



An
Bord
Pleanála

Inspector's Report

ABP-319898-24

Development	Change of use from a retail outlet to a shop for the sale of hot food (pizza primarily, but also including kebabs) as well as cold non-alcoholic drinks and desserts, mainly for home delivery by the applicant company, with ancillary customer collection.
Location	15 Edenmore Shopping Centre, Raheny, Dublin 5, D05 V560
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	WEB2137/23
Applicant(s)	Shiva Foods T/A Pizza Max Takeaway
Type of Application	Permission - Change of Use
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	1. Councillor Tom Brabazon 2. Claudia Fragnoli and others 3. Councillor Daryl Barron

Observer(s)

Seán Haughey

Date of Site Inspection

29/11/2024

Inspector

Catherine Hanly

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1.0 Site Location and Description

- 1.1. The subject site is located in Edenmore Shopping Centre. Edenmore Shopping Centre consists of 3no. blocks comprising a series of long narrow units and is located between Edenmore Park and Edenmore Avenue. The shopping centre consists of a mixture of single and two-storey buildings with surface level car parking.
- 1.2. The shopping centre faces onto a footpath and parking spaces. To the south of the site and on the opposite side of Edenmore Park road is St. Malachys Boys National School (22m from the site). St. Monica's GAA club is located to the southeast of the site, also on the opposite side of Edenmore Park Road. A 3no. storey building is located to the east of the shopping centre which contains an off-licence, The Concorde Pub, a book maker, a hair and beauty salon and a nail salon at ground floor and 2no. floors of apartment units above.
- 1.3. The wider area to the east consists of St Eithne's Girls National School (120m walking distance from the site), St. Monica's Infant Girls School (100m walking distance from the site) and Finnegen Fox Afterschool Edenmore which operates from St Monica's Infant Girls School.
- 1.4. The subject site is located in the eastern side of Edenmore Shopping Centre which is located on the northern side of Edenmore Park Road. The portion of the shopping centre where the site is located consists of a 2no. storey flat roofed building which is comprised of 9no. retail units on the ground floor and residential use at first floor.
- 1.5. The retail units front out onto the southern side of the building where the subject site is located. There is an enclosed yard to the northern rear of the retail unit. The yard has gated access opening out to a gated car park. The subject site measures 0.017ha. The site consists of a vacant retail unit and is the retail unit located second from the eastern end. There is a take-away known as Ali's Lido and a self-service laundrette known as Wash' n' Go immediately adjoining the site. The other retail units in the portion of the shopping centre along Edenmore Park where the site is located consists of a hair salon, a funeral director, a Chinese take-away, a flower shop, a butchers and a beauty salon.

2.0 Proposed Development

2.1. The proposed development comprises the following:

- Change of use from a retail outlet to a shop for the sale of hot food (pizza primarily, but also including kebabs) as well as cold non-alcoholic drinks and desserts, mainly for home delivery by the applicant company with ancillary customer collection.
- The provision of signage on the front elevation.
- The removal of an existing door on the rear elevation and its replacement with a window.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of Decision to Grant Permission was issued on 17th May 2024, subject to 12 no. conditions.
- 3.1.2. Condition no. 2 restricts the opening hours of the shop to 6.00pm to 11pm, seven days a week. The reason for this condition is to safeguard the amenities of the schools within the vicinity of the site and to comply with section 15.14.7.3 of the *Dublin City Development Plan*.
- 3.1.3. Condition no. 3 relates to the agreement of refuse storage facilities.
- 3.1.4. Condition no. 4 relates to signage and advertisements.
- 3.1.5. Condition no. 6 is in relation to noise generated by plant and states that the LAeq level measured over a 15 minute period, when measured at the nearest noise sensitive premises when externally located plant at the proposed development is in operation shall show no more than 3 decibel increase when compared with the representative LAeq (15 minutes) level measured from the same position, under the same conditions and during a comparable period with no external plant in operation. Condition no. 6 also states that there shall be no external speakers and that all early morning deliveries must take place after 7am.
- 3.1.6. Condition no. 7 relates to ventilation.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning Authority issued a Further Information request in relation to 2no. items. The first item requested that the applicant provided an assessment of the takeaway in accordance with section 15.14.7.3 Fast Food/ Takeaways of the *Dublin City Development Plan 2022 – 2028* and include details of the hours of operation, agreement with Dublin City Council in relation to litter control, details of appropriate waste storage measures, litter control measures and adequate ventilation with regard to any first-floor residential use in the future on the site. The second item outlined the Planning Authority's concerns about the location of the proposed takeaway within 50m of St Malachys Boys National School and St Eithne's Girls School and the quantum of existing takeaways in the locality. The applicant was requested to provide an evidence-based case considering the number of such facilities in the area within 1km of school sites and that the development would be in the interests of the proper planning and sustainable development of the area and in accordance with 15.14.7.3 of the *Dublin City Development Plan 2022-2028*.
- The applicant submitted details at Further Information stage which stated that the hot food outlet would trade from 6pm to 11pm.
- The applicant submitted details at Further Information stage which outlined that the applicant would maintain a waste bin outside the premises and would agree details of waste management requirements prior to the commencement of development. The Planning Officer noted that details of refuse facilities will be agreed with the Planning Authority prior to the commencement of development.
- The manufacturer's details for the proposed ventilation system were submitted at Further Information stage. The Planning Authority noted that conditions would be attached to any grant of planning permission relating to pollution control measures.
- Regarding the proximity of the site to adjacent schools, the applicant submitted a supporting statement which set out that they did not believe that the presence of two schools in close proximity to the site warrants withholding

permission. The applicant referenced a case decided by An Bord Pleanála, reference number **PL06F.304077** in relation to the construction of a drive-through restaurant in proximity to Skerries Educate Together National School which was c. 300m from the site. The Board in this instance had regard to the fact that the proposed use was permitted in principle under the zoning of the site, the proximity of the nearby schools and the fact that pupils were not allowed to leave during lunch break. In this instance the Board permitted the drive-through restaurant.

- Upon consideration of the information at Further Information, the Planning Officer's Report noted that takeaway is a permissible use under the Z4 zoning of the site. The Planning Officer further noted that both St Malachys Boys National School and St Eithne's Girls School are primary schools and as such the hours of operation of the subject site, 6pm to 11pm, oppose primary school hours of operation.
- In relation to the vitality of the Edenmore Shopping Centre and the number of such take-away facilities in the area, the Planning Officer noted the applicant's justification that the site is located in a neighbourhood shopping centre which has a zoning objective to provide a range of services. The Planning Officer further noted that the site is a vacant retail unit and the proposal involves the reoccupation of a vacant unit with existing surface level car parking and parking control measures along the public area. The Planning Officer considered that the proposal would have a neutral impact on the overall vitality of the Edenmore Shopping Centre and would not have an overly negative impact upon the vitality of the surrounding retail area.
- It was considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.
- It was considered that having regard to the nature and scale of the development that there was no real likelihood of significant effects on the environment arising from the proposed development. As such the need for

environmental impact assessment can be excluded at preliminary examination and a screening determination is not required.

- The Planning Officer concluded that the takeaway is a permissible use under the Z4 zoning. The site is currently vacant and benefits from existing car parking infrastructure. The Planning Officer further stated that the proposed use should be between the hours of 6pm to 11pm in order to safeguard the amenities of the schools in the vicinity, in compliance with Section 15.14.7.3 Fast Food/ Takeaways of the *Dublin City Development Plan*.

3.2.2. Other Technical Reports

- Environmental Health Report: Recommends that should Planning Permission be granted, that a condition is attached in relation to noise pollution control measures during the construction and operational phases. It was also recommended that conditions are attached relating to air pollution control measures during the construction phase and the operational phase regarding kitchen extraction. It was further recommended that a condition is included requiring that deliveries take place before 7am and prevent a noise nuisance.
- Drainage Division's Report: Recommends conditions regarding compliance with the Greater Dublin Regional Code of Practice for Drainage Works Version 6, no discharge of trade effluent to waters or sewers, that drainage shall be designed on a separate foul and surface water system and that all private drainage is located within the final site boundary.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. 37 no. observations were received by Dublin City Council. The issues raised are as follows:

- There is an excessive amount of take-aways in the area.
- The development counteracts the Government's healthy living guidelines.

- Photographs submitted with the application are incorrect and inaccurate as to the proximity of the site to schools.
- Concern regarding the proximity of the development to existing schools.
- Concern that the development will result in anti-social behaviour.
- The development would take up some of the existing parking spaces, which are already in demand.
- The development could cause financial strain on other businesses in the area.
- Littering is an issue in the area and there is a concern that the development will contribute to this problem.
- There is a concern around noise generated by the development and its associated opening hours.
- A previous application was refused on the site under **reference number 3495/21** and the reasons for refusal still stand.

4.0 Planning History

4.1. Planning History on the Subject Site

- 4.1.1. **Planning Authority Reg. Ref. 3495/21**: Change of use from existing retail unit to pizza takeaway. 2021 **Refusal**. Refusal noted that there are already 2no. takeaways in the parade of shops and 4no. takeaways in the shopping centre complex. The proposed development was considered to result in a proliferation of such uses and would impact the residential amenities of the area and the apartments above. The development was considered contrary to section 16.25 of the *Dublin City Development Plan 2016 – 2022*.

4.2. Relevant Planning Applications within the Wider Area

- 4.2.1. **Planning Authority Reg. Ref. 4202/24**: The construction of 1no. additional floor over the existing 3 storey retail and apartment building at Edenmore View Apartments to accommodate 8 no. new apartments. **Further Information** requested in October 2024 in relation to materials, Housing Quality Assessment, A Lifecycle Report, Daylight/ Sunlight Assessment, the design of north facing units, design of the

units, details of the roof terrace, parking provision, mobility management plan, bicycle parking, serving strategy and drainage issues.

- 4.2.2. **Planning Authority Reg. Ref. 3696/20**: The revitalisation, reorganisation and refurbishment of the Edenmore Shopping Centre, involving new glazed shopfronts, reduction in the number of commercial units from 15 to 14, reorganisation of supermarket B, change of use of supermarket A to create 3 no. retail units, creation of a covered truck delivery year new bin storage area, upgrade of all access to the apartments, redesign of signage, new entrance and resurfacing of the parking area and provision of bicycle racks. 2021 **Grant**.
- 4.2.3. This portion of the supermarket contains 2no. take-aways, Golden City and Mizzoni's Pizza. The permitted development also contained 2no. take-aways.
- 4.2.4. **APB Ref. PL29N.247136 & Planning Authority Reg. Ref. 3047/16**: Change of use of ground floor unit from retail to café/ takeaway at unit 7 Edenmore Avenue. 2016 **Grant** following first party appeal against condition no. 2 regarding opening hours. An Bord Pleanála considered that condition no. 2 was appropriate and upheld it without modification. Condition no. 2 restricted opening hours from 8am – 12am Monday to Wednesday and 8am – 1am Thursday – Sunday and bank holidays.

5.0 Policy Context

5.1. Dublin City Development Plan 2022 - 2028

- 5.1.1. The site is subject to land use zoning Z4, Key Urban Villages and Urban Villages, with the objective *“to provide for and improve mixed-services facilities”*.
- 5.1.2. Section 14.7.4 of the *Dublin City Development Plan*, herein referred to as the *Dublin CDP* states that proposals for development within Urban Villages should be in accordance with the following principle, *“Commercial/ retail: promote the creation of a vibrant retail and commercial core with animated streetscapes. A diversity of uses should be promoted to maintain vitality throughout the day and evening”*.

5.2. General Retail Policy

- 5.2.1. CCUV12 Shopfront Design states that it is the policy of Dublin City Council *“to require a high quality of design and finish for new and replacement shopfront signage and advertising. Dublin City Council will actively promote the principles of*

good shopfront design as set out in Dublin City Council's Shopfront Design Guidelines and Chapter 15."

- 5.2.2. CCUV20 Mixed Use Key Urban Villages/ Urban Villages states that it is the policy of Dublin City Council *"to support the development, regeneration and or consolidation of Key Urban Villages/urban villages as appropriate, to ensure these centres continue to develop their mixed used role and function adding vitality to these centres including through the provision of residential development."*

5.3. Fast Food/Takeaways

- 5.3.1. Section 15.14.7.3 of the *Dublin CDP* states that *"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.”*

5.3.2. Section 15.14.7.4 states that “Café, restaurant and take away uses should be designed having regard to the appropriate noise and ventilation guidelines. All ventilation proposals should avoid direct extracts at street level, where possible. Where extract odour and ventilation is required on main street frontages, careful design solutions should be provided to extract does not interfere with pedestrians and road users in terms of noise and odour. Similarly, noise associated with the use of a café / restaurant / take away should be minimised as to ensure no overspill to street level occurs. Café and restaurant proposals should include an engineering statement to address, noise, ventilation and odour as part of any planning applications.”

5.4. **Shopfront and Façade Design**

5.4.1. Section 15.17.5 of the *Dublin CDP* states that “Shopfront design plays a key part in contribution to the quality of the public realm. Attractive facades and shopfronts have the ability to rejuvenate the streetscape and create an attractive public realm environment. Shopfront signage should:

- *Be located at fascia level.*
- *In the case of shop blinds, comprise traditional retractable canvas awning signs of Shopfronts and Other Business Premises.*
- *The signage relating to any commercial ground floor use should be contained within the fascia board of the shopfront.*
- *The lettering employed should be either on the fascia, or consist of individually mounted solid letters mounted on the fascia. The size of the lettering used should be in proportion to the depth of the fascia board.*
- *Signage internal to the premises, including interior suspended advertising panels, which obscure views into the shop or business and create dead frontage onto the street shall not normally be permitted.*

- *Corporate signs will only be permitted where they are compatible with the character of the building, its materials and colour scheme and those of adjoining buildings.*
- *Advertisements and signs relating to uses above ground floor level should generally be provided at the entrance to the upper floors, in a form and design which does not detract from or impinge upon the integrity of the ground floor shopfronts, or other elevation features of the building.*
- *Shopfronts sponsored by commercial brands will generally not be permitted. Proposals for shopfront signage shall have regard to the contents of the Retail Design Manual, 2012, Dublin City Council's Shopfront Design Guide, 2001 and the O'Connell Street Area Shopfront Design Guidelines, 2003, where appropriate. www.dublincity.ie."*

5.5. The Shopfront Design Guide (2001)

- 5.5.1. These Guidelines set out design considerations in relation to the development of shopfronts and signage.

5.6. Natural Heritage Designations

- 5.6.1. The site is located approximately 1.9 km from the North Dublin Bay SAC and North Bull Island SPA.
- 5.6.2. The site is also located approximately 3.4 km from the Baldoyle Bay SAC.

6.0 EIA Screening

- 6.1. The proposed development 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 Regulation 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of this report.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. 3 no. 3rd party appeals have been lodged by Councillor Tom Brabazon, Claudia Fragnoli (on behalf of other members, businesses and clubs in the community) and Daryl Barron.
- 7.1.2. The grounds of the appeal can be summarised as follows:

Existing Take-Aways and Retail Offering

- It is stated that the shopping centre contains 6 no. takeaways and is considered to be overpopulated with takeaways. The fast-food take-away units include Ali's Lido, Lemon Tree Chinese Takeaway, Mizzoni's Pizza, Julio's Fish and Chip, Power Curry and Golden City.
- It was highlighted that Centra and Four Fields in the wider area also offer hot food.
- It is indicated that more takeaways will undermine business viability and skew the retail mix towards a single type of use, which is contrary to the objectives of fostering a vibrant and diverse retail environment.
- It is stated that the development does not accord with section 15.14.7.3 of the Development Plan as there is an overconcentration of takeaways and the development will not diversify the shopping centre.
- It was noted that other locations serving hot food in the wider area include Spar on Tonlegee Road, Burger King and McDonalds on the Malahide Road, Donaghmede Shopping Centre and Tesco Clare Hall Shopping Centre.
- It was identified that there is a fish and chip shop directly adjacent to the subject site. Other uses along this portion of the mall include a butcher, Chinese takeaway, florist, funeral home and a hairdressers.

Policies for Tackling Obesity

- UCC School of Public Health Policies for tackling obesity and creating healthier food environments in Ireland and an Obesity Policy and Action Plan for Ireland published by the Department of Health set out goals and policy

objectives. It was identified that adding fat based and sugary content food does not assist the obesity epidemic in Ireland.

- It was stated that whilst the hours of the takeaway are restricted to 6pm to 11pm, this does not safeguard the amenities of the schools within the vicinity of the site where the schools are used after hours for community, sporting and after-hours education uses.
- Ireland Food EPI 2020 by the ECC School of Public Health states that the Government must fulfil its commitment to regulate for a healthy food environment as stated in a Healthy Weight for Ireland Obesity Policy and Action Plan 2016 – 2025 by introducing zoning legislation for no fry zones to prohibit the placement of unhealthy food outlets within 400m of schools.
- The appeal submissions note that healthy weight needs to become normal and this application is part of the process.
- A document entitled Policies for Tackling Obesity and Creating Healthier Food Environments in Ireland: Food EPI 2020, has been submitted with one of the appeals. The document highlights the following key points:
 - In Ireland, 60% of adults and one in four children are living with overweight and obesity.
 - A concentrated effort by policy makers to develop robust policies is necessary to reverse the trend of deterioration of our food environments and move to establishing healthier food environments for all.
 - An expert panel identified areas of concern which included the need for greater emphasis on reducing the marketing of unhealthy foods to children through the media, limited use of fiscal policies to support healthy food choices, limited support for private companies to promote healthy foods in their workplaces, provision of income support programs for healthy foods, the need for evidence informed labelling, the need for food composition targets.
 - 5 policy actions necessary to support healthy food environments are identified which include school food policies, income support, healthy food subsidies, zoning laws and public sector healthy food choices.

- 5 infrastructure support actions necessary to support healthy food environments include transparency in policy, political support, engagement platforms with civil society, system-based approach and health impacts in policy.
 - Those in at risk groups are at a significantly higher risk of non-communicable diseases and poor health outcomes.
 - Those in low-income households have to spend a larger portion of their income to buy nutritionally adequate food.
 - The Irish Government have implemented evidence based dietary guidelines. There is however a lack of policy restricting the promotion of unhealthy foods to children.
- A document entitled A Healthy Weight for Ireland, Obesity Policy and Action Plan 2016 – 2025 was submitted with one of the appeals. The document highlights the following key points:
 - It is stated that obesity is largely preventable.
 - It was identified that overweight and obesity are risk factors for non-communicable diseases.
 - It is noted that diet and nutrition are crucial to maintaining a healthy lifestyle.
 - It is stated that breastfeeding is a significant protective factor against obesity in children.
 - It is identified that physical activity is very important from health, societal and economic perspectives.
 - It is highlighted that effective interventions on diet and physical activity include policy through urban planning, mass media, education, workplace, community programmes, primary care and home-based interventions with older adults.
 - It is stated that top-down measures are needed and bottom-up approaches are required to empower families and communities.

- The Action Plan sets out short term 5-year targets to reduce the level of obesity and excess weight in adults and children.
- The Action Plan sets out 10 steps to prevent obesity including embedding multi-sectoral actions on obesity prevention, regulating for a healthy environment, securing support from the commercial sector to play its part in obesity prevention, implementing a communications strategy, the Department of Health will provide leadership in the governance of the Obesity Policy and Action Plan, mobilising the health service through effective community based health promotion programmes, developing a service model for specialist care for children and adults, acknowledging the key role of physical activity, allocating resources to appropriate groups and developing a multi-annual research programme.

Traffic

- It is stated that there is an issue with traffic in the area and the development will exacerbate this issue.

Impact on the Amenities of the Shopping Centre and wider area

- It is considered that the effect of noise, general disturbance, hours of operation and fumes from the takeaway should be considered and their associated impacts on nearby amenities.
- Concern is highlighted with respect to the enforcement of the opening hours stipulated under condition no. 2.

Dublin City Council's Healthy Living Policies

- It is stated that the development would not accord with Dublin City Council which states that to promote a healthier and more active lifestyle, it will aim to ensure that new takeaway outlets will not be permitted within 250m of a school site. The site is located within the 250m distance from St Malachy's Boys National School, St Eithnes Girls National School, St Monica's Girls National School and 1 no. creche.

- It is stated that that the development does not comply with Section 15.14.7.3 of the Development Plan.

Planning History

- It is noted that there is a history of permission being refused for a similar application on the site under **reference number 3495/21**.
- It was identified that the development will conflict with the existing planning permission granted under **reference number 3696/20** for the redevelopment and rejuvenation of the Shopping Centre.
- The third parties reference how the applicant's planners report referenced planning **reference number 3222/21** which was for the change of use of a laundrette to a fast-food restaurant in Finglas. This was provided as precedence for why this change of use should be granted on the subject site. The appellants state that these two applications are not comparable as Finglas Village is a level 3 RSES classification and Edenmore is classified as a level 4. In this application, Dublin City Council refused the application due to its location within 250m of a school. The Board overturned the decision and stated that the number of takeaways in the Finglas area is not considered to be excessive and on balance a second vacant unit in the parade of shops would have more of a detrimental impact on the vitality of the area. The Board also considered that the functional entrance of the school was outside the 250m range and as such the development did not contravene the Development Plan.

7.2. Applicant's Response

7.2.1. The applicant's response to the grounds of appeal can be summarised as follows:

- The First-Party identifies that Dublin City Council could have prohibited takeaways outside city centre locations when adopting its Development Plan. This did not occur and is illustrative as to the manner in which this appeal should be approached.

- It is noted that pizza is not a banned substance, and a range of foodstuffs are acceptable as part of a balanced diet.
- It is indicated that as the takeaway will not operate before 6pm and would mainly comprise a delivery service. The First-Party considers that a conflict would not arise between the development and the health of school children.
- It is stated that the concern regarding the enforcement of the opening hours is not a lawful consideration given the range of enforcement mechanisms to deal with any such transgressions. Concerns regarding enforcement run counter to the principle in *Kelly v An Bord Pleanala* IRLJ 1994 1 96.
- It is highlighted that whilst the appellants state that the development will not add to the diversity of retail opportunities in the area, it does not identify any deficits in terms of facilities for the local community. The First-Party identified the range of retail units on offer in Edenmore Shopping Centre.
- It is considered that Edenmore Shopping Centre provides a reasonable range of services for the local community and that the development would not deprive the local residents of a service which does not already exist. The First-Party states that the unit has been vacant for some time.
- It is indicated that the proposed takeaway would provide an alternative hot food service. The number of objections may relate to the fact that some existing hot food outlets may suffer a decline in income due to this development.
- One of the appellants states that litter is an issue in Edenmore. This is stated as a current issue and it is highlighted that this is not of the applicant's making. It is stated that the proposed development is primarily a home-delivery service whereby used packaging would be discarded into local residents' bins. It is stated that it is therefore not considered that the littering problem in the Shopping Centre would increase as a result.
- The applicant does not consider that the development will result in an increase of noise and traffic pollution. In appeal **ref. PL06F.242351** the Board distinguished between takeaway uses and home delivery services. The applicant does not consider that take-aways generate significant levels of

traffic as they tend to be used by local residents and due to the fact that the facility will mainly provide a home delivery service.

- The applicant does not consider that the proposed development would conflict with planning **reference number 3696/20**, as the development will occupy a vacant unit which is outside the site boundary of **reference number 3696/20** and would contribute to the vitality and viability of Edenmore Shopping Centre.
- It is stated that takeaway food outlets, especially those providing home delivery services are unlikely to increase the volume of litter locally. It is also considered that they are unlikely to result in an increase in anti-social behaviour as food will be taken from Edenmore Shopping Centre and brought to customers' homes.

7.3. Planning Authority Response

7.3.1. The Planning Authority did not respond to the grounds of appeal.

7.4. Observations

7.4.1. 1no. observation was received from Seán Haughey. The issues raised in the observation can be summarised as follows:

- The provision of a fast-food business on the subject site would be contrary to the proper planning and development of the neighbourhood.

8.0 **Assessment**

8.1. Having examined the application details and all other documentation on file, including the submissions received in relation to the appeal, including the reports of the planning authority, and inspected 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
- Proliferation of Takeaways
- Vitality of the Shopping Centre
- Health Impacts
- Waste
- Traffic
- Odour Emissions
- Noise
- Design
- Drainage

8.2. Each of these issues are addressed in turn below.

8.3. **Principle of Development**

8.3.1. The site located on land zoned Key Urban Villages and Urban Villages – Zone 4 with an objective “*to provide for and improve mixed-services facilities*” in the *Dublin CDP*. Takeaway is a permissible use under the Z4 zoning objective. As such, it is considered that the principle of providing a takeaway on the subject site is acceptable, subject to a number of other criteria which are addressed in the sections below.

8.4. **Proliferation of Takeaways**

8.4.1. Section 15.14.7.3 of the *Dublin CDP* has very specific objectives to prevent an excessive concentration of takeaways and to ensure that shopping areas have a suitable mix of uses.

8.4.2. I note under **reference number 3495/21**, that permission was refused by Dublin City Council for a change of use from an existing retail unit to a pizza takeaway on the subject site. In this instance the Planning Officer noted that there are already 2no. takeaways in the parade of shops and 4no. takeaways in the remainder of the shopping centre complex. It was therefore considered that the proposed development would result in a proliferation of such uses and would impact the residential amenities of the area and the apartments above. However, noting that the 4no. takeaways in the remainder of the shopping centre are located along Edenmore Avenue and along the central portion of the shopping centre between Edenmore Avenue and Edenmore Park, I consider that the takeaways are spread out across the shopping centre and as a result do not create a proliferation of such uses. In addition, I note that the proposed development would bring the number of takeaways in this parade of shops along Edenmore Park to 33%. I do not consider this to amount to an excessive number of takeaways. Noting the quantum of existing takeaways and the mixture of other retail units in this parade of shops and in the wider shopping centre and area, I do not consider that the proposed development would result in an excessive concentration of takeaways or the loss of retail opportunity in the area.

8.4.3. Furthermore, in accordance with section 15.14.7.3 of the *Dublin CDP*, I consider that the take-away is in keeping with both the scale of the building and the pattern of development in the area.

8.5. **Vitality of the Shopping Centre**

8.5.1. The Dublin City Council Planner's Report notes that the development involves the reoccupation of a vacant unit that opens in late afternoon and would have a neutral impact on the vitality of the Edenmore Shopping Centre. The report further notes that the development would not have an overly negative impact upon the vitality of the surrounding retail area.

8.5.2. With regards to the opening hours of the takeaway being 6pm to 11pm, I note that section 14.7.4 of the *Dublin CDP* encourages a diversity of uses to maintain vitality in urban villages throughout the day and evening. I further note the zoning objective of the site seeks "*to provide for and improve mixed-services facilities*", under which takeaway is a permissible use. From my site inspection, I noted that 15 no. units

appeared to be either vacant or closed at the time of my inspection which occurred mid-week, before lunch time. Of these 15no. units, 6no. units are noted to be take-aways. As such, having regard to the fact that unit is currently vacant, the proposed opening hours and the mix of units in the Edenmore Shopping Centre, I consider that the proposed development will reduce vacancy in the Shopping Centre, will assist in the creation of a vibrant retail area and will assist in promoting vitality in the evening in accordance with section 14.7.4 of the *Dublin CDP*.

8.6. Health Impacts

- 8.6.1. The appellants have raised concern regarding the provision of a takeaway in close proximity to the existing schools in the area and 1no. creche. No details have been provided regarding the name of the creche, however I note that Finnegan Fox Afterschool is located in St Monica's Infant Girls School.
- 8.6.2. The grounds of appeal express concern regarding the impact of the development on the eating habits and long-term health outcomes of children. I note the contents of the 2no. documents which have been submitted with the appeals titled, *Policies for Tackling Obesity and Creating Healthier Food Environments in Ireland: Food EPI 2020* and *A Healthy Weight for Ireland, Obesity Policy and Action Plan 2016 – 2025*. The documents identify statistics regarding obesity and set out the need to establish healthier food environments.
- 8.6.3. Section 15.14.7.3 of the *Dublin CDP* states that the provision of takeaways shall have regard to the number of such facilities within 1km of school sites and that any new outlets will not be permitted within 250m of a school site.
- 8.6.4. I note that the proposed development is within 250m of St Malachy's Boys National School, St Eithne's Girls National School and St Monica's Girls National School.
- 8.6.5. The grounds of appeal reference **ABP Reference No. 313472-22** and planning **reference number 3222/21** which granted planning permission for a change of use of a launderette to a takeaway. The appellants state that this application was provided as precedence by the applicant. The appellants outline however that this application should not be used as precedence as the 2no. applications are not comparable given that the site under **ABP Reference No. 313472-22** is located in Finglas Village which is a level 3 village, whilst Edenmore is classified as a level 4 village. I note the different locations of the 2no. sites and the different circumstances

including that under **ABP Reference No. 313472-22** the functional entrance to the school was outside the 250m range.

- 8.6.6. In the subject application, the Planner's Report from Dublin City Council considered that the development was acceptable given that takeaway is a permissible use on Z4 land and that the proposed hours of operation do not coincide with the primary school hours. I consider that the intention behind section 15.14.7.3 in the *Dublin CDP* which prohibits takeaways within 250m of a school, is to assist in the regulation of a healthy food environment for children. Noting the proposed hours of operation which are outside school hours, I consider that the proposed takeaway is acceptable and would not conflict with the Government's commitment to regulate for a healthy food environment as set out in *A Healthy Weight for Ireland, Obesity Policy and Action Plan*.
- 8.6.7. Notwithstanding that the proposed hours of the takeaway are outside school hours, I understand that the appellants are concerned about the impact of the development on the use of the schools after hours by the community, sports groups and after-hours educational uses. However, the appellants have not supplied any information to identify the groups using the school's facilities out of hours and their hours of operation. As such I can only comment on the information which has formed part of the appeal.
- 8.6.8. The appellants have raised concern regarding the enforcement of the proposed opening hours of the development. I understand the appellants concerns, however enforcement is a matter for the Planning Authority to pursue should issues arise. As such, it would not be appropriate to refuse an application based on considering issues of possible non-compliance.
- 8.6.9. To conclude, I am satisfied that subject to the inclusion of a condition restricting the opening hours, that the proposed development will not conflict with section 15.14.7.3 of the *Dublin CDP* and that the development will not contravene policy designed to regulate a healthy food environment for children.

8.7. **Waste**

- 8.7.1. The appellants are concerned about the waste storage facilities for the development. Section 15.14.7.3 of the *Dublin CDP* requires takeaways provide and maintain a suitable waste bin outside their premises during hours of operation. In response to

the Further Information request issued by Dublin City Council, the applicant stated that they would maintain a waste bin outside the premises during hours of operation. I note that the applicant has not identified a location of their own refuse storage, however I note that the unit opens out to the yard to the rear which is included within the site boundary. In the Notification of Decision to Grant Permission, Dublin City Council attached condition no. 3 which required the applicant to submit details of refuse storage facilities prior to the occupation of the unit. I consider that this condition addresses any issues surrounding waste storage facilities. Should the Board consider granting planning permission, I recommend that a similar condition is attached.

8.8. Traffic

- 8.8.1. The grounds of appeal refer to the impact of the development on traffic in the area. I note from the notices, that the proposed development is mainly for home delivery by the applicant company with ancillary customer collection. I also note that there are unallocated parking spaces outside the front of the subject site and as noted above, there are 2no. existing takeaways in the parade of shops where the site is located. Furthermore, regard is had to the Z4 zoning objective of the site, which seeks “*to provide for and improve mixed-services facilities*”. I also note the *Dublin CDP* which states that development within urban villages should “*promote the creation of a vibrant retail and commercial core with animated streetscapes.*” Having regard to the foregoing, I consider that an acceptable level of traffic will be generated by the proposed development which would be in line with a commercial use in an urban village. I therefore do not consider that the development will generate an excessive level of traffic which would have an adverse impact on the surrounding area.

8.9. Odour Emissions

- 8.9.1. The appellants are concerned about potential fumes which could be generated from the development and their associated impact on the shopping centre and residential amenities of adjacent properties. I note that a residential unit is located on the first-floor of the subject site. Residential units are also located on the first-floors of the other retail units located along this parade of shops. The application drawings identify the proposed ducting and the location of an extract on the rear elevation. The Environmental Health Officer issued a report based on the initial application and

recommended conditions in relation to noise and air pollution control. In response to a request for Further Information, the applicant submitted manufacturer's details and data sheets for a proposed ventilation system. I note that the Environmental Health Officer did not comment on the documents submitted in response to the Further Information request. In the Notification of Decision to Grant Permission, Dublin City Council included a condition in relation to the operational air pollution control/ kitchen extraction. Noting the details of the proposed ventilation system and the positioning of the retail unit in the parade of shops with residential use above, I consider that the ventilation of the unit and any associated fumes can be appropriately addressed by way of condition to ensure that the development will not impact the amenities of the shopping centre or adjacent properties. Should the Board consider granting planning permission, I recommend that a similar condition, to that imposed by Dublin City Council, is included.

8.10. Noise

- 8.10.1. The grounds of appeal refer to the impact of the development on noise in the area. I note condition no. 6 in the Notification of Decision to Grant Planning Permission imposed operational noise control requirements on the use of the unit. Having regard to the residential units at first-floor in the parade of shops, the proposed operating hours between 6pm and 11pm, the proposed ventilation system and the quantum of takeaway units in the parade of shops, I consider that an undue level of noise will not result from the proposed use. Should the Board consider granting Planning Permission, I recommend that a condition on operational noise control is included.

8.11. Design

- 8.11.1. Policy CCUV12 in the *Dublin CDP* states that it is policy to require a high quality of design and finish for new and replacement shopfront signage and advertising. I also note section 15.17.5 of the *Dublin CDP* which outlines the requirements for shopfront signage. Having regard to the proposed signage details, I consider that the proposed development complies with Policy CCUV12 and section 15.17.5 of the *Dublin CDP* and will not impact the visual amenities of the area. I note condition no. 4 in the Notification of Decision to Grant Planning Permission stated that the glazing to the takeaway shall be kept free of all stickers, posters and advertisements. Should the

Board consider granting Planning Permission, I recommend that a condition is included in order to protect the visual amenities of the area.

- 8.11.2. The grounds of appeal state that the proposed development will conflict with the development permitted under planning **reference no. 3696/20** for the refurbishment of the Edenmore Shopping Centre. I note that the subject site is not included within the development boundary of **reference no. 3696/20**. Having regard to the permitted development under **reference no. 3696/20** and the development now proposed, I do not consider that any conflict will arise.

8.12. **Drainage**

- 8.12.1. No drainage information has been submitted with the application. I note the contents of the report from the Drainage Division in Dublin City Council which recommends conditions should planning permission be granted. Should the Board consider granting planning permission, I recommend that similar drainage conditions are attached.

9.0 **AA Screening**

- 9.1. Having regard to the development proposed being the change of use from a retail outlet to a shop for the sale of hot food, in a serviced urban area, I consider that no Appropriate Assessment issues arise and it is not considered that the proposed development will be likely to have a significant effect, either individually or in combination with other plans or projects on a European site.

10.0 **Recommendation**

- 10.1. I recommend that planning permission should be granted, subject to conditions as set out below.

11.0 **Reasons and Considerations**

- 11.1. Having regard to the provisions of the *Dublin City Development Plan 2022 – 2028*, including the Z4 - “Key Urban Villages and Urban Villages” zoning which applies to the site, the pattern of development in the surrounding vicinity, the reoccupation of a vacant unit where there is a high degree of vacancy and the limited hours of

operation, it is considered that subject to compliance with the conditions set out below, the development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1.	The development shall be carried out in accordance with the plans and particulars submitted with the planning application except as may be otherwise required by the following conditions. Reason: To clarify the plans and particulars for which permission is granted
2.	The use hereby approved shall only be carried out between the hours of 6pm to 11pm. Reason: In order to safeguard the amenities of the schools within the vicinity of the site, in compliance with Section 15.14.7.3 Fast Food/ Takeaways of the <i>Dublin City Development Plan 2022 – 2028</i>.
3.	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 with, the planning authority prior to the commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities. Reason: In the interests of public health and visual amenity.
4.	No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building unless authorised by a further grant of planning permission. Reason: In the interest of visual amenity.

5.	The developer shall comply with the requirements set out in the Codes of Practice from the Drainage Division and the Noise and Air Pollution Section. Reason: To ensure a satisfactory standard of development.
6.	The applicant shall comply with the following operational noise control requirements of the of Planning Authority: i. The LAeq level measured over a 15 minute period, when measured at the nearest noise sensitive premises when externally located plant at the proposed development is in operation shall show no more than 3 decibel increase when compared with the representative LAeq (15 Minutes) level measured from the same position, under the same conditions and during a comparable period with no external plant in operation. ii. There shall be no speakers located externally or in such a way that music played on the premises is audible at the nearest noise sensitive premises. iii. All early morning deliveries to the proposed development must take place after 7am. Reason: To reduce or prevent the intrusion of noise, in the interest of local amenity.
7.	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 the commencement of development. Reason: In the interest of public health and to protect the amenities of the area.
8.	Site development and building works shall be carried out only between the hours of 07:00 to 18:00 Monday to Fridays and 08:00 to 14:00 on Saturdays and not at all on Sundays and public holidays. Deviation

	from these times will only be allowed where a written request with compelling reasons for the proposed deviation has been submitted and approval has been issued by Dublin City Council. Reason: In order to safeguard the amenities of adjoining residential occupiers.
9.	The developer shall comply with the following drainage requirements: i. There shall be no discharge of trade effluent to waters (including groundwater) or sewers except where a license is granted by the responsible sanitary and/ or local authority as required by the Local Government (Water Pollution) Acts 1977 and 1990. ii. The drainage for the proposed development shall be designed on a completely separate foul and surface water system. iii. All private drainage such as, downpipes, gullies, manholes, armstrong junctions, etc. are to be located within the final site boundary. Private drainage is not permitted in public areas, or areas intended to be taken in charge. Reason: In the interest of public health, to prevent water pollution and flood prevention.
10.	The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining street is kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developers expense. Reason: To ensure that the adjoining roadways are kept in a clean and safe condition during the construction works and in the interests of orderly development.
11.	During the construction and demolition phases, the proposal development shall comply with British Standard 5228 - Noise Control on Construction and open sites Part 1. Code of practice for basic

	information and procedures for noise control & this Units Construction & Demolition Good Practice Guide for Construction Sites. Reason: In the interests of residential amenity.
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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.

Catherine Hanly
Planning Inspector

9th December 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála	ABP-319898-24		
Case Reference			
Proposed Development Summary	- Change of use from a retail outlet to a shop for the sale of hot food (pizza primarily, but also including kebabs) as well as cold non-alcoholic drinks and desserts, mainly for home delivery by the applicant company with ancillary customer collection. - The provision of signage on the front elevation. - The removal of an existing door on the rear elevation and its replacement with a window.		
Development Address	15 Edenmore Shopping Centre, Raheny, Dublin 5, D05 V560		
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	x
		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) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	x		Proceed to Q.3

3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?

		Threshold	Comment (if relevant)	Conclusion
No	x	N/A		No EIAR or Preliminary Examination required
Yes				Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	x	Preliminary Examination required
Yes		Screening Determination required

Inspector:

Date: