# An Bord Pleanála



# PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

# **Dublin City**

Planning Register Reference Number: 2653/16

An Bord Pleanála Reference Number: PL 29S.247104

**APPEAL** by Canbe Limited care of Vincent JP Farry and Company Limited of Suite 180, 28 South Frederick Street, Dublin against the decision made on the 21<sup>st</sup> day of July, 2016 by Dublin City Council to grant subject to conditions a permission in accordance with plans and particulars lodged with the said Council.

**PROPOSED DEVELOPMENT:** Change of use of ground floor and basement from retail to use as a café/restaurant, new shop fascia signage for the café on Pearse Street and Brunswick Place, and regularisation of the full extent of the existing basement which is larger than originally permitted under planning register reference number 0881/03, all at ground floor and basement at 130 Pearse Street, Dublin.

#### **DECISION**

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to ATTACH condition number 2 and the reason therefor.

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# REASONS AND CONSIDERATIONS

Having regard to the fact that the application did not include for change of use of the subject premises to use as a takeaway, but only as a café/restaurant, and to the fact that use as a takeaway (that is, "use for the sale of hot food for consumption off the premises") is a separate use recognised under planning legislation, and having regard to the provisions of the Dublin City Development Plan 2016 - 2022, and in particular the permissible uses under the Z1 zoning objective in this Plan, which do not include use as a takeaway, and to the pattern of development in the vicinity of the subject site, it is considered that the restriction contained in the condition in question as imposed by the planning authority, was appropriate and reasonable.

In not accepting the recommendation of the Inspector to require the condition to be amended so as to limit the types of foods and beverages permitted to be sold on a takeaway basis, the Board considered that such a stipulation would not be enforceable or reasonable, and considered that the restriction on use of the premises as a takeaway, as imposed by the planning authority, was appropriate in this instance.

# **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Member of An Bord Pleanála duly authorised to authenticate the seal of the Board.

Dated this day of 2016.

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