



An
Bord
Pleanála

Inspector's Report

ABP-322120-25

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|--------------------------------|--|--------------------|-----------------|
| Development | For the change of use of ground floor from retail to use as a take-away restaurant for the sale of hot food for consumption off the premises. Modifications to the internal layout, new signage to shopfront and all associated and ancillary works. | | |
| Location | Nugent Street, Station Road, Co. Kildare. | | |
| Planning Authority Ref. | 24/61162. | | |
| Applicant(s) | Valdrim Lubashtani. | | |
| Type of Application | Retention | PA Decision | Grant Retention |
| Type of Appeal | Third Party | Appellant | Maria Macari |
| Observer(s) | None | | |
| Date of Site Inspection | 16-04-2025 | Inspector | Adam Kearney |

Context

1. Site Location/ and Description.

The property is located at Nugent Street, Station Road in Kildare Town within 100m of the central square area. The corner, end of terrace unit is part of a larger two storey mixed-use terrace probably constructed between 20 and 25 years ago. The retail unit design is a hybrid of modern with some traditional style timber shop front features, with dual aspect display windows and a splayed entrance door set behind a concrete support pillar on the corner. Overhead is an Asian cuisine restaurant accessed by external steps and to the north separated by a section of the old town wall is a small two storey neighbourhood centre with 4 no. retail units and a parking area to the front.

2. Description of development.

Applicant is seeking retention for a change of use of ground floor from retail to use as a take-away restaurant for the sale of hot food for consumption off the premises including modifications to the internal layout, new signage to shopfront and all associated and ancillary works

3. Planning History

REF 99/2219: Permission was granted for the demolition of existing house and outbuildings and construction of a two-storey building containing 4 shop units and 1 entrance lobby on ground floor level and 1 office unit and a restaurant (together with ancillary service areas) etc.

REF 24/60488: Permission was refused for retention of change of use of original retail unit (granted under Pl. Ref. 99/2219) to a unit for the sale of hot food for consumption off the premises, modifications to internal layout configuration, new signage to shop front and all associated and ancillary works.

UD8409: Warning letter issued in April in relation to the change of use of retail unit to take away.

4. Local Planning Policy

- ***Kildare County Development Plan 2023-2029***

Chapter 15 sets out the various Development Management Standards. Section 15.13.7 (Fast Food Outlets, Takeaways, Bookmakers, Budget Shops, Vape Shops, Charity Shops, Telephone / Mobile Shops and Amusement / Gaming Arcades) notes that in order to maintain the appropriate mix of uses and protect the amenities in a particular area, it is the policy of the Council to prevent the excessive concentration of Fast Food Outlets, Takeaways, Bookmakers, Budget Shops, Vape Shops, Charity Shops, Telephone/ Mobile Shops and Amusement/Gaming Arcades.

Kildare Town Local Area Plan 2023 – 2029

The site is zoned Town Centre ‘A’, the objective of this zoning is as follows: “To protect, improve and provide for the future development of the town centre”.

A Hot Food Take-Away is “Open for consideration” in the town centre zoning

- *Objective TCO 1.3 of the Kildare Town Local Area Plan 2023-2029 and Section 15.13.7 of Kildare County Development Plan 2023-2029 seek to prevent an excessive concentration of non-desirable uses including takeaways in the town centre.*
- *TCO 1.3 Protect the vibrancy, ambience, quality and vitality of the town centre by:*
 - (i) Promoting an appropriate mix of day and night-time uses.*
 - (ii) Preventing an excessive concentration of non-desirable uses including takeaways, off-licences, bookmakers, phone repair shops and vape shops (where planning permission is required)*

5. Natural Heritage Designations

- None in Vicinity
- Nearest Pollardstown Fen Special Area of Conservation (SAC) c.5.4km northeast

Development, Decision and Grounds of Appeal

6. PA Decision

Planning Authority decided to Grant Permission subject to 8 conditions;

Having regard to the policies and objectives of the Kildare County Development Plan 2023-2029, the nature and design of the proposed development, and the character of adjoining development, it is considered that, subject to compliance with the conditions attached, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

6.1 Planners Report

- In the main the area planner was opposed to the change of use and recommended a refusal based on excessive concentration of undesirable.
- There was a Direction by the Director of Services by email on 19/12/2024 to seek Further Information in relation to the proposed development on the basis that a hot food take is open for consideration in the zoning matrix.
- On foot of receiving the FI the area planner's opinion remained unchanged but was overruled by the Director of Services and permission was granted.

6.2 Other Technical Reports

Internal Reports

Municipal District Engineer: No report received to date.

Water Services: No objection subject to conditions.

Environment: No objection subject to conditions.

Transportation: No report received to date.

Enforcement: Warning letter issued UD8409

7. Third Party Appeal. Grounds:

- No record of preplanning meeting is evident from the documentation associated with the files and screengrab of email correspondence with LA confirming same is provided
- Such a record would detail why the decision was reversed from the earlier 'strong' refusal and where the planning files are similar
- Applicant refers to hours of operation and how this would militate against anti-social behaviour, but this is not adequate justification to permit the development
- The market is saturated with take-away's, and the population is not increasing so any business is being taken from existing take away businesses
- The extraction system was stated in the application to be 'existing' but it was put in place by the applicant without the benefit of permission
- The applicant states that many of the existing take aways businesses are unauthorised, but this should be dealt with by the applicant by way of complaint or by the LA
- Applicant states they spent 80,000 euro and employs 7 people, but why would a business spend this amount of money without the benefit of planning permission
- rejects applicants' assertion that cites best international practise that no more than 10% of ground floor units in a town should be 'Take-Aways'
- raises a concern that the applicant seems to have compiled the application themselves and questions this and whether the application was actually prepared by someone working for another entity and who would be unable to affix their name as the agent
- expresses hope that the planner is not put in an 'awkward position'
- asks that Bord Pleanala refuse the application

8. PA Response

- accusatory tone and insinuations by the appellants agent are strongly refuted
- existing fast-food takeaway would not conflict with town centre zoning objective
- would be in line with existing permitted uses

- would not conflict with '*vibrancy, ambience, quality and vitality of town centre*'
- No formal preplanning was carried out but informal discussion with Acting Senior Planner took place
- Applicant was advised that strong justification for the use would be required to overcome the reasons for refusal.
- accusations that conversations or agreements had been put in place outside the planning process are completely unfounded
- would appear that the appellants agent is incorrect in their statement that the applicant prepared the conservation report
- the application details are clear with the planning report prepared by the stated Planning Consultant

8.1 Applicants First Party Response

- Undoubtedly a commercial objection
- Appellant refers to enforcement action which is not a function of the board
- The applicant has confirmed a preplanning meeting took place and has provided the number. In regard to the appeal indicating no meeting took place they (applicant) have no responsibility for the administration of the Planning Authority
- Hours of operation are a key consideration in determining applications for 'Take- Aways' due to the propensity for anti-social behaviour
- Rejects assertion that there is a 'dense number of hot food take aways'
- Extraction fan was included in the application and falls within the category of 'Ancillary Site Works'
- Appellants agent fails to understand that in making their decision the planning authority cannot consider other unauthorised developments as they have no planning status
- Makes a distinction between 'take home' and 'take away'

Environmental Screening

9. EIA Screening

The subject change of use is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. I refer the Board to Appendix 1 in this regard.

10. AA Screening

Refer to Appendix 2. Having regard to nature, scale and location of the proposed development and proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

2.1. I have reviewed the application and the appeal inclusive of first party response and have visited the site. I am satisfied that the appeal can be considered under the following headings

- Principle of Development
- Appraisal of Town Centre Retail Composition
- Impact on Visual and Residential Amenities & Kildare Town ACA
- Procedural Matters

2.2. Principle of Development

The appeal site is within a Town Centre Zoning 'A' and where under the Kildare Town Plan 2023 - 2029 (Table 11.5) A Hot Food Take-Away is "Open for consideration". The premises was originally constructed as a retail unit and previous to this was in use as a café. The principle of commercial development at this location is therefore established.

2.3. Appraisal of Town Centre Retail Composition

I acknowledge there are a number of restaurants/take-aways in the greater town centre area as set out in the third-party appeal and in the Local Authority Planners Report. Proximate to the subject site, to the north is another pizzeria style restaurant that forms an end of terrace unit in a neighbourhood centre and there are two Asian Cuisine offerings with one overhead the subject unit on the first floor and another to the south also located on Nugent Street. Some of these businesses I am assuming are dine in or a mixture of dine in and take-away.

However, having walked around the town centre and the Market Square area I am not convinced that there is a manifest over-concentration of any one specific commercial use in the Town Centre and indeed my overall impression of the town was extremely positive in this regard in terms of visual amenity, activity and cleanliness. I noted very little vacancy and a diverse selection of retail offerings. While in isolation as a desktop exercise the list of 'take-aways' operating in the town may present as an oversupply, in contextual terms given the size of the town and the overall number of existing businesses operating, the effect, if any is diluted to the point of imperceptibility. I am satisfied therefore that there is not an over concentration of take-aways in Kildare Town at present.

2.4. Impact on Visual and Residential Amenities & Kildare Town ACA

The 'change of use' to be retained is from a café to a takeaway with no physical alterations to the exterior other than signage. I consider the terraced block that houses the subject property was constructed circa 20 -25 years ago, it comprises restaurants, grocery, a charity shop and residential. It is, in the main tasteful and well maintained with a neutral colour scheme, traditional style shop front features and traditional street lighting affixed along the street elevation.

The unit itself is on the corner with partial traditional façade, setback fenestration and a support concrete column at the entrance door. The change of use involved no physical modification to the building and the signage changes are minimal.

The site is within the Kildare Town ACA. The subject permission involving a change of use from café to take away involving revisions to signage will have no impact on the character and integrity of the ACA.

In terms of residential amenity, the take-away is at a remove from the nearest residential estate and the opening times are such that there would be no late-night activity that may give rise to Anti-Social Behaviour after public house closing times. Overall, I am satisfied that the change of use from retail to Take Away Restaurant will not have a significant impact on the residential amenity of the area or constitute a visual impact inclusive of an impact on the Kildare Town ACA.

2.5. Procedural Matters

The agent for the appellant strongly points out potential anomalies in the application and of failures by the Planning Authority in their procedures.

With regard to pre-planning, the PA response explains that an 'informal' discussion did take place between the applicant and the Acting Senior Planner and that a formal pre-planning meeting did not take place, and the pre-planning number on the application was invalid and did not represent any internal record of a meeting.

While the applicant should have clarified the specifics of the pre-planning interaction in the relevant section of the Planning Application Form, I am satisfied that the specific nature and format of the pre-planning meeting is/was largely irrelevant and that all parties understood that pre-planning advice was sought and given.

In terms of assertions made by the appellant re the application compilation I am satisfied with the PA response pointing out the application was managed and compiled by the Planning Consultant for the applicant and that a supporting conservation report was compiled by a 3rd party.

I note some conservation report references outdated development plan policies but is in the main an adequate justification of development within an ACA for a minor 'change of use' application.

3.0 Recommendation

3.1. I recommend that Retention Permission for the development be Granted.

4.0 Reasons & Considerations

Having regard to the nature and extent of the proposed development for retention which comprises a change of use from retail use to take-away restaurant for the sale of hot food for consumption off the premises, the town centre location of the site where a hot food takeaway is open for consideration as per Table 11.5 of the Kildare Town Local Area Plan 2023-2029, and having considered the wider town centre economy and pattern of development in the area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not detract from the architectural character of the Kildare Town ACA and would, therefore, be in accordance with the proper planning and sustainable development of the area.

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| 1. | <p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise, be required in order to comply with the following conditions.</p> <p>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.</p> <p>Reason: In the interest of clarity.</p> |
| 2. | <p>The opening hours of the take-away restaurant shall be 15.00 to 23.00 Monday to Sunday and shall not be altered, without prior grant of planning permission</p> <p>Reason: In the interests of residential amenity</p> |
| 3. | <p>No further advertising signage or devices other than those included with the current application shall be erected outside the premises inclusive of footpath and No external roller shutters, awnings, canopies or grilles, shall be erected, without prior grant of planning permission.</p> |

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| | Reason: In the interest of Visual Amenity |
| 4. | <p>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.</p> <p>Reason: In the interest of public health and to protect the amenities of the area.</p> |
| 5. | <p>Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.</p> <p>Reason: In the interest of public health and visual amenity.</p> |
| 6. | <p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer, or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p> |

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Name: Adam Kearney

Planning Inspector

Date: 22-04-2025

Form 1

EIA Pre-Screening

| | | | |
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| An Bord Pleanála Case Reference | ABP-322120-25 | | |
| Proposed Development Summary | Retention of Change of Use from retail to a Take-Away Restaurant | | |
| Development Address | Nugent Street, Station Road, Kildare Town | | |
| 1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings) | | Yes | ✓ |
| | | No | No further action required |
| 2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)? | | | |
| Yes | | State the Class here. | Proceed to Q3. |
| No | ✓ | | No further action required |
| 3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class? | | | |
| Yes | | State the relevant threshold here for the Class of development. | EIA-Mandatory EIAR required |

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| No | | | Proceed to Q4 |
| 4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]? | | | |
| Yes | | State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold. | Preliminary examination required (Form 2) |

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| 5. Has Schedule 7A information been submitted? | | |
| No | | Pre-Screening conclusion remains as above (Q1 to Q4) |
| Yes | | Screening Determination required |

Inspector: Adam Kearney

Date: 22-04-2025

Appendix 2

AA Screening

I have considered the retention of 'change of use' in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is not located within or immediately adjacent to any European Sites. The closest European Sites, part of the Natura 2000 Network is the Pollardstown Fen Special Area of Conservation (SAC) c.5.4km northeast

The proposed development comprises retention for a change of use of ground floor from retail to use as a take-away restaurant for the sale of hot food for consumption off the premises including modifications to the internal layout, new signage to shopfront and all associated and ancillary works

No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows

- Nature and scale of the proposed development
- The distance from nearest European site
- Urban location with access to all public services and utilities,

I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.