



An  
Bord  
Pleanála

## Inspector's Report PL28.249077

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<b>Development</b>	Permission for the change of use from retail to use as a coffee shop. Works will include renovations of shop front, new fascia signage and associated works.
<b>Location</b>	110 St. Patricks Street, Cork.
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	17/37441
<b>Applicant(s)</b>	Caffé Nero Ireland, Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party v condition 2
<b>Appellant(s)</b>	Caffé Nero Ireland, Ltd
<b>Observer(s)</b>	Caffé Nero Ireland, Ltd
<b>Date of Site Inspection</b>	24 <sup>th</sup> October, 2017
<b>Inspector</b>	A. Considine

## **1.0 Site Location and Description**

- 1.1. The site the subject of this appeal is located on St. Patricks Street in Cork City centre. St. Patricks Street is one of the primary shopping streets in Cork and the subject site is located on the western side of the street. The applicant indicates that the building is currently vacant but on the date of my site inspection, the Board will note that it is occupied by the Calendar Club shop which sells a variety of paper goods. The Three Store is located immediately adjacent with the Savoy building adjacent again. Above the door to the upper floor a photographic studio is advertised.
- 1.2. The subject site comprises two floors of an existing four storey building and the floor area affected is indicated at 197m<sup>2</sup> over the ground and first floor levels. The site has a stated area of 0.014ha.

## **2.0 Proposed Development**

- 2.1. The application to Cork City Council was for permission for the change of use from retail to use as a coffee shop. Works will include renovations of shop front, new fascia signage and associated works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to refuse planning permission for the proposed development for the following stated reason:

Having regard to planning policy and development objectives as outlined in Paragraph 13.16 and Objective 13.4 'Protection of Prime and Key Secondary Retail Frontage' of Cork City Development Plan 2015-2021, which seeks to support and strengthen the higher order retail function of the City Centre and the concentration of shops within the City Centre Retail Area and also restrict restaurant (coffee shop) uses from locating at ground floor level on prime retail frontages, the proposed development would materially contravene the

objectives of the Plan and would be contrary to the proper planning and sustainable development of the area.

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

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

The Planning Officers report formed the basis of the planning authority's decision to refuse permission. Appropriate Assessment, Environmental Impact Assessment and Flood Risk Assessment are also dealt with within the reports.

#### **3.2.2. Other Technical Reports**

Drainage Section: No objection subject to compliance with conditions.

Environment Section: Further information required in relation to waste management and details of service plant and equipment.

Roads Section: No objection subject to compliance with conditions.

### **3.3. Prescribed Bodies**

Irish Water: No objection.

### **3.4. Third Party Observations**

There are no third party submissions noted on the Planning Authority's file.

## **4.0 Planning History**

There is no relevant or recent planning history associated with the subject site. Planning Authority decisions in 2001 and 2002 related to the construction of a new shop front and internally illuminated signage.

## **5.0 Policy Context**

### **5.1. Development Plan:**

5.1.1. The Cork City Development Plan 2015 – 2021 is the statutory Development Plan for the city of Cork. The subject site is zoned ZO 1 City Centre Retail Area

(CCRA) where it is the stated objective ‘to provide for the protection, upgrading and expansion of retailing, in particular higher order comparison retailing, as well as a range of other supporting uses in the City Centre retail area.’

5.1.2. The supporting text in the plan notes that the Council is committed to the reinforcement of the City Centre’s role in the retail hierarchy by supporting exiting retailing and facilitating the development new floor-space to meet projected demand. Retailing is prioritised in this area but not to the exclusion of other land use types. Other uses such as residential, hotel, office and cultural and leisure facilities etc which compliment the retail function of the CCRA and promote vibrancy in the City Centre are also permitted, subject to the policies to promote City Centre retailing in Chapter 13.’

5.1.3. Objective 13.4 of the Plan deals with the Protection of Prime and Key Secondary Retail Frontage and states that it is the objective of the Council ‘to restrict retail offices, general offices, hot food takeaways, general convenience stores, public houses, night clubs, mobile phone shops, bookmakers/betting shops and restaurant uses from locating at ground floor level on prime retail frontages, and restrict retail offices, general offices, hot food takeaways, bookmakers/betting shops at ground floor level on secondary retail frontages (as defined in Map 2, Volume 2).’

5.1.4. Chapter 16 of the Plan deals with Development Management where section Part F deals with Shop Fronts and Commercial Facades

## 5.2. **Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site are the Cork Harbour SPA (site code 004030) and the Great Island Chanel cSAC (site code 001058).

## 6.0 **The Appeal**

This is a first party appeal against the decision of the Planning Authority to refuse permission for the proposed change of use.

## 6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The council refused permission in relation to shopping policy given the location of the site on St. Patricks Street. Policy bans certain night time uses.
- As the coffee shop would occupy two floors, it is submitted that the statutory control on uses only governs the ground level.
- No part of the policy prohibits coffee shop outlets on St. Patricks Street.
- It is a fundamental error to treat the proposed coffee shop as a restaurant.
- Aside from the referral cases which treat a coffee outlet as a 'shop', the Council's view contradicts the Planning & Development Regulations, 2001 as amended, whose provisions expressly and explicitly allow 'sandwiches or other food' to be sold from a shop premises and which specifically states that a shop unit 'does not include a restaurant.'
- The reason that Objective 13.4 does not ban coffee shops is that such outlets trade during traditional retail periods.
- The associated ban on certain ground floor uses in this primary shopping designation has been in existence for over thirteen years and given changing retail trends, the policy may have resulted in the excessively high vacancy rate.
- The unit has been vacant for five years except for an occasional pop up shop.
- Referral cases indicated which concluded that change of use from a bank to a café was exempted development, and partial change of use of retail unit to café also exempt. While it is not being claimed that the proposal does not need consent, it is submitted that a coffee shop could locate in this outlet without permission, provided that it exhibits characteristics of a shop rather than a restaurant.
- It is not believed that the proposed development would materially contravene the Cork City Development Plan, 2015 as suggested.
- Vacancy issues raised
- The development will not impact on residential amenity.

## 6.2. Planning Authority Response

The PA has responded to this first party appeal, advising as follows:

- The application was for use as a coffee shop over both floors and was assessed as such.
- The use proposed is considered effectively the same type of use as a restaurant taking account of Paragraph 13.16 and objective 13.4 Protection of Prime and Key Secondary Retail Frontage, of the Cork City Development Plan.
- Paragraph 16.82 Cafés / Restaurants align these uses.
- Reference is made to RL3425 for 11 St. Patricks Street which considered the scale, nature of layout of the coffee shop as being more akin to a restaurant use which is expressly excluded from the definition of 'shop' under Article 5(1) of the Planning & Development Regulations, 2001, as amended.

## 6.3. Observations

None

## 7.0 Assessment

Having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. General Compliance with the Cork City Development Plan & General Development Standards
2. Appropriate Assessment

## **7.1. Compliance with the Cork City Development Plan & General Development Standards:**

7.1.1. The development before the Board provides for the change of use of a retail store at ground floor level and office use at first floor level to a café. The subject site is located within the Prime Retail Area of Cork City, on St. Patricks Street, which is zoned ZO 1 City Centre Retail Area (CCRA) where it is the stated objective 'to provide for the protection, upgrading and expansion of retailing, in particular higher order comparison retailing, as well as a range of other supporting uses in the City Centre retail area.' Retailing is prioritised in this area, and other uses such as residential, hotel, office and cultural and leisure facilities uses are also acceptable in this zone.

7.1.2. Objective 13.4 of the Plan, however deals with the Protection of Prime and Key Secondary Retail Frontage and states that it is the objective of the Council 'to restrict retail offices, general offices, hot food takeaways, general convenience stores, public houses, night clubs, mobile phone shops, bookmakers/betting shops and restaurant uses from locating at ground floor level on prime retail frontages, and restrict retail offices, general offices, hot food takeaways, bookmakers/betting shops at ground floor level on secondary retail frontages (as defined in Map 2, Volume 2).'

7.1.3. In this regard, the Board will note that the Planning Authority has considered the proposed café use to equate to that of a restaurant and therefore, has concluded that the proposed change of use would materially contravene this objective of the Plan. The first party considers that this opinion is flawed and cites a number of referrals which would corroborate this opinion. It is further submitted that the City Development Plan does not ban coffee shops in the area.

7.1.4. The proposed coffee shop will, if permitted, be laid out over two floors and will have a stated floor area of 197m<sup>2</sup> comprising 107m<sup>2</sup> at ground floor level and 90m<sup>2</sup> at first floor level. The submitted layout for the coffee shop will provide for seating for 36 covers at ground floor level with seating for a further 33 covers at first floor level. WC facilities are proposed on both floors. I have considered a number of referrals in terms of the use of retail units as 'coffee shops' and I would note that Board decided in a significant number of cases that such uses 'did not constitute use as a "shop" as defined in Article 5(1) because the scale, nature and layout of the coffee shop was

more akin to a restaurant use which is expressly excluded from the definition of 'shop' under Article 5(1).'

7.1.5. Having regard to the information presented in support of the proposed development, I would concur that the principle of a coffee shop is not explicitly excluded from Prime Retail Frontage. I am clear that the City Development Plan does seek to protect such areas for the upgrading and expansion of retailing, in particular higher order comparison retailing, as well as a range of other supporting uses. In this regard, I would advise the Board that there are a number of existing cafes / coffee shops adjacent to the subject site including, Insomnia in Easons to the north, and a coffee shop in the Savoy building to the south. Both of these facilities are ancillary to the primary retail uses of the buildings. In this regard, I am satisfied that the proposed development if permitted, would be contrary to the objectives of the Cork City Development Plan, 2015 and would, if permitted, materially contravene the stated policy objectives of the Plan to protect the Prime Retail Frontage.

## **7.2. Appropriate Assessment**

7.2.1. The closest European Sites are the Cork Harbour SPA (site code 004030) and the Great Island Chanel cSAC (site code 001058). Having regard to the nature of the site, being a developed urban site, together with the fact that no ground works are proposed, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

I recommend that planning permission be refused for the proposed development for the following stated reason.



## 9.0 Reasons and Considerations

The development objectives of the Cork City Development Plan, 2015-2021, and in particular to Objective 13.4, as it relates to the Protection of Prime and Key Secondary Retail Frontage, which includes property on St. Patricks Street and the subject site, seeks to support and strengthen the higher order retail function of the City Centre and the concentration of shops within the City Centre Retail Area. Having regard to the nature and scale of the proposed coffee shop use, in particular at ground floor level in this prime retail frontage, it is considered that the proposed development, if permitted, would materially contravene the objectives of the Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

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A. Considine

Inspector

11<sup>th</sup> November, 2017