



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312409-22

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<b>Development</b>	Retention permission for change of use from electrical warehouse to Café with take-away facilities.
<b>Location</b>	Unit 14, Block 3, Ballyboggan Business Centre, Dublin 11 D11 AK80
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	2464/21
<b>Applicant(s)</b>	The Local Café Limited
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Café 53
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19 <sup>th</sup> February 2022
<b>Inspector</b>	Máire Daly

## 1.0 Site Location and Description

- 1.1. The subject unit for which retention of change of use is sought has a stated area of 144sqm and currently operates as a café/takeway called 'The Local' located in Unit no.14 of Block 3 of the Ballyboggan Business Centre which is c.80m south of the Tolka River Park and 100m north of the Royal Canal in north Dublin City.
- 1.2. The site is accessed off the Ballyboggan Road, via an internal industrial estate road and is surrounded by similar industrial/commercial units, with two similar blocks (Block 1 and 2) located to the south. In total 3 no. two-storey units are located in Block 3 – units no. 13-16. A footpath runs along the front of the building and the unit is accessed off same. The unit has a total width of c.9m and the structure has a depth of approximately the same. A takeaway counter is open to the elements to the front of the building, with a small hatch access to the main kitchen prep area behind. This takeaway element also incorporates a roller shutter. The ground floor is comprised mainly of this takeaway element and the kitchen area. The first floor contains a seating area of c.60 sq m. Two circular non-illuminated signs denoting the name of the café 'The Local' are located at ground floor and first floor level on the front elevation of the unit. A 'Takeaway' sign is located above the open element of the front elevation.
- 1.3. Car parking is located to the front (south) of the subject unit which is shared with the other units including a unit in use as a gym/fitness centre to the east. An auto repair, sales and tyre garage are located to the rear (north) of Block 3 with access directly off the internal estate road. Ballyboggan Business Centre which is comprised of warehouse/commercial buildings is located to the immediate east and accessed off the same internal estate road. The extended area to the east is mainly commercial/industrial estate in nature, with the area to the southwest and north west comprised of housing estates, separated from the industrial/commercial elements by the R805 regional road.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the retention of the following:

- Change of use from electrical warehouse, reception, office's and canteen area to a café (c.144sqm) incorporating kitchen area at ground floor level, small take away counter at ground floor level to front of unit and seating area at first floor level for café customer's only;
- Take away facility which is part of the overall change of use at ground floor of unit; and
- Retention of opening times of café - Monday to Thursday 8.30am until 5pm, Friday and Saturday 8.30am until 10pm inclusive.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. The planning authority granted permission subject to 7 conditions, most of which were standard in nature apart from the following Conditions no.2 and 3 as follows:

2. *Within 8 weeks of the final grant of retention of planning permission the applicant shall submit the following details for the written agreement of the planning authority:*

*Details of cleansing / anti-litter measures which shall include the maintenance of a suitable bin outside the premises during hours of business; and*

*Details of adequate ventilation of the kitchen area.*

**Reason:** *In the interest of orderly development*

3. *The premises shall not open or operate before 8.30am or after 17.00 hours daily Monday to Thursday and shall not open or operate before 8.30am or after 19.00 hours on Friday and Saturday.*

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

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

3.2.2. The initial report of the Planning Officer states that although 'takeaways' aren't specifically listed as uses that are permissible or open for consideration under Z6

zoning, Section 14.4 of the Development Plan does not preclude this use either in this zone. They also note the objections received and raise concerns regarding the operating hours of the takeaway, compliance with Section 16.25 of the Development Plan regarding over saturation of cafes in the local area, waste storage facilities, litter control and ventilation. Further information was therefore recommended.

3.2.3. A second report, subsequent to the submission of a response to further information, notes that satisfactory responses have been received regarding the number of existing and permitted cafes/takeaways in a 1 km radius and hours of operation. The Planning Officer notes the proposed changes to the hours of operation for the takeaway element which now correspond with the main café i.e. 8:30am to 17:00 Monday to Thursday and 8:30 to 19:00 on Friday and Saturday. Regarding waste management the Planning Officer states that conditions requiring an anti-litter plan and also details of adequate ventilation should be attached as part of any grant of permission.

#### 3.2.4. **Other Technical Reports**

- Drainage Division – DCC – Report dated 15<sup>th</sup> April 2021 - no objection subject to standard conditions.

#### 3.3. **Prescribed Bodies**

- Transport infrastructure Ireland (TII) – Correspondence dated 13<sup>th</sup> April 2021 which stated that they had no objection, subject to condition relating to a contribution to the Section 49 Levy scheme for Light Rail, if applicable.

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

3.4.1. One third party submission was received from an agent acting on behalf of the owners of Café 53, which is located on the Lee Road, c. 1.25km southwest of the appeal site. The issues raised are generally similar to those referenced in the grounds of appeal. These include:

- Concerns relating to the lack of staff/customer car parking in proximity to the cafe.
- The oversaturation of cafes takeaways in the local area; and

- The lack of appropriate bathroom facilities.

## 4.0 Planning History

- 4.1. No recent relevant planning history.
- 4.2. Enforcement Case – Dublin City Council Ref: EO968/20 – case opened in December 2020 – Café in operation without planning permission.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The operative development plan is the Dublin City Development Plan 2016-2022. The appeal site has a zoning objective Z6 '*to provide for the creation and protection of enterprise and facilitate opportunities for employment creation*'. The following Sections of the plan are relevant:

- 5.1.2. **Section 14.8.6** - Employment/Enterprise – Zone Z6. Use such as a restaurant is compatible with Zoning Objective Z6 and is a permissible use. However, the takeaway element is not permissible or open for consideration within the zoning. In this regard Section 14.4 of the plan states that uses not listed under the 'permissible' or 'open for consideration' categories are deemed not to be permissible in principle in zones Z1, Z2, Z8, Z9, Z11 and Z15, while other uses may be dealt with in accordance with the overall policies and objectives in this plan.

Therefore, the planning authority or in this case the Board would not be precluded in principle from granting permission subject to compliance with the other policies in the plan.

- 5.1.3. **Section 16.25 Takeaways** - it is the objective of Dublin City Council to prevent an excessive concentration of take-aways and to ensure that the intensity of any proposed take-away is in keeping with both the scale of the building and the pattern of development in the area.

This section lists considerations to be taken into account when assessing proposed takeaway developments.

5.1.4. **Section 16.29 Restaurants** – states that in considering applications for restaurants, the following will be taken into consideration:

- The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents.
- Traffic considerations.
- Waste storage facilities .
- The number/frequency of restaurants and other retail services in the area .
- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.

## 5.2. **Natural Heritage Designations**

- The Royal Canal Proposed Natural Heritage Areas (pNHA) (Site Code: 002103) is located c.100m south of the subject site.

## 5.3. **EIA Screening**

5.3.1. The proposal does not involve a class of development for which EIAR is required.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

6.1.1. The grounds of appeal are submitted by Studio D Architects on behalf of the owners of Café 53, Lee Road, Dublin 11. The main points made can be summarised as follows:

- Customer seating internally - no detail has been submitted on seating to be provided internally at first floor level.
- Access to universal WC facilities for customers - The only wheelchair accessible toilet appears to be at the back of the kitchen preparation area which is not accessible to customers.
- Health and Safety and Fire Safety concerns – while not a planning issue – can the building comply with building and fire regulations.

- Car Parking - Concerns regarding adequate parking to serve café. It appears that external seating is being provided in car parking spaces to the front of the cafe. These have not been noted on the submitted drawings. The Development Plan standard of 1 car space per 150sqm of seating area is perilous and will result in disturbance and inconvenience to other units in the industrial estate including parking on the main roads leading into the estate.
- Oversaturation of cafes/takeaways in the local area - The submitted further information did not include the requested map showing the number of existing and permitted take away/restaurants within a 1km radius of the site. The list also did not include certain cafes at both 1.1km and 1.5km.
- Signage - the local cafe is advertised abundantly in the local area with very large freestanding signs and banners attached to railings facing public areas. This additional signage was not noted in the Planning Officer's reports.

## 6.2. Applicant's Response

6.2.1. The applicant responded to the issues raised in the appeal as follows:

- No seating plan was shown on the submitted drawing as no alterations took place to that of the previous canteen that was in place before the current owner took over the premises:
- Health/Safety/Fire – These are not planning issues as such and would require compliance under separate regulations.
- The works to the premises were carried out prior to retention being sought, however if the Board require further works to be carried out to ensure access is possible to the wheelchair toilet, then this can be arranged. Currently the owner of Unit 13 has stated that the applicant and their customers can use their facilities if necessary.
- The external seating was used during the Covid pandemic, and the applicant hopes again to use this area during the summer for outdoor seating, however if the Board requires these be removed then the applicant will comply or apply for further permission as necessary.

- Approximately 14 staff are employed in the business, most of whom are family members and therefore drop off and picks up are normally arranged and only one space is frequently required for staff (i.e. for the applicant). In addition the owners of Units 13 and 15 have also agreed to allow the applicant to use their allocated car parking spaces if necessary.
- While noted that a map was not submitted in response to further information, a list of cafes/takeaways within a 1 km radius of the site was submitted to the planning authority as this was considered sufficient and as per the requirements of the plan. The additional two cafes outside of the 1km radius were given for reference only and were not strictly required by the planning authority.
- The signage referred to by the appellant is attached to the railing's and on the main road and if the Board agree that planning permission is required a new planning application for retention can be made. If the Board requires removal of same this can also be done.

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

- 6.3.1. The response received states that the Planning Authority confirms its decision and that the issues raised in the appeal have been covered in the planner's report.

## **7.0 Assessment**

- 7.1. I consider that the main issues in the assessment of this appeal are as follows:

- Principle of Development
- Takeaway Element
- Car Parking and Traffic
- Opening Hours
- Other Matters
- Appropriate Assessment – Screening



## 7.2. Principle of Development

- 7.2.1. The proposed development is located in an area zoned Z6 *'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation'*. A restaurant is permissible under the Z6 zoning, however I note that a 'Take away' has a different definition to restaurant/ café in the Development Plan and is not listed as being permissible or open for consideration under the Z6 zoning. Section 14.4 of the Development Plan notes that Uses not listed under the 'permissible' or 'open for consideration' categories will be deemed not to be permissible uses in principle in zones Z1, Z2, Z8, Z9, Z11 and Z15. As the Z6 zone is not included in the preceding list, it is considered that the take-away use can be considered. Therefore, the principle of development is considered acceptable, subject to the detailed considerations below.

## 7.3. Takeaway Element

- 7.3.1. The application for retention relates to two separate but connected uses (café/ restaurant and take-away). These uses are separately defined and have separate associated sections under the Development Plan, namely Section 16.25 which relates to take-aways and Section 16.29 which relates to cafes. In particular Section 16.25 Takeaways seeks to prevent an excessive concentration of take-aways and to ensure that the intensity of any proposed take-away in local areas particularly in close proximity to school is managed appropriately. The applicant sought to address this particular issue in their response to the request for further information to the planning authority where they listed the location of permitted and existing take-away restaurants within a 1 km radius of the subject site. They have also listed two other cafes (including the appellant's premises) which are outside of the 1km radius. The appellant argues that the applicant did not fully list the extent of premises outside of the 1km radius, however I note that Section 16.25 does not require this. I note that the nearest school, which is located on the Ratoath Road is located a distance of approx. 500m which is considered a sufficient distance as not to be considered within close proximity.

## 7.4. Car Parking and Signage

- 7.4.1. The appeal submission raises concerns in relation to the adequacy of car parking provision on site and also the traffic impact that lack of same may have on the

surrounding units and estate, as well as pedestrian and customer safety. On site visit it was noted that Unit 14 currently has two allocated car spaces which are located to the immediate south of the building. The space to the front (south) of the 'takeaway' counter is marked as a clearway currently and facilitates waiting customers. Table 16.1 of the Development Plan sets out the 'Maximum Car Parking Standards for Various Land-Uses', according to these standards given the current site's location in Zone 2 of Map J of the Plan 'Restaurants, Cafés and Take-away' uses require 1 car space per 150 sq.m seating area. According to the submitted plans the first-floor seating area for which retention is sought measures approx. 60sq m, therefore the provision of 2 no. car spaces is considered sufficient. However, on site visit I noted that the two allocated spaces currently host two picnic benches which facilitate outdoor seating. Although I note the appellant in their appeal response has given justification for this outdoor seating arrangement, given Covid social distancing requirements, I do not consider the use of these car spaces for this seating appropriate. The removal of this associated seating can be addressed by way of condition.

- 7.4.2. I note the appellant's concerns regarding signage associated with the café (facing onto the Ballyboggan Road). However, this signage is located outside of the delineated site boundary and therefore cannot be considered as part of this appeal. The matter of enforcement falls under the jurisdiction of the planning authority.

## **7.5. Opening Hours**

- 7.5.1. In response to the Planning Authority's request for further information where they sought clarity regarding the proposed takeaway opening hours, the applicant's response stated that while they originally sought to open the takeaway until 10pm on Fridays and Saturdays (as advertised in site notices), under revised proposals they now seek to keep the takeaway element opening hours in line with the café hours. The opening hours proposed are therefore 8:30am to 5pm Monday to Thursday and 8:30am to 7pm on Fridays and Saturdays. The revised hours of operation are considered to be acceptable, and these can be imposed by way of condition.

## **7.6. Other Matters**

- 7.6.1. I note the appellant's concerns in relation to customer seating, access to universal WC facilities and compliance with health and safety and fire standards.

- 7.6.2. Regarding customer seating and the concerns raised, I note that the applicant has stated in their response to the appeal that this area at first floor level has not been altered from its previous layout as a staff canteen, as used by the previous company that occupied the premises. Although I note that no definitive plans regarding seating arrangements at first floor level were submitted, given that an area of c.60sq m is provided, I see no problem with providing adequate seating for customers, regardless of the layout. As discussed previously in terms of car parking the required standards in compliance with the Development Plan have been met and therefore, I am satisfied with that no additional parking is required regardless of the amount of indoor seating provided.
- 7.6.3. The applicant seeks retention for the change of use of the premises from that of a workshop (ground floor) and open plan office (first floor) to a café and takeaway. They have in general kept the original layout and the WC arrangements in relation to same. The appellant raises concerns with the location of the ground floor disabled toilet and accessibility of same. The applicant in response has stated that they can alter the arrangement of the ground floor to ensure access to this toilet but in any case that the owner of Unit 13 has granted the applicant access and use of their ground floor accessible toilet. I do not consider the use of the adjoining unit's facilities appropriate and note that Part M of the Building Regulations sets out standards to ensure that buildings are accessible and usable by everyone, including the aged, people with disabilities and people with children. However, I note that the issue of compliance with Building Regulations, Health and Safety and Fire Regulations will be evaluated under a separate legal codes and thus need not concern the Board for the purposes of this appeal.
- 7.6.4. Having examined the submitted further information the Planning Officer stated that concerns regarding the provision of adequate ventilation within the existing café unit remained and therefore attached a condition to address same. However, having examined the submitted further information I note that the submitted invoice received from the supplier 'Electric Maintenance Company Ltd.' includes for a 'Plate fan' which I am satisfied would adequately address the ventilation requirements of the cafe and therefore I do not consider a specific condition requiring additional information on this matter is required.

7.6.5. While I note the applicant has provided details of waste storage and collection/disposal measures for the waste generated from the commercial element on site and invoice evidence of same showing pick-up costs of said bins, I would agree with the Planning Officer that this does not adequately address the litter facility provisions for patrons, therefore if the Board are minded to grant permission, I would suggest that details of anti-litter measures and provision of bins for patrons should be submitted to the planning authority for agreement, this can be addressed by way of condition.

## **7.7. Appropriate Assessment - Screening**

7.7.1. Having regard to the modest nature and scale of the development for which retention is sought and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on any European site.

## **8.0 Recommendation**

8.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

## **9.0 Reasons and Considerations**

9.1. Having regard to the nature and scale of the development for which retention is sought and the pattern of development in the area, it is considered, subject to compliance with the conditions set out below, that the development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would constitute an acceptable use at this location. Therefore, the proposed development would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out, retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 9th day of November 2021, 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, retained and completed in accordance with the agreed particulars.

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

2. The hours of operation shall be between 0830 hours and 1700 hours Monday to Thursday and 0830 hours and 1900 hours Friday and Saturday.

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

3. The existing outdoor seating associated with the premises which is located in the car spaces to the front (south) of Unit 14 shall be removed within one month of the date of this order.

**Reason:** To ensure that adequate off-street parking provision is available to serve the proposed development.

4. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority within one month of the date of this order. This scheme shall include the provision of litter bins and refuse storage facilities.

**Reason:** In the interest of visual amenity

5. Notwithstanding the provisions of the Planning and Development Regulations 2001, as amended, or any statutory provision amending or replacing them, other than that indicated on the drawing number 210003/P/002, received by the planning authority on the 25th day of May 2021, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

**Reason:** To protect the visual amenities of the area.

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

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

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Máire Daly  
Planning Inspector

20<sup>th</sup> February 2022