



An  
Bord  
Pleanála

## Inspector's Report ABP-306780-20

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Question(s)	Whether replacement signage is or is not development and is or is not exempted development and whether the current use as a licensed café/restaurant is not a material change of use from that permitted under TP12/35314 and TP13/35544
Location	52/53 North Main Street, Cork
Declaration	None issued by Planning Authority
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	R566/20
Applicant for Declaration	Black Dog Bar and Nightclub Ltd.
Planning Authority Decision	Planning Authority referred questions to the Board for determination
Referral	
Referred by	Cork City Council
Date of Inspection	12 <sup>th</sup> June 2020 & 22 <sup>nd</sup> July 2020
Inspector	Fergal Ó Bric

## 1.0 Introduction

On the 24<sup>th</sup> day of February 2020, Black Dog Bar and Nightclub Ltd. sought a declaration under section 5 of the Planning and Development Act from Cork City Council as to whether replacement signage is or is not development and is or is not exempted development and whether the current use as a licensed café/restaurant is or is not a material change of use from that permitted under TP12/35314 and TP13/355 at 52/53 North Main Street, Cork.

The following was included in the submission to the Planning Authority:

- The current signage is in substantial compliance with that permitted under Planning Authority reference number TP13/35534 which sought planning permission to change the front window type, signage and the installation of a new vent flue on the gable end of the east elevation of number 53, North Main Street. The drawings submitted with that planning application showed a signboard above the window head, between the two stone pillars at either end, with the historic meat market carved stone plaque retained above.
- The sign originally erected on the premises, covered the original carved stone sign and was arguably not in accordance with the permitted details. A refusal of Planning permission under TP17/37500 for the retention of that signage was issued and subsequently the sign was removed and replaced with the current signage.
- The layout and design of the current signage is based on the outcome of a meeting between the Planning Authority and the occupiers of the premises in July 2015 and a review of the planning reports prepared under Planning Authority reference number TP17/37500. The Planning Authority stated that their primary concern was for the reinstatement of the original stone signboard on the premises. They consider that the existing signage addresses the concerns expressed by the Planning Authority and is in accordance with details permitted under TP13/35544.

- The only visible difference in the signage is the utilisation of a retro-style cinema signboard with horizontal font dividers and adjustable lettering.
- The style of the current sign is more modest than the previous sign and is considered to be in keeping with the character of the street, one of the primary entertainment areas within the city, while not detracting from the character of the existing structure.
- Given the details provided in the planning application documents (no dimensions included) and the non-requirement to provide further details of the signage as part of compliance, they consider that the existing signage is generally in accordance with the 2013 planning permission.
- The works should therefore be considered as ‘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 Planning Authority reference numbers TP12/35324 and TP13/35534. Prior to this the site comprised two separate planning units. Number 52 operated as an established licensed premises and number 53 was a vacant retail unit.
- The effect of the permission permitted under TP12/35314 was to create a new planning unit and allow unit numbers 52 and 53 North Main Street to be linked together through a common outdoor seating area and for the combined area to be used as a single combined licensed premises, which included an ancillary use as a licensed café/restaurant.
- No condition was attached to either permission which regulated the mix of uses, the relationship between the bar and the café/restaurant, the type of food offering, the location of any café use within the overall licensed premises, or the hours of operation. A single licence governs the entire planning unit which is issued annually by the courts.
- Condition number 1 of TP12/35314 states that the development should be carried out in accordance with the drawings and specifications as

submitted to the Planning Authority. It specifically does not state that the development shall be carried out in accordance with the plans and. Therefore, this condition is taken as referring to the dimensions and materials as opposed any non-technical information submitted.

- The Board decision under Bord Pleanála reference number 305107-19 did not reach any formal conclusion or decision regarding the planning status of the use. Under the reasons and considerations of the Board decision under item (d) the following was set out: the planning history of numbers 52 and 53 North Main Street, with particular reference to planning permissions, planning register reference numbers TP12/35314 and TP13/35544, and noting that the current use of number 53 North Main Street presents as a public house whose permitted use is as a licensed café/restaurant and for which no planning permission appears to exist for use as a public house either independently or associated with the public house use at number 52 North Main Street.
- It is proposed to amend the content of the permitted signage to confirm that number 53 will operate as a licensed café/restaurant which is associated with, and ancillary to the established public bar and music venue at number 52.
- Number 53 is not an independent planning or licensing unit. The red line application site boundary for all planning applications included the full extent of both numbers 52 and 53 North Main Street.
- The planning permissions allow number 53 to provide ancillary licensed café and restaurant services to the late-night public bar and music venue at number 52.
- There were no conditions attached to the relevant planning permissions which regulate the nature and extent of the ancillary use of number 53 as a licensed café/restaurant, or the way the use of the bar and café/restaurant interact with each other during normal opening hours or

during the occasional events when a late night extension is granted by the District Court.

- Reference is made to a precedent under Planning Authority reference number TP 16/36972 which pertains to another nearby licensed premises which includes a planning condition as follows : The use shall be restricted to a restaurant with ancillary bar in the area so indicated on the plans and particulars.
- Reference is also made to a Section 5 declaration, Planning Authority reference number R498/18 which determined that planning permission would be required to use the permitted licensed restaurant for a separate public bar, the planning permission did not preclude the use of the licensed restaurant to provide additional ancillary bar space, as there are too many variables and uncertainties as to whether the use would or would not be development.
- Unlike a nearby licensed premises which was subject to planning reference numbers TP 16/36972 and R498/18, there were no planning conditions attached to the permission associated with numbers 52 and 53 North Main Street which required a specific area of the permitted floorspace to be used as a licensed café/restaurant. .
- A consistent approach should be adopted by the Planning Authority and the non-material change of use that applies to other licensed establishments should also apply in this instance.
- As there has been no material change in the permitted mix of uses, the current use of number 53 as an ancillary licensed café/restaurant to the Vicarstown Inn (at Number 52) is not development as defined in Section 3 of the Planning Acts.

## **2.0 Site Location / Description**

Numbers 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 as two separate and individual 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 kitchen area at the end of the bar counter and partially covered outdoor smoking area to the rear, with some seating provided. The smoking areas to the rear of the premises are shared. The linkage between the two premises is a door access between the shared outdoor smoking area.

## **3.0 The Question**

3.1 The questions before the Board are:

Whether replacement signage is or is not development and is or is not exempted development,

and whether the current use as a licensed café/restaurant is not a material change of use from that permitted under Planning Authority reference numbers TP12/35314 and TP13/355 at 52/53 North Main Street, Cork.

## **4.0 Planning Authority Declaration**

4.1 Cork City Council have forwarded this referral to the Board as provided for under Section 5(4) of the Planning and Development Act, 2000 (as amended) in respect of these two questions.

## **5.0 Planning Authority's Reports**

### **5.1 Planning Report**

The Planning Officer noted the site's planning history and relevant legislative provisions. It was considered that both the signage and use of number 53 constitutes development as it comprises works. The service kitchen was viewed as being in an external area (the existing smoking area), 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 planning exemptions for 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:

- There are two planning enforcement files pertaining to number 53 North Main Street. The first, EN E7/464 was served on the 6<sup>th</sup> day of June 2019

in respect of (1) un-authorised sign on the front elevation and (2) unauthorised use as a late night music bar in contravention of planning permission TP 12/35314. A summons was served, and enforcement proceedings commenced in the District Court following non-compliance with the enforcement notice on the 26<sup>th</sup> day of February 2020. The second enforcement notice Planning Authority reference number EN067 was served on the 6<sup>th</sup> day of February 2020 in relation to an unauthorised extension to the rear of number 53. The unauthorised extension comprises usable external floorspace which includes a service kitchen and associated equipment and counter. The extension is located below an existing roof to the rear (east) of the property.

- Planning permission was granted by the Planning Authority under TP35544 for the provision of signage to the front of number 53, North Main Street. The signage in place at present does not accord with the extent of signage as identified in the permission. The signage on the front of the premises includes a billboard style sign, red neon sign and lettering to the upper floor windows, as noted within the image included within their report.
- Number 52 is identified as a protected structure within the Cork City Development Plan 2015-2021, both numbers 52 and 53 are included within the National Inventory of Architectural Heritage (NIAH).
- The signage to the front elevation materially affects the character of the North Main Street ACA and, therefore, conflicts with Section 82 of the Planning Acts and therefore would not constitute exempted development.
- The Council granted planning permission under planning reference number TP 12/35314 for a change of use from retail to a licensed café/restaurant within Number 53.



- There is an enforcement file pertaining to the un-authorised use of the premises within number 53, as a late-night music bar in contravention of Planning Authority reference number TP12/35314.
- Reference is also made to An Bord Pleanála reference number 305107-19 where it states: The Black Dog Saloon and Mescaleria (number 53, North Main Street) presents itself as a public house...there is no café or restaurant in formal presentation at number 53. No exemption exists to change the use of a premises from retail to a licensed café/restaurant.
- Planning Authority enforcement file numbers E7464 and E8067 both pertain to number 53 North Main Street. The former pertains to an unauthorised sign on the front elevation and the unauthorised use of the premises as a late night music bar in contravention of TP 12/35314 and the latter notice pertained to an unauthorised extension to the rear of the premises and includes use as service kitchen and associated equipment and counter and is located below the existing roof to the rear of number 53.

The referral included a copy of the original information submitted to the Planning Authority.

## **7.0 Response to Referrer's Submission**

7.1 The following is submitted:

- 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 within 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.

- 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 as 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 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 sister businesses on Cornmarket Street. Food is still prepared and cooked on site.

Reference is made by the Planning Authority to Enforcement Number E8067. This is in relation to works which have already been addressed by the Board under An Bord Pleanála reference number 305107-19. These works are not relevant to the current case as they relate to works outside the scope of the current referral and that the client fully intends to comply with the enforcement Notice E8067 following resolution with a number of fire safety matters.

There has been a history of consultation, dating back as far as June 2013, between the clients and the Planning Authority on the implementation of planning permissions,

Numbers 52 and 53 were licensed by the District Court as a single premise in June 2013 and opened as a pub with ancillary licensed café/restaurant which offered a range of food, bakery products, hot beverages, and alcoholic drinks.

While implementing the planning permission under TP13/35544, the kitchen area within number 53 was enlarged to provide food preparation for a sister premises (Bodega Bar) in the adjacent Cornmarket area, as well as numbers 52 and 53 North Main Street. Subsequently it was decided to relocate some of the food preparation to the Rising Sun Brewery pub in the Cornmarket area. The client acknowledged that the marquee signage originally erected above number 53 exceeded the dimensions permitted under TP13/35544, retention permission for this signage was refused planning permission under TP17/37500 and the marquee sign has now been modified to comply with the provisions of TP13/35544.

The clients understood from discussions with the Planning Authority that their primary concern was the unauthorised marquee sign that covered the original carved stone signboard. The signage was modified and the name of the premises BDSM in thin neon tubing was installed within the original signboard.

Under An Bord Pleanála reference member 305107-19, the Board did not make any direction in relation to use and indicated that the nature of a licensed café/restaurant was a question of balance between the food and beverage and the way that the use was presented to customers.

The fact that no specific planning permission exists for a particular use, does not mean that it is an unauthorised use, as it may be a non-material change from another established or permitted use.

The clients are not clear which of the three signage elements are considered to be unauthorised, no written report is provided to substantiate the views of the Conservation Officer, and no reasons or considerations are provided to justify the conclusion that the signage would affect the character of the ACA to a material extent.

The position adopted by the Planning Authority fails to make any reference to the statement of character for the North Main Street Architectural Conservation Area (ACA) as set out within the City Development Plan.

The following is set out in the Development Plan in relation to this ACA: The area continues to suffer from the continuing decline of its traditional economic and social role despite the uplift generated by the 1994 Historic Centre Action Plan. That initiative needs to be followed up with a sustained effort on the part of the City Council, local residents, business people, property owners and the general community who use the area... the overall identity of the area needs to be strengthened so that the area's archaeological and architectural richness can be actively maintained.

This statement of character highlights the need to encourage commercial vibrancy along North Main Street and confirms that the conversion of a vacant retail store to a café/restaurant with appropriate signage is entirely consistent with the objectives of the North Main Street Area. The Board will note that there is a wide variety of shop fronts and signage along the street, there is no specific type of signage which could be considered to represent the distinctive character of this ACA. There is, therefore, no basis for the Planning Authority's conclusion that the use of a small neon sign on the signboard of an established shop front would have any effect on the frontage of number 53, or on the overall character of the ACA.

It is not appropriate for the Planning Authority to base its conclusions on undocumented internal discussions with the Conservation Officer. The Board and the client are entitled to know the reasons and considerations on which the conclusion was reached by the Planning Authority that there would be a material effect on the character of the ACA. There is also an onus on the Conservation Officer to clarify what form of signage would be compatible in this instance.

In terms of the materiality of the change of use, The Planning Authority relies on a quotation from the Planning Inspectors report prepared in 2019 under An Bord Pleanála reference number 305107-19. The Inspector was reporting on the situation as he found it on the date of his site inspection in October 2019. This cannot be considered to be an accurate representation of the use of the premises throughout a typical week as the balance between food and beverage sales within a licensed premise varies over time. The use of a licensed café/restaurant is primarily a question of where the food is consumed rather than prepared. Although some food preparation has been transferred to a sister establishment in the Cornmarket area, quite an amount of food preparation is carried at number 53 North Main Street. This could not have been ascertained by the Planning Inspector, as his site inspection was conducted outside of opening hours.

The fact that some of the food consumed is no longer prepared on the same premises does not mean that the use as a licensed café/restaurant has ceased.

The Inspector's statement that there was no café or restaurant in formal presentation at the time of his site inspection does not in itself support the Planning Authority's allegation that a change of use has occurred within this premises to a late night music bar.

The referral has overlooked an important difference between the conclusion reached in the Inspector's Report and the Board Direction. The Board did not reach any conclusion regarding the primary use of number 53 and removed from the Inspector's statement that numbers 52 and 53 were two separate planning units.

The client acknowledges that the Board order has had regard to: the Planning history associated with numbers 52 and 53 North Main Street, with particular reference to Planning register reference numbers tP12/35314 and TP 13/35544, and noting that the current use of number 53 North Main Street presents as a public house whose permitted use is as a licensed café/restaurant and for which no planning permission appears to exist for use as a public house either independently or associated with the public house at number 52 North Main Street.

- 7.2 The fact that the premises presented as a public house at the time of the inspector's visit does not mean that it is being primarily and continuously used for that purpose. No such permission is required to continue the use of that premises as part of the established mix of pub, cafe and restaurant uses within the larger planning units of number 52 and 53 North Main Street.
- 7.3 The Planning Authority has avoided addressing the materiality of the change of use by relying on the Planning Inspectors report prepared under 305107-19, declining to comment on the case made of the clients request under Section 5(1) of the Planning Acts, in February 2020, and failing to provide evidence of the current use of the premises.
- 7.4 To determine whether the current use of number 53 is or is not exempted development, the Board must establish that the change of use is development, and that the change from the permitted use of the premises is material.
- 7.5 Planning permission TP12/35314 has been implemented in full
- 7.6 The clients are of the view that any change between the current and permitted use, is not material. A planning permission which has no conditions attached restricting the use, would allow the commercial operator to respond to changes in the market environment, while maintaining the primacy of the primary use.
- 7.7 No issues regarding compliance with the permitted use were raised by the Planning Authority between June 2013 and June 2015 when discussions were held with the Planning Authority regarding compliance with the permitted

signage. The permission granted under TP13/35314 included internal and external works, as well as the change of use.

- 7.8 There is no legal basis for a Planning Authority to take enforcement action regarding non-compliance with a permission, which it now considered to have expired without being implemented.
- 7.9 The Planning Authority's referral does not accurately reflect the planning history of the site and is based on the erroneous assumption, that the permission granted under Planning Authority reference number TP 12/35214 expired before it was implemented.
- 7.10 The arguments relating to the signage rely on the location of the site within an ACA but fail to have regard to the statement of character for the North Main Street ACA.
- 7.11 They also rely on a verbal comment from the Conservation Officer without providing any written report.
- 7.12 The arguments relating to the use of the premises rely on a Planning Inspector's report, in turn, based on a single inspection carried out on a Tuesday in October, outside of opening hours. It also overlooks the fact that the Board made significant amendments to the Inspector's conclusions. The report of the Inspector's site visit does not accurately reflect the current use of the site.
- 7.13 There is a lack of consistency in the Planning Authority' approach to this case:

## **8.0 Planning History**

Planning Authority reference number R520/19, An Bord Pleanála reference number 305107-19, In 2019 the appellants submitted a Section 5 referral to the Board where the following questions were asked: Whether the alterations to the internal layout of the permitted licensed premises are or are not development and are or are not exempted development and the Board determined that 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.



Planning Authority reference number TP17/37500, in 2017, the Planning Authority refused planning permission for the retention of the front lit signage above ground floor window.

Planning Authority reference number TP13/35544, in 2013 planning 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.

Planning Authority reference number TP12/35314, in 2012 planning 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 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.

Planning Enforcement:

Planning Authority reference number E7/464 was served on the 6<sup>th</sup> day of June 2019 in respect of (1) un-authorized use sign on the front elevation and (2) unauthorised use as a late night music bar in contravention of planning permission TP 12/35314. A summons was served and enforcement proceedings commenced in the District court following non-compliance with the enforcement notice on the 26<sup>th</sup> day of February 2020.

Planning Authority reference number E8067 was served on the 6<sup>th</sup> day of February 2020 in relation to an unauthorised extension to the rear of number 53. The unauthorised extension comprises usable external floorspace which includes a service kitchen and associated equipment and counter. The extension is located below an existing roof to the rear (east) of the property.

## **9.0 Statutory Provisions**

### **8.1 Planning and Development Act 2000 (as amended)**

#### 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.

### Section 82

Development in Architectural Conservation Areas (notwithstanding the provisions of Section 4 (1) (a) (h) (j) (K0 or (l) or any regulations made under Section 4(2) (J0), the carrying out of works to the exterior of a structure located within an Architectural Conservation Area shall be exempted development only if these works would not materially affect the character of the area.

## 8.2 **Planning and Development Regulations, 2001 (as amended)**

### 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,

## **10.0 Assessment**

### **9.1 Introduction**

The Scope of the Referral:

This referral relates to whether replacement signage on the street façade is or is not exempted development and whether the current use as a licensed café/restaurant is or is not a material change of use from that permitted under

Planning Authority reference number TP12/35314 and TP 13/35544 at Number 53 North Main Street, Cork. In the submission to the Board, the client expressly references the layouts permitted under Planning Authority reference numbers TP12/35314 and TP13/35544 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 plans and particulars 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 “The Vicarstown Bar and the Black Dog Saloon & Mezcaleria 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 external signage and the use(s) of the permitted licensed premises at number 53 North Main Street, Cork. The erection of replacement signage and a material change of use may reasonably be determined to be actions 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, these 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 street 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 relatively 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 small service kitchen (approximate dimensions of 1.5 metres long by 1 metre deep) at the end of the bar area. An area which was previously permitted as a prep kitchen area is now a cooled fridge area that serves both numbers 52 and 53, an external roofed service kitchen within the outdoor smoking area to the rear (pre-covid 19 era) is now an external seating area (post covid-19 era) and the erection of replacement signage in the form of bill board signage which is lit by red neon tubular lighting. .

The Board should note that the area immediately between the 'Licensed Café' bar counter area before the ladies toilets comprises a cold store, shared between the two premises.

#### *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 service kitchen' at the end of the bar area, there is no other kitchen facility and no associated food preparation area. At the time of my site inspection, there was no evidence of any cooking or baking, taking place on this premises. No. 53 Main Street presents itself as a bar. It was confirmed in the submission on behalf of the clients that some of the food preparation takes place in a sister licensed premises, in the adjacent Cornmarket area. Internally number 53 operates as an entirely separate commercial unit from the Vicarstown Bar. There is no café or restaurant in formal presentation at No. 53, with only five small rectangular tables (that would serve two persons each) within the internal area of the premises, albeit that food in the form of cakes, hot beverages, tacos, quesidallas, sandwiches and chilli is advertised as being available to purchase on site.

#### *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 a retail use to use as a licensed café/restaurant, while the latter did not relate to any change of use. The Board will note that the change of use application related to number 53 which was a former meat market (retail shop) and that Vicarstown Bar was already an established public house at that time.

It is evident that while the two planning applications made reference to Numbers 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 for 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 number 53 to function as an independent public house or as an extension to the Vicarstown Bar. The further development of number 53 under planning authority reference number 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 number 53 as a public house, with an ancillary use arising from the existence an ancillary modest service kitchen area at the end of the public bar area, 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 permission 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 replacement external signage has been erected since the granting of planning permission under P.A. Ref. 13/35544. This signage comprises a billboard type sign which includes individual lettering that can be altered. This sign is illuminated by a red neon illumination through the individual lettering. North Main Street is an Architectural Conservation Area, numbers 52 and 53 North Main Street are included within the National Inventory of Architectural Heritage and number 52 is identified as a protected structure within the Cork City Development Plan 2015.

Objective 9.28 of the Development Plan is that "The City Council as planning authority aims to protect structures of built heritage interest.

Chapter 16, Part F deals with Shop Fronts and Commercial Facades.

Chapter 16, Part H, deals with the issue of advertising signs. Section 16.119 specifically addresses fascia signage and illuminative and projecting signs where it states: As a general principle fascia signs and projecting signs should be simple in design, not excessive in illumination nor size. The following basic guidelines will be applied in assessing planning applications:

- The City Council will aim to reduce visual clutter and control the number of signs and advertising that are displayed,
- Plastic derived fascia's with product advertising will not be permitted,
- Projecting signs should be of 2.4 metre clearance above street level,

- Internally illuminated fascia's will not be permitted,
- Internally illuminated signs shall be restricted,
- The design of illuminated signage should be sympathetic to the building on which it is to be displayed,
- An over-riding principle is the avoidance of visual clutter and an improvement on the quality of the commercial character of the city.

I am not satisfied that the current signage is in accordance with the planning permission TP13/35544. Although, not explicitly mentioned within the development description, signage is included within the elevation plans. Although not particularly well detailed drawings, it is apparent that the current signage is materially different from that included on the drawings under TP13/35544, in that horizontal font breaks have been introduced within a retro-style bill board type sign with neon tubular lighting used to illuminate the BDSM lettering above the bill board sign. These changes are considered to be materially different from those included within the 2013 planning permission and would, therefore, require planning permission.

Neither is the signage considered sympathetic to the building on which it is displayed nor sympathetic to the wider Architectural Conservation Area and especially given that the structure is also included within the NIAH and the specific objective of the Council is to protect buildings of architectural interest. The signage displayed on the frontage of number 53 is not considered appropriate given the sensitive built environment which is subject to statutory protection.

In terms of the use of number 53. From the site inspections conducted in June and July 2020 as well as the inspection by the inspector in October 2019 the intern of number 53 presents as a public house with some ancillary café/restaurant element. The length of the counter area assigned to the public house element is approximately seven metres long, the length of counter area

assigned to the cafe/restaurant is approximately one and a half metres long. The bar area includes several beer taps along the extensive bar counter area which has been extended towards the street frontage from the drawings submitted under TP/13/35544. There is also an extensive range of spirits available to purchase as these are set out behind the counter area and stacked high on the wall as far as the ceiling. While it is accepted that there is an element of hot beverages and food served on the premises, the preparation of food on site is stated as being on a small scale, and it is also noted that a considerable number of tables which would have served the café/restaurant and which were included within the floor plans as presented under TP/13/35544 have been removed and replaced by public house bar counter area. The existing permitted use within number 53 is as a licensed café/restaurant, and while there is an element of this use on site, this element of café/restaurant use is considered to be ancillary to the public house/bar use. As per the provisions of Schedule 2, Class 14 of the Planning and Development Regulations 2001 (as amended) the use of a café/restaurant falls within a different use class to use as a public house. Therefore, it is considered that a material change of use has occurred within number 53, which is development and is not exempted development.

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 the replacement external signage is development or is not exempted development and whether a material change of use of the existing licensed café/restaurant has occurred at number 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 Cork City Council. on the 2nd day of March, 2020:

**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 number 53 North Main Street, Cork, in the form of replacement signage and whether a material change of use has occurred, whether these alterations constitute ‘development’ for the purposes of the Planning and Development Act
- (b) 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

- (c) 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 replacement signage alterations in the form of a red neon lit billboard sign, on the street front of the permitted licensed premises at number 53 North Main Street, Cork constitute development, and development that is not exempted development.

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Fergal O'Bric

Planning Inspectorate

31<sup>st</sup> July, 2020.