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Bord  
Pleanála

## Inspector's Report PL06D.248316

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<b>Development</b>	Change of use from retail use to café use on ground floor unit of a three storey mixed-use terraced building.
<b>Location</b>	28 Booterstown Avenue, Booterstown, Co. Dublin
<b>Planning Authority</b>	Dun Laoghaire-Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D17A/0050
<b>Applicant(s)</b>	Eva Boyan Xu Wang
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant, subject to 4 conditions
<b>Type of Appeal</b>	Third Party -v- Decision
<b>Appellant(s)</b>	Michael Semple
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	6 <sup>th</sup> July 2017
<b>Inspector</b>	Hugh D. Morrison

## **1.0 Site Location and Description**

- 1.1. The site is located on the eastern side of Booterstown Avenue in a position 145m to the south of the junction between Rock Road (R118) and this Avenue. It is virtually opposite the access point to the residential cul-de-sacs of Beech Grove and Castle Court and both sides of Booterstown Avenue, in the vicinity of this site, are the subject of double yellow lines.
- 1.2. The site is of rectangular shape and it extends over an area of 362 sqm. It has recently been redeveloped to provide a mid-row, street-fronted, three storey building, which has a shop on the ground floor, along with part of one of two duplexes, and the remainder of that duplex and the other duplex on the upper floors. The buildings on either side are in residential use and to the rear of the new building the site is laid out to provide a dedicated garden area for each of the duplexes, bin, bicycle, and heating sheds, and a space at the eastern end of the site, which is identified for use in conjunction with the retail unit. Further to the east there is a block of offices set within its own grounds.

## **2.0 Proposed Development**

- 2.1. The proposal would entail a change of use of the ground floor of the building from a shop to a café. Of the 250 sqm comprised in this building, 69 sqm would thus be affected.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission was granted subject to 4 conditions.

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

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

The proposed modest use would be capable of being satisfactorily accommodated within the subject building and it would be appropriate to the surrounding area.

### 3.2.2. Other Technical Reports

- Conservation Officer: The site is located within a candidate ACA under Policy AR17 of the CDP. As the subject building is a modern one, the proposed change of use would have a neutral impact on the character of this Area.
- Transportation Planning: No objection, subject to conditions.
- Surface Water Drainage Report: No objection.
- Irish Water: Standard observations.
- HSE Environmental Health: Standard conditions requested.

### 3.3. Prescribed Bodies

None of the conservation bodies have responded.

### 3.4. Third Party Observations

See grounds of appeal.

## 4.0 Planning History

- D09A/0364: Demolition of existing two storey building and construction of three storey building comprising a ground floor shop and 2 duplexes on the upper floors: Permitted at appeal PL06D.236321.

The aforementioned permission was the subject of a time extension up until 23<sup>rd</sup> July 2020 and a car parking condition attached to it was subsequently omitted under application D15A/0420.

- Section 5 referral 6216: Proposed change of use from retail unit to sale of fruit, vegetable, pastry, tea, coffee and sandwiches held to be development, which is not exempted development.

## 5.0 Policy Context

### 5.1. Development Plan

Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 (CDP), the site is subject to Zoning Objective A, “To protect and/or improve residential amenity.” This site is on Booterstown Avenue and, under Appendix 4 of the CDP, this Avenue is a candidate ACA. The proposal is for a café, which, under Zoning Objective A, is a use that is “open for consideration”.

### 5.2. Natural Heritage Designations

n/a

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appellant, who resides in the adjoining dwelling house at No. 26 Booterstown Avenue, cites the following grounds of appeal:

- Zoning:
  - Both adjoining properties are in residential use.
  - Activities, e.g. deliveries and preparation/consumption/disposal of food, generated by the café would contravene the Zoning Objective.
  - Intensification would result.
- Incompatibility:
  - The site is outside the “neighbourhood centre” area of Booterstown. Under the Retail Planning Guidelines, the intensification of a retail use outside such a centre conflicts with the principles set out in these Guidelines and it would adversely impact upon residential amenity.

- Design:
  - No ancillary access for deliveries occurs and so they would occur at the front of the site and risk illegal parking, which would cause an obstruction and pose a risk to road safety.
  - No outdoor smoking area is specified and one to the rear would be objectionable.
  - No provision for waste storage has been made.
- Use of external area:
  - If the rear garden were to be used by customers, then the resulting noise and disturbance would be unacceptable.
  - Fit out works have commenced.

Concern is expressed that conditions attached to the draft permission do not relate to days and hours of operation and they do not forbid use of the rear garden.

## 6.2. Applicant Response

- Zoning:
  - Under the CDP, an intensification of use is not precluded. The former building on the site comprised a hairdresser's and a shop on the ground floor and so it constituted a more intensive use of this floor than that which persists at present/is now proposed.
  - Envisaged deliveries would entail a continuation of the existing pattern of daily deliveries at 7am and weekly ones at 11am.
  - No cooking facilities are proposed.
  - Waste would be dealt with, as present, in a self-contained covered bin store.
  - The Zoning Objective would not be contravened.
- Incompatibility:
  - The above discussion of intensification is reiterated.
  - The café would function as a local amenity.

- After hours' disturbance would not arise, as the café would close at 5pm. Noise levels would be comparable to that of the existing retail use.
- Design:
  - Deliveries are undertaken by small/medium size vehicles for brief periods of time, as at present with the existing retail use.
  - Smoking areas are not obligatory and none is planned for the proposed café.
  - Parking is discussed by the Transportation Planning Section: it is not considered to be an issue as it is anticipated that most customers would come on foot.
- Use of external area:
  - The rear garden is divided into three, with one space being reserved for the existing retail use. In this respect, it is used for seating.
  - The fit out works referred to are ones authorised under the extant permission.

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

No new matters have been raised that would prompt the Planning Authority to make a different decision.

### 6.4. **Observations**

None

### 6.5. **Further Responses**

None

## 7.0 **Assessment**

I have reviewed the proposal in the light of the CDP, relevant planning history, and the submissions of the parties. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use, intensification, and conservation,
- (ii) Amenity,
- (iii) Traffic and parking,
- (iv) Water, and
- (v) AA.

**(i) Land use, intensification, and conservation**

- 1.1 The proposal is for a change of use only of the ground floor of a mixed-use three storey building from a shop to a café. Under the CDP's Zoning Objective A for the site, a café is a use that is deemed to be "open for consideration".
- 1.2 The appellant considers that the proposed café would generate activities that would result in an intensification of the use of the building that would be inappropriate under the said Zoning Objective and in the presence on either side of properties that are in residential use. He further draws attention to the neighbourhood centre zoning of properties clustered around the junction between Rock Road and Booterstown Avenue to the north of the site and he expresses the view that the proposed use would be more appropriately located therein.
- 1.3 The applicant has responded by stating that, prior to the redevelopment of the site, there were two shops on the site and so the existing use does/proposed use would represent a de-intensification of the historic use of this site. He also outlines that no cooking, as distinct from re-heating equipment, would be installed in the proposed café, and that the projected hours of opening would extend only until 5 pm.
- 1.4 In the light of the above exchanges, I do not consider that the proposed use would represent a self-evident intensification of the use of the site. The historic pattern of usage indicates that, notwithstanding the location of the site outside the nearest neighbourhood centre, it has been in retail use in the past as well as in the present and the propose use would simply represent a continuation of this use, as a café. As this use is "open for consideration" under Zoning Objective A, there is no in principle objection to it and so, under Section 8.3.4 of the CDP, its acceptability or otherwise is linked to whether or not it would be compatible with

the overall policies and objectives for the zone, would not have undesirable effects, and would otherwise be consistent with the proper planning and sustainable development of the area.

1.5 The site is located in a position “two doors down” from a protected structure and within a candidate ACA under the CDP. However, as the current proposal is for a change of use only to a recently constructed building, it would not pose any conservation issues.

1.6 I conclude that the proposal would raise no in principle land use objection under Zoning Objective A of the CDP and it would not self-evidently represent an intensification of the use of the building. The proposed café would pose no conservation issues.

## **(ii) Amenity**

2.1 In the light of the applicant’s response under the above heading, the proposed café *per se* would be compatible with the residential amenities of the area.

2.2 The appellant draws attention to the absence of a smoking area from the proposal. He also draws attention to the possibility that the eastern end of the site may be used as an outdoor seating area for customers. He states that the noise and disturbance that such usage would generate would be incompatible with the residential amenities of the area.

2.3 The applicant has responded that no smoking area is planned and that there is no obligation upon a café proprietor to provide one. He intimates that the eastern end of the site is/would be a seating area.

2.4 During my site visit, I inspected the outdoor area to the rear of the building on-site. I have also examined the plans submitted under previous implemented permissions for the site. This area is laid out to provide two dedicated rear gardens for the residents of the duplexes. It is also laid out to provide bin, bicycle, and heating sheds for all the uses of the said building. At the eastern end of the site, a slightly raised area exists that is shown as being “for the retail unit”. A footpath links these various items and it also serves an external flight of steps to the duplex which is accessed at first floor level.



2.5 In the light of my site visit, I consider that the eastern end of the site would not lend itself to customer, as distinct from staff, use in conjunction with the proposed café. This outdoor space is physically removed from the café and there is no line of sight between the two. Its use by the public would be difficult to control and such use would pose security and privacy issues for the residents of the duplexes. I, therefore, take the view that the outdoor space in question should be restricted to use by the staff of the café. A condition could be attached to any permission to this effect.

2.6 I conclude that, subject to the use of the eastern end of the site being restricted to use by staff only, the proposal would be compatible with the amenities of the area.

### **(iii) Traffic and parking**

3.1 The appellant expresses concern that the proposed café would generate traffic movements by delivery vehicles that would risk instances of illegal parking.

3.2 The applicant has responded by stating that such movements would replicate the ones that take place at present in conjunction with the existing retail use.

3.3 The Council's Transportation Planning advice indicates that customers are likely to come to the café mainly on foot. In the light of the concentration of dwellings, offices, and schools in the vicinity of the site and the limited availability of on-street car parking, I concur with this view.

### **(iv) Water**

4.1 As at present, the proposed café would be served by the public mains water supply and drainage system. As the café would entail a change of use only to an existing building which is in use as a shop, no flood risk issues arise.

### **(v) AA**

5.1 As this café would entail a change of use only to an existing building, no Appropriate Assessment issues would arise.

## **8.0 Recommendation**

That the proposal be permitted.

## 9.0 Reasons and Considerations

Having regard to the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, it is considered that, subject to conditions, the proposal would be compatible with the amenities of the area and thus it would accord with Zoning Objective A. The proposed café would replicate the existing traffic and parking patterns of the shop, which it would replace, and it would be served by the public mains water supply and drainage system. No Appropriate Assessment issues would arise. The proposal would thus accord with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. 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. 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.

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

2. Prior to the installation of the external shop signage, the developer shall submit a scheme for such signage to the Planning Authority for its written agreement and, thereafter, only the agreed scheme shall be implemented.

**Reason:** In order to afford the Planning Authority control over this aspect of the proposal, in the interest of visual amenity.

3. The outdoor space at the eastern end of the site denoted as being “for the retail unit” on the submitted plans shall not be made available for the use of customers at any time.

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

4. The hours of opening to the public shall be between 08.00 hours and 18.00 hours daily.

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

5. Prior to the commencement of the use or at such other time as shall be agreed in writing with the Planning Authority, the developer shall pay the sum of €1,000 (one thousand euro) to the Planning Authority towards the provision of on-street cycle parking to be placed on public roads/areas within the vicinity of the site.

**Reason:** In order to comply with the provisions of Section 8.2.4.7 of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022.

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Hugh D. Morrison  
Planning Inspector

11<sup>th</sup> July 2017