



An  
Bord  
Pleanála

**Board Order**  
**ABP-316246-23**

---

**Planning and Development Acts 2000 to 2022**

**Planning Authority: Dún Laoghaire-Rathdown County Council**

**Planning Register Reference Number: D22A/0526.**

**Appeal** by West Group Investments Limited care of Virtus of 5<sup>th</sup> floor, Glass House, Smithfield, Dublin against the decision made on the 14<sup>th</sup> day of March, 2023 by Dún Laoghaire-Rathdown County Council to refuse a permission.

**Proposed Development:** Permission is sought for the change of use of the retail ground floor and part basement element of the approved development (planning authority register reference D18A/1118) to restaurant use, at 3 Kilbogget Villas, Old Bray Road, Cabinteely, Dublin. The proposed development was revised by further public notices received by the planning authority on the 20<sup>th</sup> day of February 2023.

**Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## Reasons and Considerations

The proposed development is located in Cabinteely village in an area zoned NC – neighbourhood centre in the Dún Laoghaire-Rathdown County Development Plan 2022-2028, under which restaurant use is permitted in principle. Having regard to the existing pattern of development in the area, the planning history of the subject site and the nature of the proposed development, it is considered that the change of use to restaurant use, subject to compliance with the conditions set out below, would not be prejudicial to public health, would not seriously injure the residential amenities of adjoining properties by reason of noise and odour nuisance, would not be visually intrusive, would not endanger public safety or convenience by reason of traffic generation or otherwise, would not significantly impact the neighbourhood centres effectiveness as a retail destination and would conform to the provisions of the current development plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board had regard to the number of restaurants within the village and did not consider that the proposed development would result in an over proliferation of 'restaurant' premises that could cause disturbance or nuisance, and that the development complied with the criteria set out in section 12.6.5, development protocols for restaurants, in the Dún Laoghaire-Rathdown County Development Plan 2022-2028. The Board also considered the vacant nature of the unit on the subject site and other vacant units in the wider area. The Board also had regard to the planning history of the subject site (planning authority register reference D18A/1118; appeal reference number ABP-303723-19) which, contrary to the Inspector's view, had ultimately removed the rooftop amenity area, and considered that the proposed ventilation system would not seriously injure the residential amenity of nearby residential uses. Furthermore, the Board did not agree with the

Inspector that the installation of the roof plant would result in intrusive views from the public realm, particularly given its setback distance from the streetscape.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application to the planning authority as revised by further plans and particulars received by the planning authority on the 20<sup>th</sup> day of February 2023 and amended by the plans and particulars received by An Bord Pleanála on the 11<sup>th</sup> April 2023, except as may otherwise be required in order to comply with the following conditions. 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 the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The premises hereby permitted shall not operate outside the hours of 0800 to 2230 on any day.

**Reason:** In order to safeguard the amenities of adjoining residential properties.

3. The premises hereby permitted shall not be used for the sale of hot food for consumption off the premises (that is, a take-away use), whether or not such use would represent an ancillary use to the principal use as a restaurant.

**Reason:** In the interest of clarity, and in order to safeguard the amenities of adjoining residential properties.

4. The premises hereby permitted shall not be used as a night-club or public house. No live music shall be played within the premises. No recorded music, that would be audible outside the premises, shall be played.

**Reason:** In the interest of clarity, and in order to safeguard the amenities of adjoining residential properties.

5. The mitigation measures outlined in Section 2.5 of the Noise Impact analysis Report (Issue 3P) submitted with the appeal shall be implemented in full, including the restriction of the use of the fans after 2300 hours.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

6. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity, and to allow the planning authority to assess the impact of any such signage or advertising structures through the statutory planning process, having regard to the fact that details of such signage or advertising were not provided with the application documentation.

7. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

8. Site development and building works shall be carried out only between the hours of 0800 to 1900 Monday to Friday inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays or Bank Holidays. Deviations from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities and property in the vicinity.

9. 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.

**Reason:** In the interest of public health and to protect the amenities of the area.

  
Stephen Bohan

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

Dated this  day of  2024.