



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313555-22

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<b>Development</b>	Change of use to takeaway, construction of extension, demolition of W/C and all associated site works.
<b>Location</b>	No. 99, Malahide Road, Grace Park, Dublin 3.
<b>Planning Authority</b>	Dublin City Council North.
<b>Planning Authority Reg. Ref.</b>	WEB1809/21.
<b>Applicant(s)</b>	Fulin Investments.
<b>Type of Application</b>	Planning Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party.
<b>Appellant(s)</b>	Betty Wang.
<b>Observer(s)</b>	1. Lino Rocca. 2. Diarmuid Reilly.
<b>Date of Site Inspection</b>	31 <sup>st</sup> day of August, 2022.
<b>Inspector</b>	Patricia-Marie Young.

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## 1.0 Site Location and Description

- 1.1. The appeal site is located at No. 99 Malahide Road, R107 Regional Route, in Dublin 3. It forms part of a terrace group of six two-storey buildings that address the western side of Malahide Road, and it is situated second from the southern end of the terrace c40m to the north Casino Park and 75m to the south Donnycarney Road, just over 5km to the north east of Dublin city centre, as the bird would fly.
- 1.2. No. 99 Malahide Road consists of a vacant commercial unit with former residential use over. It would appear that No. 99 up to recently was used in its entirety for commercial purposes. To the rear it has been extended by way of a part single and part two storey extension. The rear boundary aligns with a laneway that serves the subject terrace group.
- 1.3. At ground floor level the site is adjoined by an office use to the south and to the north by Vincenzo's Wood Fired Pizza (Takeaway). To the immediate south of Vincenzo's there is a vacant unit and neighbouring this vacant unit to the south is Fragrant City (Takeaway) and Rocca Food Fare (Takeaway). Within this terrace group the upper floor levels appear to mainly consist of residential units. To the front of the terrace group there is an area for on-street car parking. On the opposite side of the road is Clontarf Golf and Bowling Club. Photographs taken during inspection of the site and its setting are attached.

## 2.0 Proposed Development

- 2.1. Planning permission is being sought for:
  - Change of use from retail unit to Take-away restaurant.
  - Conversion of existing garage to Dry Food storage area.
  - First floor extension to rear of the property.
  - Demolition of existing W/C to allow new staff entrance from the laneway to rear of the property.
  - All associated site works.
- 2.2. The applicant submitted their further information response on the 22<sup>nd</sup> day of March, 2022. This did not give rise to any significant changes or amendments to the

development sought under this application but provided a survey of similar developments operating within 1km distance of the subject site, proposed waste management measures and operational staffing.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

3.1.1. The Planning Authority's Notification of the Decision to Grant Permission was issued on 14<sup>th</sup> day of May, 2022, and it included 14 no. mainly standard conditions including:

Condition No. 2: Section 48 contribution.

Condition No. 6: Omits the first-floor office window on the south elevation facing the rear of No. 97 Malahide Road.

Condition No. 7: Waste, Litter and Storage.

Condition No. 8: Environmental Health.

Condition No. 9: Drainage.

Condition No. 10 & 12: Signage.

Condition No. 11: Security Shutters.

Condition No. 13: Hours of Operation.

Condition No. 14: Noise & Air.

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

##### 3.2.1. **Planning Reports**

The **final Planning Officer's report**, dated the 13<sup>th</sup> day of April, 2022, is the basis of the Planning Authority's decision. In relation to the applicant's further information response the Planning Officer was satisfied from the survey provided that the area could accommodate an additional takeaway in what is an already commercialised streetscape scene. They were also satisfied that it would not give rise to any additional traffic related or environmental noise pollution and it would give customers the option of dining at the subject premises. In this case it was considered that the development would not be located close to schools or result in an over concentration of takeaway

uses at this location. In addition, the Planning Officer was satisfied that other concerns such as staffing, and waste, were adequately addressed by the applicant's further information response. This report concludes with a recommendation to grant permission subject to safeguards.

The **initial Planning Officer's report**, dated the 23<sup>rd</sup> day of September, 2021, concluded with a request for further information to address concerns on the following matters:

1) Clarification of the proposed development against the criteria 16.25 of the Development Plan. Particularly:

- Number and frequency of takeaways as well as schools within a 1km radius.
- Whether the proposed development would result in an excessive concentration of takeaways in this area.
- Staffing.
- Hours of Operation.

2) Litter and Waste Management.

### 3.2.2. **Other Technical Reports**

**Drainage:** No objection.

**Environmental Health:** No objection.

### 3.3. **Prescribed Bodies**

3.3.1. None.

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

3.4.1. During the course of the Planning Authority's determination of this application they received five Third-Party observations. These are attached to file and the contents of which I have noted. The substantive concerns raised in my considered opinion correlate with those raised by the Third-Party Appellant and the two observer's submissions which are summarised under Section 6 of my report below.

## 4.0 Planning History

### 4.1. Site

4.1.1. No recent and/or relevant planning history.

### 4.2. Vicinity

4.2.1. The Planning Authority's Planning Officer's report sets out an overview of the planning history for the terrace unit the appeal site form. I have noted this history and to this I note the following appeal case:

- **ABP.PL29N.229355 (P.A. Ref. No. 1982/08).**

This particular appeal case relates to unit 107C Malahide Road which forms part of the subject terrace group and related to a refusal of planning permission by the Planning Authority for a development consisting of the change of use of an existing retail unit to restaurant/fast food and the provision of trademark signage. The Board in this case overturned the decision of the Planning Authority on the basis of the particular nature of the proposed use, the provision of the Development Plan and the pattern of development in the vicinity. It considered that subject to conditions the proposed development would be acceptable in terms of traffic, public health, and public health. The Board also considered that the proposed pizza outlet would be acceptable within the mix of uses in the vicinity and would not have a significant effect on the residential amenities of the area.

Decision date: 17/11/2008.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The operative development plan is the Dublin City Council Development Plan 2016-2022. The site is located within an area zoned '*Z3 - Neighbourhood Centre*' with an objective 'To provide for and improve neighbouring facilities'.

5.1.2. Section 16.25 sets out the requirements in relation to takeaways.

## **5.2. Natural Heritage Designations**

5.2.1. None.

## **5.3. EIA Screening**

5.3.1. Having regard to the existing development on site, the nature and scale of the proposed development and the location of the site in a serviced area, 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 at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

6.1.1. The grounds of this Third-Party Appeal can be summarised as follows:

- The grant of permission for the proposed development sought under this application is objected to.
- There are already three takeaways operating in this small terrace.
- There is already an issue with parking to serve existing businesses including takeaway drivers and customers.
- The proposed development has the potential to add to the parking issues at this location and give rise to greater potential for adverse traffic situations to occur.
- Concern is raised in relation to competition impact on the existing takeaways.
- The proposed development would ruin the balance of development existing as well as would jeopardise the wellbeing of those operating and living in this terrace.

### **6.2. Applicant Response**

6.2.1. The applicant's response can be summarised as follows:

- The further information response already addressed the appellants concerns.

- The applicants premises already takes up spaces in this area for their only deliveries. These spaces are public spaces and are not just the reserve of the applicant's takeaway business.
- All members of the public must adhere to what is required of responsible drivers and if they do not this is not the responsibility of business owners.
- The appellant indicates that she is acting on behalf of Vincenzo's Wood Fire Pizza, Rocca's Food Fare and Fragrant City yet there are no accompanying appeals from these businesses or co-signatures.
- This appeal is vexatious, and its purpose is to prolong the application process.

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

6.3.1. None.

### 6.4. **Observations**

6.4.1. On the 7<sup>th</sup> day of June, 2022, the Board received an observation from Lino Rocca, resident of Apartment 107a Malahide Road, which is located above Rocca's Food Fare, which included the following comments:

- Reference is made to Section 16.25 of the Development Plan which seeks to maintain an appropriate mix of uses and protect night-time amenities alongside preventing an excessive concentration of takeaways and to ensure that the intensity of takeaways is in keeping with the scale of the building and the pattern of development in the area. There are already 3 takeaways in this small terrace of properties, i.e., 50% of the 6 units within it. This development, if permitted, would increase this percentage to 66%.
- If successful this development would give rise to increased noise, general disturbance and litter which would in turn add to the diminishment of residential amenity.
- This development would give rise to an increase in parking and traffic.
- It would result in additional under pressure lay-by that is located to the front of this terrace group.



- Currently residents have difficulty accessing parking outside their homes in this terrace at busy times.

6.4.2. On the 30<sup>th</sup> day of May, 2022, the Board received an observation from Diarmuid Reilly, resident of Apartment 107c Malahide Road, which included the following comments:

- It is contended that the observer is a lease holder of the adjoining property from which he operates Vincenzo's Woodfire Pizza.
- The proposed development, if permitted, would result in bad planning and poor urban design.
- There is insufficient car parking for the three restaurants and takeaways that operate in this small terrace unit of six commercial units.
- The Planning Authority's Planning Officer appears to rely on proximity of Clontarf Road, Killester Dart Station, and the quality bus corridor, in making determination that the parking provision is acceptable.
- The parking situation at present is not acceptable and would be made worse by an additional takeaway.
- Concern is raised that there is no report from the Planning Authority's Transportation Planning Department to inform the Planning Authority's decision.
- There are 12 takeaways within a 1km radius of this site. The applicant has incorrectly shown a lesser number in their further information report.
- The staffing of this restaurant, of 1 full-time staff member and one additional part-time staff member, appears to be very low for what is proposed in their experience of running a similar business.
- The information provided by the applicant as part of the further information response inadequately addresses litter and also is questionable based on the low number of staff stated.
- The Planning Authority in their determination of this application have not adequately addressed the concerns they have raised.
- It is requested that the decision of the Planning Authority be overturned as sought by the appellant in their submission to the Board.

## 7.0 Assessment

### 7.1. Preliminary Comment

- 7.1.1. I note that one of the observers to this appeal raises concerns in relation to the information provided by the applicant in relation to this application. On this particular matter I consider that there is adequate information on file to allow the Board to make a determination of the development sought.
- 7.1.2. On the matter of the use of the upper floor level I am cognisant that it would appear that the upper floor level of No. 99 Malahide Road is indicated in the submitted drawings as being residential in its use. This would appear to be contrary to its previous use yet there appears to be no planning history that would suggest any change of use from residential to commercial or otherwise.
- 7.1.3. Such matters are enforcement matters for the Planning Authority to deal with as they see fit. With this application confined to the development sought under this application which essentially relates to the change of use of the ground floor level to a takeaway at ground floor level together with the alterations and additions which also include the provision of an access from the proposed takeaway to a manager's office, storage and staff toilet towards the rear of No. 99 Malahide Road, at first floor level.
- 7.1.4. I therefore note that the remainder of the first-floor level is shown in the submitted documents as a separate dwelling unit which falls outside of the development sought under this application that is now before the Board for its *de novo* determination.

### 7.2. Main Assessment

- 7.2.1. In my considered opinion the main issues that arise for determination by the Board in relation to this appeal relate to the following matters:
- Principle of the Proposed Development and Development Plan Compatibility
- 7.2.2. In this regard, I consider that other matters such as the overlooking issue arising from the proposed first floor office window on the south elevation facing the rear of No. 97 Malahide Road together with other matters such as signage, environmental health, operational hours, waste management through to the payment of Section 48 contributions can be satisfactorily dealt with by way of condition. I therefore concur with the Planning Authority that subject to appropriately worded conditions that all

other matters arising from the proposed development sought under this application can be satisfactorily addressed as well as would potentially give rise to more qualitative outcomes particularly in terms of the visual, residential through to environmental health amenity.

### 7.3. Principle of the Proposed Development

- 7.3.1. By way of this application Planning Permission is sought for a development that comprises of the change of use of a now vacant retail unit to a takeaway restaurant together with alterations and additions that would facilitate the use of the ground and part of the first floor, including the provision of a first-floor addition to the rear and the demolition of an existing rear building that is described in the submitted drawings as a 'WC' in order to provide pedestrian access to the takeaway from the cul-de-sac rear laneway.
- 7.3.2. Under the provisions of the Development Plan the site and its immediate setting forms part of a larger parcel of suburban land that is subject to the 'Z3' zoning objective. Section 14.8.3 of the Development Plan sets out the objective for such lands is to provide for and improve neighbourhood facilities. It also states that such areas should: "*provide local facilities such as small convenience shops, hairdressers, hardware etc. within a residential neighbourhood and range from the traditional parade of shops to neighbourhood centres*"; and, "*neighbourhood centres provide an essential and sustainable amenity for residential areas and it is important that they should be maintained and strengthened, where necessary*".
- 7.3.3. On 'Z3' zoned land takeaways are '*open for consideration*'.
- 7.3.4. According to the Development Plan an '*open for consideration use*' is one which may be permitted where the Planning Authority is satisfied that the development would be compatible with the overall policies and objectives of the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.
- 7.3.5. In this instance the Planning Authority has concluded that the proposed change of use is consistent with the objective of 'Z3' zoned land subject to conditions.
- 7.3.6. The appellant and observers to this appeal seek that the Board overturn the Planning Authority's notification to grant permission for a number of reasons including on the

basis that it would give rise to an over concentration of takeaways in this modest terrace group and within this area.

7.3.7. Section 16.25 of the Development Plan deals specifically with takeaway developments. It states: *“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 takeaways 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”*.

7.3.8. It also sets out that the provision of such facilities will be strictly controlled, having regard to a number of factors which I will comment upon separately as follows: The factors include:

- *The effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents.*

In relation to this factor, I am cognisant as said previously that the Planning Authority in their notification to grant permission included a number of robust conditions to safeguard the residential amenities of nearby residents from adverse impact that potentially could arise from the proposed development if permitted. With this including the omission of a first-floor window to deal with the matter of overlooking to safeguard the residential amenity of No. 97, the adjoining unit which includes a residential unit at first floor level. Standard hours of operation, noise, waste management, litter and other nuisances were also dealt with by way of standard conditions.

Notwithstanding, my concern is that this modest group of six properties designed to accommodate retail/commercial type land uses at ground floor level with residential living on the first-floor level above already contains three functioning takeaways.

Available information suggests that the existing takeaways offers no ‘dine in’ facilities and their food offer is either ordered and collected by the individual customer or delivered to the customer by the delivery service each of these takeaway units provide.

Whilst I am cognisant that these takeaways offer three different food offerings for their customers their opening hours are primarily evening into late night. It is unclear what food offer is proposed by the First Party in the documents submitted for the proposed

take-away restaurant sought under this application. Thus, there is no certainty that there is no overlapping of takeaway food offers proposed.

I therefore raise concern that the addition of another evening to late night land use would add to the cumulative issues arising for the residents of these units.

In particular noise nuisances, malodours and the like with the surrounding area having a large residential population and with the proposed development adding a fourth takeaway food offering in a modest terrace group.

- *The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.*

I accept that there appears to be a discrepancy in the 8 number of takeaway type land uses presented by the applicants as part of their further information and the larger number of 12 takeaways presented by the observers in their appeal.

I also consider that this modest terrace group forms part of a parade of neighbourhood shops, services and amenities with the subject terrace including an accountancy type office and another vacant unit.

Whilst the current vacant situation of No. 99 Malahide Road together with the other vacant unit within the subject terrace group detracts from the vitality and vibrancy of this terrace group as well as the wider streetscape it forms part of I raise a concern that the provision of a fourth takeaway unit at this location is not in the spirit of safeguarding the vitality and viability of shopping areas alongside maintaining a suitable mix of retail uses.

- *Traffic considerations.*

At the time of site inspection, I observed that the Malahide Road was heavily trafficked and whilst I note that the other takeaway units were not yet operating there was availability within this streetscape for limited on-street car parking. I accept that it is likely that the concentration of three takeaways of the type proposed and the types existing within this terrace unit would give rise to significant pressure on the car parking on-street availability in the evening and late-night hours in which they operate. With this in turn giving rise to more difficulty for the residents of this subject terrace, which appear to not have the benefit of any off-street independent car parking, to gain access to public on-street parking in their immediate locality. Outside of this concern I concur

with the Planning Authority that the proposed development is unlikely to give rise to any additional road safety and/or traffic hazards for road users of the Malahide Road including vulnerable road users.

- *The number and frequency of such facilities in the area, particularly in close proximity to schools.*

I have already raised concerns about the over concentration of takeaway land uses at the subject terrace, however, the site is not in close proximity to any school. As such I do not raise proximity to schools as a substantive concern in this case.

- *The number and frequency of such facilities within a 1km radius of the proposed development.*

Within a 1km radius I consider that the number and frequency of takeaway land uses which in my observations appear to be more accurately represented by the observer is not out of character with a highly populated suburban area, with a regional road bisecting this suburban area and with this regional road also being the area in which neighbourhood centre services are channelled to. The issue is in this instance is the overconcentration at one particular location of one particular type of food offer and one that does not provide any particular difference from that already overly provided for within this modest terrace unit. As said the Development Plan seeks in 'Z3' zoned land to safeguard the vitality but also maintain a suitable mix of retail uses. This would not be achieved, in my view, by way of another evening to late night land use at this location and would result in this terrace group not positively enhancing the streetscape scene during main commercial day time offers.

- *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 retail shops.*

I consider that this criterion overlaps with the concerns already raised above and I do not consider that this immediate area is overly served by takeaway land uses to the detriment of providing a range of retail and/or other commercial offers that by way of their mixture and variety be beneficial to the vibrancy as well as vitality of what is highly populated residential area. Alongside would also more positively contribute to the vitality and vibrancy of the Malahide Road streetscape scene as appreciated from the public domain of this heavily trafficked urban thoroughfare.

- 7.3.9. I am not also convinced on the basis of the information provided with this application that the local residential market demands more concentration of takeaways at this particular location. Whilst it would appear reasonable to permit a use that is open for consideration that would remove vacancy from this streetscape scene, notwithstanding, takeaway land uses are a type of land uses that are subject to strict controls for a plethora of reasons including vitality, amenity, and public health, with four within such a limited area resulting in an overconcentration of a particular use that cumulatively could have more likelihood of negative impacts on residential amenity.
- 7.3.10. In conclusion, consider that to permit a fourth takeaway at this location would be contrary to the land use zoning of the site and would be contrary to the Development Plan provisions for takeaway land use type developments where they may be positively considered subject to safeguards.

#### 7.4. **Appropriate Assessment**

- 7.4.1. Having regard to the location of the development within a serviced built up area, the nature of the development and the separation distance from the nearest European site, I consider that the proposed development either alone, or, in combination with other plans or projects, would not be likely to have significant effects on any European site, in view of these sites conservation objectives and that, therefore, a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement is not required.

### 8.0 **Recommendation**

- 8.1. I recommend that permission be **refused**.

### 9.0 **Reasons and Considerations**

1. The proposed development is located in a modest mixed use terrace group of six units characterised by originally retail units at ground floor with residential over which is subject to the 'Z3' land use the zoning objective under the Dublin City Development Plan, 2016-2022, which seeks to provide for and improve neighbourhood facilities. In addition, Section 16.25 of the Dublin City Development Plan 2016-2022 sets out policy with regard to the context and character of the

street and to encourage a range of retail shops in such neighbourhood centres. This small terrace group currently accommodates three take-away with a several other takeaways located within a 1km radius. The proposed new takeaway would result in the loss of a retail unit and associated daytime use and would create an over-concentration of takeaways uses to the detriment of the vitality, vibrancy and range of retail uses in this neighbourhood centre and would therefore conflict with development plan policy for such areas. In addition, Section 16.25 of the Development Plan seeks to prevent an overconcentration of takeaways in any area and to maintain a suitable mix of use in order to maintain and strengthen neighbourhood centres. and the proper planning and sustainable development of the area. It is considered therefore considered that the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Patricia-Marie Young  
Planning Inspector

21<sup>st</sup> day of September, 2022.