



An
Bord
Pleanála

Inspector's Report ABP-305107-19

Question	Whether the alterations to the internal layout of the permitted licensed premises are or are not development and are or are not exempted development
Location	52/53 North Main Street, Cork
Declaration	
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	R520/19
Applicant for Declaration	Black Dog Bar and Nightclub Ltd.
Planning Authority Decision	Is development & is not exempted development
Referral	
Referred by	Black Dog Bar and Nightclub Ltd.
Date of Inspection	15 th October, 2019
Inspector	Kevin Moore

1.0 Introduction

On 13th June 2019, Black Dog Bar and Nightclub Ltd. sought a Declaration under section 5 of the Planning and Development Act from Cork City Council on whether the alterations to the internal layout of the permitted licensed premises at 52/53 North Main Street, Cork are or are not development and are or are not exempted development.

The following was included in the submission to the planning authority:

- The alterations fall within the definition of ‘development’ as they involved ‘works’ to remove, relocate or replace some of the partitions, furnishings and fittings shown on the layouts permitted under P.A. Ref. Nos. 12/35324 and 13/35534.
- The works are ‘exempted development’ as they fall within section 4(1)(h) of the Planning Act.
- The planning unit comprises the combined areas of 52 and 53 North Main Street and was established by the permissions granted under P.A. Ref. Nos. 12/35324 and 13/35534. Prior to this the site comprised two separate planning units.

2.0 Site Location / Description

Nos. 52/53 North Main Street constitute premises located in the heart of the commercial core of Cork City Centre. The four storey terraced buildings present two frontages at street level and two individual commercial units within, the northernmost comprising “The Vicarstown Bar” and the southernmost “Black Dog Saloon & Mezcaleria”. The former is a bar with a smoking area to the rear and the latter internally presents as a bar-style premises with a small kitchen and small outdoor area to the rear. The linkage between the two premises is a door access between this outdoor area and smoking area.

3.0 The Question

3.1 The question before the Board is:

Whether the alterations to the internal layout of the permitted licensed premises at 52/53 North Main Street, Cork are or are not development and are or are not exempted development.

4.0 Planning Authority Declaration

4.1 On 15th July 2019, Cork City Council issued a declaration stating that, having regard to sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended) and Articles 6 and 9 of the Planning and Development Regulations 2001, as amended, it was considered that the proposed service kitchen located in the existing beer garden of No. 53 North Main Street currently operating as a public house and late night bar is development and is not exempted development.

5.0 Planning Authority's Reports

5.1 Planning Report

The Planner noted the site's planning history and relevant legislative provisions. It was considered the proposal constitutes development as it comprises works. The proposed service kitchen was viewed as being located in an external area (the existing beer garden), notwithstanding a slight overhanging roof. It was submitted that the additional service kitchen involves an extension to the existing floor area of the public house by constructing it externally in the current rear yard of No. 53. The proposal was considered not to come under the terms of section 4(1)(h). Noting that the current operational use is as a public house and late night bar, it was submitted that there are no exemptions under the planning legislation to permit the change of use from a shop (which was the previous use)

to a public house. It was stated that the property had the benefit of planning permission under TP 12/35314 for the change of use of the ground floor retail to a licensed café/restaurant use. Reference was made to Class 14 of the Planning and Development Regulations with regard to public house to shop use and restaurant to shop use and the differentiation between restaurant and public house use. It was submitted that Planning Permission TP 12/35314 had never been implemented and that that permission had now lapsed. The current use of the property was regarded as being unauthorised and it was submitted that there are no exemptions to commercial premises. It was concluded that the proposed altered layout was development and was not exempted development.

6.0 The Referrer's Submission

6.1 The following is submitted:

- The Board will note that the subject of the section 5 Declaration issued by the City Council differs from the subject for which the Declaration was sought. Given this and the content of the Planner's report, adequate attention was not given to the original request. Therefore, the question is now referred to the Board.
- The alterations made to the internal layout of the permitted licensed premises, permitted under P.A. Refs. 12/35414 and 13/35544, are considered to be 'development'. However, they are 'exempted development' as they fall within the scope of section 4(1)(h) of the Planning and Development Act.
- The subject development, comprising 52 and 53 North Main Street, has two relevant planning permissions under P.A. Refs. 12/35414 and 13/35544. Previous to these applications No. 52 was an established licensed premises with a dance licence (not a late bar) and No. 53 was a vacant retail unit. The effect of these permissions was to create a single planning unit with the relevant licence now benefitting the two properties.

- While the question asked in the request to the City Council made no reference to the use of the building, a rebuttal of the points made in the Planner's report are offered and include the following:
 - The effect of Planning Permission 12/35414 was to combine Nos. 52 and 53 into a single planning unit and licensed premises, as clearly stated in the development description and indicated in the planning documents and drawings. Following the granting of permission, Nos. 52 and 53 are licensed under the same licence by the courts, with the court sanctioning the opening hours. The fact that the café restaurant is described as 'licensed' in the premises indicates that it would be operated in accordance with whatever licence was granted. The current use of the premises is in accordance with the relevant licence.
 - The assertion made by the Planner that the use permitted under Planning Permission 12/35314 was never implemented and the current and operational use is as a public house and late night bar is unfounded. Planning permissions sought for the site have always indicated that the use would be as a licensed café/restaurant and the planning permission afforded to the site permitted this licensed use. There is no condition restricting opening hours and, therefore, the premises runs per the licensing hours.
 - With regard to section 4(1)(h), the fully enclosed beer garden area was once internal prior to the removal of the roof permitted under the 2012 application. This space has always been indicated as usable floor space within the past planning permissions, within the defined planning unit, and part of the permitted license use for eating and drinking. This area clearly identifies the interior of the structure as defined in section 4(1)(h). There has not been an extension to the premises as the alterations are provided within the existing floor space with part of the beer garden used for serving drinks now used for serving pizza, tacos and tapas.

- The service kitchen comprises a counter with certain kitchen apparatus positioned behind same, located under an existing lean-to roof overhang. The counter is not enclosed by walls, glazing or panels. It is not an extension of the floor space as it is located within it.
- If the Board is minded to agree with the Council's interpretation that the counter/service kitchen is located in an external area, it must be noted that this kitchen area does not materially affect the appearance of the structure so as to render the appearance inconsistent with the character of the structure and is therefore exempted development under section 4(1)(h). It is reiterated that the only change is the addition of a counter and some kitchen equipment.
- Reference made to Article 9(1)(a)(vii) is not relevant as it only relates to exemptions being sought under the Planning and Development Regulations and not under the Act. Section 4(1)(h) is considered to be a different and entirely separate matter.
- The use of No. 53 is not unauthorised. The difference between a licensed bar and a licensed café/restaurant would be reflected in the terms of the relevant licence. The terms of Planning Permission 12/35314 were implemented and the referrer has been operating as a licensed café/restaurant within the terms of its licence since the foundation of the business.
- BDSM is not a late night bar. It is a licensed café/restaurant premises with a dance licence. It has always had a year-round food offering and not at certain times of the year. Pizzas have been offered on site since the opening of the business and more recently the food offer has been expanded and is available seven days a week. Due to the popularity of the food offer the production of pizza dough and sauce was centralised to one of its businesses on Cornmarket Street. Food is still prepared and cooked on site.

The referral included a copy of the original submission made to the planning authority.

7.0 Planning History

P.A. Ref. 12/35314

Permission was granted for change of use of ground floor from retail to a licensed café/restaurant use, the widening of the front entry doors and provisions of awnings to the front of No. 52 (a protected structure) & 53; the removal of the rear float roof and installation of a new preparation kitchen within No. 53.

P.A. Ref. 13/35544

Permission was granted to change window type to No. 52 North Main Street, a protected structure, and to change the front window type, front signage and to erect a new vent flue on the gable end of the eastern elevation of 53 North Main Street, amended under application TP 12/35314.

P.A. Ref. TP17/37500

Permission was refused for the retention of the front lit signage above ground floor window.

8.0 Statutory Provisions

8.1 Planning and Development Act 2000

Section 2(1)

In this Act, except where the context otherwise requires—

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the

application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1)

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(1)

The following shall be exempted development for the purposes of this Act - ...

- (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 32(1)

Subject to the other provisions of this Act, permission shall be required under this Part—

- (a) in respect of any development of land, not being exempted development, and
- (b) in the case of development which is unauthorised, for the retention of that unauthorised development ...

8.2 Planning and Development Regulations, 2001

PART 2 - Exempted Development

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

- (a) if the carrying out of such development would –
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act, ...
 - (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use, ...

Schedule 2

Part 1 Exempted Development - General

Change of use

CLASS 14

Development consisting of a change of use—

(a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,

(b) from use as a public house, to use as a shop,

(c) from use for the direction of funerals, as a funeral home, as an amusement arcade or a restaurant, to use as a shop,

(d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop,

....

9.0 Assessment

9.1 Introduction

The Scope of the Referral

I note that the referral relates to whether the alterations to the internal layout of the permitted licensed premises at 52/53 North Main Street, Cork are or are not development and are or are not exempted development. In the submission to the Board the referrer expressly references the layouts permitted under P.A. Ref. Nos. 12/35324 and 13/35534 and the planning unit comprising the combined areas of 52 and 53 North Main Street that was established by these permissions. Having regard to this, it is reasonable that, in order to determine the nature and extent of the alterations which are the subject of the referral, due regard is had to the layout of the developments permitted by these planning permissions. As a result of these permissions being an integral part of the deliberations on the

subject matter of the referral, the Board could not be precluded from considering the provisions under the Planning and Development Regulations 2001 (as amended) as they apply to exempted development. In other words, the Board would not be restricted solely to the exempted development provisions relating to section 4(1)(h) of the Planning and Development Act 2000 (as amended).

The Premises at Present

I wish to confirm for the Board that the “Existing Ground Floor Plan” submitted by the referrer accurately reflects the existing floor plans of The Vicarstown Bar and the Black Dog Saloon & Mezcaleria. They present as two separate premises with linkage via an access to the rear leading from the smoking area of the public house to the outdoor area to the rear of the saloon and mazcaleria.

9.2 The Question of ‘Development’

The matter referred to the Board comprises alterations to the layout of the permitted licensed premises at 52/53 North Main Street, Cork. The making of alterations may reasonably be determined to be an activity that would comprise ‘works’ in accordance with the definition set out under section 2(1) of the Planning and Development Act 2000 (as amended). Thus, this would constitute the carrying out of works on, in and over land and would thereby constitute “development” in accordance with section 3 of the Planning and Development Act, 2000 (as amended). The Board will also note that the making of any material change in the use of any structures or other land constitutes ‘development’ also in accordance with section 3 of the Act.

9.3 The Question of 'Exempted Development'

The Differences in Floor Plans between Planning Permissions 12/35324 and 13/35534

I note the following:

- The sole difference for The Vicarstown Bar is the removal of a store and fridge cold room and the consequent extension of the smoking area.
- In the Black Dog Saloon & Mezcaleria, the counter area has been extended towards the frontage, with the loss of tables and seating. The middle section of the floor plan was altered, with the removal of a kitchen area, reorganization of bottle storage and the formalization of an outdoor yard. In the rear section toilet areas have been redeveloped, while the outdoor area remains relative unaltered.
- In the plans in both applications, the area to the rear of the Black Dog Saloon & Mezcaleria is referenced "Roof Removed".

The Differences in Floor Plans between Planning Permission 13/35534 and the Existing Floor Plans

I note the following:

- There are no changes to The Vicarstown Bar since the changes made under Planning Permission 13/35534.
- The principal alteration in the Black Dog Saloon & Mezcaleria relates to the development of a roofed service kitchen within the outdoor area to the rear. There are some very minor alterations in the form of stairway provision.

The Board should note that the area immediately behind the 'Licensed Café' and before the ladies toilets comprises a cold store.

The Nature and Extent of the Existing Development

The Vicarstown Bar is a public house. The Black Dog Saloon & Mezcaleria presents itself as a public house. With the exception of the small enclosed 'Service Kitchen' adjoining the outdoor area, there is no kitchen facility and no associated food preparation area. At the time of my site inspection, there was no evidence of any cooking taking place in this premises. No. 53 Main Street presents itself as an entirely separate commercial unit from the Vicarstown Bar. There is no café or restaurant in formal presentation at No. 53.

Compliance with Planning Permissions

The two relevant planning permissions pertaining to this site are P.A. Refs. 12/35314 and 13/35544. The former permitted a change of use of the ground floor from retail to a licensed café/restaurant, while the latter did not relate to any change of use. The Board will note that the change of use P.A. Ref. 12/35314 related to No. 53 which was a former meat market and that Vicarstown Bar was already an established public house.

It is evident that while the two planning applications made reference to Nos. 52 and 53 North Main Street as being the address for the proposed development, they presented in plan form as two separate units and sought no planning permission to provide a single integrated unit. The connectivity was by a door link between external areas to the rear and this remains so. It can reasonably be deduced that no planning permission has issued for No. 53 to function as an independent public house or as an extension to the Vicarstown Bar. The further development of No. 53 under P.A. 13/35544 appears to have culminated in the expansion of the public house-type presentation of this unit but it did not bestow any planning permission to function as a public house.

Having regard to the above, it may reasonably be determined that development of No. 53 as a public house, with a very minor secondary use arising from the existence of a service kitchen adjoining the outdoor area to the rear, does not comply with the planning permissions associated with this premises. It may also reasonably be determined that the existing development constitutes unauthorised development in its present format as there are no planning permissions for use as a public house, with ancillary café/restaurant use. Furthermore, the Board will note that Class 14 of Part 1 of Schedule 2 of the Planning and Development Regulations does not provide for any such change of use of a café/restaurant to a public house to be exempted development.

Finally, I note the referrer's reference to licensing acquired from the Court for Nos. 52 and 53 as a single premises. The Board will note that a licence linked to the functioning of Nos. 52 and 53 does not bestow planning permission for a public house in No. 53 and/or the change of permission for the permitted café/restaurant use to an ancillary use.

The Alterations

The internal alterations that have taken place since the granting of planning permission under P.A. Ref. 13/35544 comprise very minor alterations in the form of stairway provision within No. 53. Such internal alterations, being works which affect only the interior of the structure and which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure, would be expected to fall within the provisions of section 4(1)(h) of the Planning and Development Act.

I note that the outdoor area to the rear of No. 53 has been altered by way of a change of layout. A bar counter appears to have been removed and a Service Kitchen has been developed. This Service Kitchen is wholly enclosed, is roofed

and its layout does not follow that of the previous bar counter. This location appears to have formed part of the general area referenced 'Roof Removed' from the time of Planning Permission 12/35314. Therefore, the Service Kitchen forms an extension to No. 53. The Service Kitchen, as an extension to the commercial floor area of No. 53, would be a development to which section 32 of the Planning and Development Act would apply and planning permission has not been granted to date.

Note: The development the subject of this referral is not of a class of development to which EIA applies.

10.0 CONCLUSION AND RECOMMENDATION

WHEREAS a question has arisen as to whether the alterations to the internal layout of the permitted licensed premises at 52/53 North Main Street, Cork are or are not development and are or are not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Black Dog Bar and Nightclub Ltd. on the 6th day of August, 2019:

AND WHEREAS An Bord Pleanála, in considering this referral, had particular regard to:

- (a) sections 2, 3, 4 and 32 of the Planning and Development Act 2000 (as amended),
- (b) articles 5-11 of the Planning and Development Regulations 2001 (as amended), with particular reference to articles 6(1) and 9(1)(a)(viii),
- (c) Part 1 of Schedule 2 *Exempted Development – General* of the Regulations, with particular reference to Class 14,

- (d) the planning history of Nos. 52 and 53 North Main Street, with particular reference to Planning Permissions Ref. Nos. 12/35314 and 13/35534; and
- (e) the submissions of the parties to the referral,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the alterations to the layout of No. 53 North Main Street, Cork, in the form of the provision of a 'Service Kitchen' to the rear of the premises, constitute 'development' for the purposes of the Planning and Development Act
- (b) No. 52 and No. 53 North Main Street, Cork constitute two separate planning units;
- (c) The permitted use of No. 53 North Main Street presents as a public house whose permitted use is as a licensed café/restaurant and which does not have planning permission for use as a public house either independently or associated with the public house use at No. 52 North Main Street; and
- (d) The use of No. 53 North Main Street as a licensed café/restaurant constitutes an ancillary use to a main public house use;

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that the primary use of No. 53 North Main Street, Cork as a public house and the alterations in the form of a Service Kitchen to the layout of the permitted licensed premises at 52/53 North Main Street, Cork constitute development and development that is not exempted development.

Kevin Moore
Senior Planning Inspector
4th November, 2019.