rear extension on a site area of 122 sq m located in a serviced urban area, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can therefore be excluded by way of preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

6.2. A First-Party Appeal was received by the Board on 4th May 2022 opposing the Local Authority's decision. The grounds of appeal can be summarised as follows:

- The development plan offers no justification as to how or why a limit of 250m should apply or how it should be measured. It is noted that there is no national policy standard or applicable guidelines which refer to what is or is not an acceptable distance or how such a distance should be measured. Policies in this regard vary significantly from planning authority to planning authority with distances ranging from 400-200m with little justification.
- It is clear that the planning officers 133m measurement is "as the crow fly's" and to the boundary wall of the school rather than representative of a defined realistic and achievable walking route from the school to the subject site.
- While the subject site is located in the region of 140m from the rear boundary of the school, there are no access points open to students along Church Street. While there is a service entrance gate to the rear of the school on Church Street this is not available for use by students.
- A UK study determined that *"200m appeared to be the optimal distance pupils were prepared to walk from and back to school at lunchtime"* and that time constraints associated with lunchtime was a considerable factor.
- The primary entrance point to the school is located on Wellmount Road, 450m walking distance, or 6 to 7 minute walk time, from the subject site. Policy RD9 is not applicable in this instance and does not constitute a valid reason for refusal.
- Discussion with the staff at St. Michaels Holly Faith Secondary School have determined that pupils are not permitted to leave school grounds during lunch break which occurs between 13:09 and 13:49 The proposed development would therefore not be accessible to students until after school when most pupils are under parental supervision.

- Parents picking up students by car and ordering an evening meal are unlikely to do so at 15.50 or 14:53 particularly given that their child would have eaten lunch in school between 13:09 and 13:49. The lack of a seating area would not make the subject development attractive as an after school meeting place for students on foot and again, having eaten between 13:09 and 13:49 a pizza, which is more consistent with that of a meal as opposed to a snack, would be an unlikely choice for a student or group of students on foot.
- The proposed development does not include a seating area for consumption of food on the premises and is for off-site delivery and pickup only.
- There are two take-away facilities directly adjacent to the subject site an Italian takeaway and a Chinese takeaway. The established opening hours for both are from 11:00am to 1:00am Monday to Saturday and 11.00am to 24:00 on Sunday or bank holidays. It is considered reasonable to assume that the proposed development should be considered acceptable at this location and be permitted to have the same opening hours as its neighbours.
- Under PLO6F.304077 relating to the construction of restaurant with a drive through collection service, the Board did not accept the inspectors recommendation to refuse permission but instead accepted the decision of the Planning Authority to grant permission. The decision was influenced by the fact that the school did not permit students to leave the school grounds at lunch time and that responsibility for access would lie with parents/guardians outside of school hours.

6.3. Planning Authority Response

No response received.

6.4. Observations

None.

7.0 Assessment

Having examined the application details and all other documentation on file, inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Development
- Development Plan Policy in relation to Takeaway Development
- Appropriate Assessment.

Each of these issues is addressed in turn below.

7.1. Principle of Development

- 7.1.1. The proposal comprises the change of use of a former laundrette to takeaway use with associated works on a site zoned Z4 with an aim *“To provide for and improve mixed-services facilities.”* Takeaway is listed as a permissible use under this zoning objective.
- 7.1.2. The Development Plan includes very specific policies to manage the provision of fast food outlets and takeaways, to prevent an excessive concentration of such outlets. Furthermore Section 14.74.4 in relation to Key Urban Villages and Urban Villages – Zone Z4, states that *“A diversity of uses should be promoted to maintain vitality throughout the day and evening”* on Z4 lands. As outlined above, two of the six units comprising the terrace are takeaways. As such, the proposal would result in 50% of the units comprising takeaways. I consider this to be disproportionately high. Whilst I acknowledge the Applicant’s arguments regarding the difficulty in attracting tenants due to the floor size of the unit, in my view, the addition of another takeaway would not positively contribute to the vitality and vibrancy of the area, albeit that a vacant unit does not positively contribute either. I note that the Local Authority’s Planner’s comments regarding a balance having to be struck in relation whether takeaway would have a bigger impact on the vitality of the area than another vacant unit. The Applicant has not outlined how long the unit has been vacant for. Notwithstanding this, in my view, use of the unit as a takeaway is not the only option available. Section 14.7.4 lists a series of other uses that would be permissible uses or open for consideration on lands zoned Z4 such as the subject site.

- 7.1.3. In conclusion, I am satisfied that the addition of another takeaway will not be in accordance with Section 15.14.7.3 of the Development Plan. Another takeaway is disproportionate to safeguard the vitality and viability of the area and to maintain a suitable mix of retail uses.

7.2. Development Plan Policy in relation to Takeaway Development

- 7.2.1. The Local Authority refused permission for the proposed development solely on the basis of its proximity to a school, St. Michael's Holy Faith. Section 15.14.7.3 of the Development Plan states that "*any new outlets will not be permitted within 250m of a school sites*". The Appellant states that students cannot access Church Street from the rear gates of the school. However, when I completed my site visit, mid-morning, on a week day during school term, the vehicular gate was open, providing direct access to the school grounds (see Photo 4 attached to this Report). The gate is less than 150m from the subject unit. Having regard to the age of students attending the secondary school, I do not concur with the assumptions made by the Appellant that the majority of them would be under parental supervision when the school day finishes. On the contrary, having regard to the provision of public transport in the area and the proximity of the residential development in the surrounding area, in my opinion, it is likely that many of the post primary students commute without parental supervision. Having regard to the foregoing, I do not consider Reg. Ref. 304077 to be relevant to this case. Furthermore, I do not consider that the lack of seating would be a deterrent for students. In conclusion, I consider the Local Authority's reason for refusal still stands.

7.3. Appropriate Assessment

- 7.3.1. Having regard to the nature and scale of the proposed development in an established urban area on serviced land, and the separation distance to the European sites to the subject site, I do not consider that the proposal would be likely to significantly impact the qualifying interests of the European Sites during either the construction or operational phases of development. As such, I consider that no Appropriate Assessment issues arise. In conclusion, 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

- 8.1.1. I recommend that planning permission be refused for the proposed development based on the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the policies and objectives of the Dublin City Development Plan 2022 - 2028, which seek to prevent an excessive concentration of fast food outlets/takeaways and to maintain an appropriate mix of uses in the City, and which policies/objectives are considered reasonable, it is considered that the proposed development of a further takeaway in this location would result in a proliferation of such uses, which would be disproportionate to the area, and would therefore, be contrary to the proper planning and sustainable development of the area.

Having regard to the location of the proposed takeaway within 150m of a school it is considered that the proposed development would not be in accordance Section 15.14.7.3 of the Dublin City Development Plan 2022 - 2028 which seeks to restrict further takeaway units within 250m of schools. The proposed development would, therefore, be contrary to the provisions of the Dublin City Development Plan 2022-2028 and would be contrary to the proper planning and sustainable development of the area.

Susan Clarke
Planning Inspector

3rd March 2023