



An  
Bord  
Pleanála

## Inspector's Report ABP-316016-23

### Questions

1. Whether the repurposed shipping container used as The Tram Café is or is not development or is or is not exempted development.
2. Whether the outdoor seating area and public toilets is or is not development or is or is not exempted development.
3. Whether the connections (water, electricity, etc.) is or is not development or is or is not exempted development.
4. Whether the signage is or is not development or is or is not exempted development.

### Location

The Tram Café, Clonmel Street,  
Dublin 2.

### Declaration

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

0014/23

Planning Authority Decision

Would constitute development and would be exempted development.

**Referral**

**Referred by**

Tom Phillips, Tom Phillips and Associates

**Landowner**

Office of City Recovery, Dublin City Council

**Occupier**

Dave Fitzpatrick

**Date of Site Inspection**

21<sup>st</sup> December 2023

**Inspector**

John Duffy

## Contents

|   |     |
|---|-----|
| 1.0 Site Location and Description .....                         | 4   |
| 2.0 The Questions .....   | 4   |
| 3.0 Planning Authority Declaration.....                         | 5   |
| 3.1. Background.....  | 5   |
| 3.2 Declaration.....  | 5   |
| 4.0 Planning History.....                                       | 6   |
| 5.0 Policy Context.....   | 6   |
| 5.1. Development Plan.....                                      | 6   |
| 5.2 Natural Heritage designations.....                          | 9   |
| 6.0 The Referral.....   | 9   |
| 6.1. Referrer's Case .....                                      | 9   |
| 6.2. Planning Authority response .....                          | 10  |
| 7.0 Statutory Provisions.....                                   | 11  |
| 7.1. Planning and Development Act, 2000 as amended .....        | 11  |
| 7.2. Planning and Development Regulations, 2001 as amended..... | 133 |
| 8.0 Assessment.....   | 18  |
| 9.0 Recommendation.....   | 21  |

## 1.0 Site Location and Description

- 1.1. The Tram Café operates from a repurposed shipping container located on 2 no. loading bays, no longer used for that purpose, on the southern side of Clonmel Street, Dublin 2, proximate to its junction with Harcourt Street.
- 1.2. Clonmel Street is a cul-de-sac however there is pedestrian access from it through the Iveagh Gardens to the east and beyond to Hatch Street and Earlsfort Terrace. There are a small number of office blocks on Clonmel Street as well as a Dublin Bikes Station on the northern side of the street, opposite The Tram Café.
- 1.3. The re-purposed shipping container is clad in timber and there are planter beds along its periphery. There are toilets provided at the eastern end of the café that have the benefit of ramped access from the public footpath, which runs immediately south of the cafe.
- 1.4. Seating is provided at both the western and eastern sides of the café. A stand-alone seating structure located at the western end, near to the junction of Clonmel Street with Harcourt Street is finished in similar timber cladding with planting. The timber clad seating located at the eastern end of the cafe is part of the overall repurposed structure.
- 1.5. A number of signage elements are attached to the café structure, including a menu board on its front elevation. On the day of the site inspection there was no freestanding sign in place.

## 2.0 The Questions

- 2.1. A number of questions have arisen pursuant to Section 5 of the Planning and Development Act 2000 as amended, as follows:
  - (i) Whether the repurposed shipping container utilised as a tea / coffee take away counter (selling tea and coffee and associated goods) is or is not

development or is or is not exempted development within the meaning of the Act.

- (ii) Whether the outdoor seating area and public toilets utilised as ancillary elements for The Tram Café is or is not development or is or is not exempted development within the meaning of the Act.
- (iii) Whether the connections (water, electricity, etc.) is or is not development or is or is not exempted development within the meaning of the Act.
- (iv) Whether the associated signage and advertising associated with The Tram Café is or is not development or is or is not exempted development within the meaning of the Act.

### **3.0 Planning Authority Declaration**

#### **3.1. Background**

The report of the Planning Officer indicates that the developer of The Tram Café is The City Recovery Task Force and refers to a letter received from the Office of City Recovery providing the background to the matter. An open tender process was initiated in April 2021 seeking proposals for provision of retail units with integrated toilet facilities in the City Council's administrative area on a temporary 3-year basis with an option to renew for a further 2 years. The tender was appropriately advertised on the e-tenders platform.

The report notes that a tender was subsequently received for the installation of a coffee retail unit with integrated public facilities at Clonmel Street and it was accepted in the summer of 2021. Following delays associated with installation of required utility services, the café/toilet unit was installed in October 2022 and is in use since then. The toilets are to be available for use during the operational hours of the café. A letter of consent to locate the integrated café/toilet unit on the public road

was issued to the café operator by Dublin City Council under section 71 of the Roads Act 1993.

### **3.2. Declaration**

Dublin City Council, in accordance with Section 5 of the Planning and Development Act 2000 as amended, considered that the works as described would constitute development and would be exempted development.

The order stated:

‘On the basis of the available information, and for the reasons and considerations set out in the above report, and having regard to the relevant legislation cited above, the proposal as described is development, exempt under Section 4(1)f and 4(1)h of the Planning and Development Act (2000) as amended from the general obligation to obtain planning permission under Section 32 of the Planning and Development Act 2000 as amended).

Under Section 179 of the same act, and Article 80 of the Planning and Development Regulations (2001) as amended, it falls outside the remit of Part 8 of those regulations.’

## **4.0 Planning History**

### **4.1. Site History**

There is no planning history pertaining to the referral site.

### **4.2. Previous Board References/ Referrals**

Nothing of direct relevance to this case was found on the database.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. Under the Dublin City Development Plan 2022 – 2028, the subject site which is located on Clonmel Street is not zoned (see Map E). Development along Clonmel Street and other adjoining streets is zoned Z8 – ‘Georgian Conservation Areas’ with

the objective 'To protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.'

- 5.1.2. An associated red hatched area indicated to the south and west of Clonmel Street on Map E denotes 'Conservation Area.' As such *Policy BHA9 Conservation Areas* is relevant and states the following:

*To protect the special interest and character of all Dublin's Conservation Areas – identified under Z8 and Z2 zoning objectives and denoted by red line conservation hatching on the zoning maps. Development within or affecting a Conservation Area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.*

*Enhancement opportunities may include:*

- 1. Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting.*
- 2. Re-instatement of missing architectural detail or important features.*
- 3. Improvement of open spaces and the wider public realm and reinstatement of historic routes and characteristic plot patterns.*
- 4. Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area.*
- 5. The repair and retention of shop and pub fronts of architectural interest.*
- 6. Retention of buildings and features that contribute to the overall character and integrity of the Conservation Area.*
- 7. The return of buildings to residential use.*

*Changes of use will be acceptable where in compliance with the zoning objectives and where they make a positive contribution to the character, function and appearance of the Conservation Area and its setting. The Council will consider the contribution of existing uses to the special interest of an area when assessing*

*change of use applications, and will promote compatible uses which ensure future long-term viability.*

5.1.3. Other relevant policies include:

*Objective CCUVO20 – Civic Amenities*

- (i) To work with city business associations and agencies to provide for appropriately located, independently accessible sanitary facilities (public toilets, changing areas, showers and wash facilities etc.) for the use of citizens and visitors to the city and accessible to all.*
- (ii) (ii) To provide civic amenities such as accessible public toilet facilities and drinking water at suitable locations in new or redeveloped public realm.*
- (iii) (iii) To provide public seating based on universal design in appropriate locations in the public realm in the city. Seating for older people with mobility issues will be based on international models of good practice.*

*Policy CCUV30 – Cafes / Restaurants*

*To promote and facilitate the provision of cafés / restaurants in the city and support their role in making the city more attractive for residents, workers, and visitors and in creating employment.*

14.3.2 *Unzoned lands*

*Certain small areas of land within the city are unzoned or not covered by a specific zoning objective. These lands are illustrated in white on the zoning maps accompanying the plan and usually correspond with the location of the city's roads, bridges, train lines, or other key infrastructure installations. Development proposals in respect of these unzoned lands will be considered in accordance with the policies and objectives of the plan. Regard will also be had to their compatibility with adjacent land-uses and zonings.*



## 5.2. Natural Heritage Designations

None.

## 6.0 The Referral

### 6.1. Referrer's Case

Tom Phillips of Tom Phillips and Associates Town Planning Consultants has appealed the declaration decision of Dublin City Council.

The following points are made:

- It is unclear from the declaration how or why the planning authority arrived at its conclusions.
- During the summer months large crowds convene on the Iveagh Gardens for events such as concerts, food festivals, comedy gigs, etc. It is unclear how the bottlenecks created by The Tram Café, particularly by the access ramp to the toilets, is to be mitigated.
- The addition of the ramp to the toilets narrows the footpath and impedes permeability to all users of the Iveagh Gardens and employees of nearby office developments. It is uncertain whether the ramp complies with the appropriate regulations.
- The loading bays occupied by The Tram Café would under normal circumstances be used by delivery drivers/couriers associated with the nearby office developments.
- The planting beds associated with the development have been used by passers-by for dumping rubbish (photos included). Concern raised how the planting features function during the summertime events.
- The seating areas are primarily used by smokers who discard cigarette butts littering the immediate area. Descriptions along with photographs of the outdoor seating facilities and the signage/advertising associated with The Tram Café are provided.
- The nature and placement of the repurposed shipping container operating as The Tram Café and the associated seating diminishes the visibility of road users

exiting Clonmel Street. The seating area blocks the view of drivers rendering it difficult to see pedestrians walking along Harcourt Street and crossing Clonmel Street.

- The same situation applies for the LUAS which runs along Harcourt Street. Cars must cross the LUAS track to merge onto Harcourt Street. The café and associated seating area diminishes the views for both parties. The opinion of a qualified traffic engineer is apparently absent. Reference is made to article 9(1)(a)(iii) of the Planning and Development Regulations 2001 as amended, relating to traffic hazard. In this context it is noted that placement of signage elements is a particular concern in terms of obstruction occurring in close proximity to the two-way LUAS line. Furthermore, a door at the rear of the Tram Café opens out onto Clonmel Street; no indication of this is given to users of vehicles.
- The Council has disregarded the fact that Clonmel Street is unzoned and arbitrarily attributes the objectives of a different zoning category to the subject site.
- There is no evidence that a qualified conservation architect assessed the development. This scenario would not likely be acceptable as part of a similar application made by a private citizen. There is no qualified opinion given which confirms that the development on unzoned lands is compatible with the adjacent land use zoning; this shows disregard for Section 14.3.2 of the Dublin City Development Plan 2022-2028.
- The repurposed shipping container in such a configuration of The Tram Café does not comply with or have regard to the context of the adjoining Georgian conservation area, and therefore it is unsuitable in this area.
- The Tram Café is unauthorised.
- The submission includes definitions deemed relevant, relating to the legislative context.

## 6.2. Planning Authority response

No response received.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000 as amended

#### Section 2(1) – Interpretation

The following are relevant to the subject questions:

**advertisement** means –

‘any word, letter, model, balloon, inflatable structure, kite, poster, notice, device or representation employed for the purpose of advertisement, announcement or direction’

**advertisement structure** means –

‘any structure which is a hoarding, scaffold, framework, pole, standard, device or sign (whether illuminated or not) and which is used or intended for use for exhibiting advertisements or any attachment to a building or structure used for advertising purposes’

**structure** means –

‘any building, structure, excavation or other thing constructed or made on, in or under any land, a part of any structure so defined and

(a) where the context so admits, includes the land on, in or under which the structure is situate and

(b) in relation to a protected structure or proposed protected structure includes

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraphs (i) or (iii)’

**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) - Development**

In the 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)** sets out development that is exempt from requiring planning permission.

**4(1)(f)** is relevant:

‘development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity’

**4(1)(g)** is relevant:

‘development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose’

**4(1)(h)** is relevant:

‘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 4(4) ‘Exempted development’**

‘Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.’

### **Part XI – Development by Local and State Authorities, etc.**

The following sections are relevant:

### **Section 178 (2) ‘Restrictions on development by certain local authorities’**

‘The council of a city shall not effect any development in the city which contravenes materially the development plan.’

### **Section 179 (1) ‘Local authority own development’**

‘(a) The Minister may prescribe a development, other than development to which *section 179A* applies, or a class of development for the purposes of this section where he or she is of the opinion that by reason of the likely size, nature or effect on the surroundings of such development or class of development there should, in relation to any such development or development belonging to such class of development, be compliance with the provisions of this section and regulations under this section.

(b) Where a local authority that is a planning authority proposes to carry out development, or development belonging to a class of development prescribed under *paragraph (a)* (hereafter in this section referred to as “proposed development”) it shall in relation to the proposed development comply with this section and any regulations under this section.

(d) This section shall also apply to proposed development which is carried out within the functional area of a local authority which is a planning authority, on behalf of, or in partnership with the local authority, pursuant to a contract with the local authority.’

## **7.2. Planning and Development Regulations, 2001 as amended**

### Article 6

‘(2) (a) Subject to article 9, development consisting of the use of a structure or other land for the exhibition of advertisements of a class specified in column 1 of Part 2 of Schedule 2 shall be exempted development for the purposes of the Act, provided that—

(i) such development complies with the conditions and limitations specified in column 2 of the said Part 2 opposite the mention of that class in the said column 1, and

(ii) the structure or other land shall not be used for the exhibition of any advertisement other than an advertisement of a class which is specified in column 1 of the said Part 2 and which complies with the conditions and limitations specified in column 2 of the said Part 2 opposite the mention of that class in the said column 1.

(b) Subject to article 9, development consisting of the erection of any advertisement structure for the exhibition of an advertisement of any one of the classes specified in column 1 of Part 2 of Schedule 2 shall be exempted development for the purposes of the Act, provided that—

(i) the area of such advertisement structure which is used for the exhibition of an advertisement does not exceed the area, if any, specified in column 2 of the said Part 2 opposite the mention of that class in the said column 1,

(ii) the advertisement structure is not used for the exhibition of advertisements other than advertisements of the class to which the exemption relates,

(iii) further to section 57 of the Act, the advertisement structure is not erected on a protected structure or a proposed protected structure save an advertisement structure referred to in Classes 5, 9 or 15 of column 1 of Part 2 of Schedule 2,

(iv) further to section 82 of the Act, the advertisement structure is not located on the exterior of a structure where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft development plan, so as to materially affect the character of the area, save an advertisement structure referred to in Classes 5, 9 or 15 of column 1 of Part 2 of Schedule 2, and

(v) where the advertisement structure is within a Gaeltacht area, any advertisement exhibited is— (I) in Irish, or (II) in Irish and other languages, with prominence given to the Irish text, and identical content in all versions of the text.’

## 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,

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

## **Schedule 2**

### **Part 2 – Exempted Development – Advertisements**

Description of Development

#### **Class 1**

‘Advertisements (other than those specified in classes 2, 3 or 5 of this Part of this Schedule) exhibited on business premises, wholly with reference to the business or other activity carried on or the goods or services provided on those premises.’

### **Conditions and Limitations**

1. The total area of such advertisements exhibited on or attached or affixed to the front of any building on the premises shall not exceed an area equal to 0.3 square metres for every metre length of such front, less the total area of any such advertisements exhibited on the premises but not exhibited on or attached or affixed to a building, and in any event shall not exceed 5 square metres.

2. The total area of such advertisements exhibited on or attached or affixed to any face of a building on the premises other than the front thereof shall not exceed 1.2 square metres and the total area of any such advertisements on such face which are illuminated shall not exceed 0.3 square metres.

3. The total area of such advertisements which are not exhibited on or attached or affixed to a building on the premises shall not exceed 3 square metres, of which not more than 1.5 square metres shall consist of advertisements which are illuminated.

4.(a) No part of any such advertisement which is not exhibited on or attached or affixed to a building on the premises, or of an advertisement structure on which it is exhibited, shall be more than 2.5 metres in height.

(b) No part of any such advertisement which is exhibited on or attached or affixed to a building on the premises shall be more than 4 metres in height above ground level.

5. Where any such advertisement projects more than 5 centimetres over any public road, the sign or other advertisement structure on which it is exhibited shall not be less than 2 metres above the level of such road and shall not project more than 1 metre over such road.



6. Where any such advertisement consists of a circular sign and projects more than 5 centimetres over any public road, the diameter of such sign shall not exceed 1 metre and no other such advertisement shall be exhibited on a sign or other advertisement structure projecting more than 5 centimetres over such road.

7. Where any one or more such advertisements are exhibited on a swinging or fixed sign or other advertisement structure (other than a circular sign) projecting more than 5 centimetres from any external face of a building, the total area of such advertisements shall not exceed 1.2 square metres and the area of any face of any such advertisement shall not exceed 0.4 square metres.

8. No such advertisement shall contain or consist of any symbol, emblem, model, logo or device exceeding 0.6 metres in height or any letter exceeding 0.3 metres in height.

9. No such advertisement shall cover any part of any window or door of any building on which the advertisement is exhibited or to which it is attached or affixed.

**Part 8 of the Planning and Development Regulations 2001 as amended  
'Requirements in respect of specified development by, on behalf of, or in  
partnership with local authorities'**

Article 80

Development prescribed for purposes of section 179 of the Act.

80. (1) Subject to sub-article (2) and sub-section (6) of section 179 of the Act, the following classes of development, hereafter in this Part referred to as "proposed development", are hereby prescribed for the purposes of section 179 of the Act —

(j) the construction or erection of a fire station, a library or a public toilet,

## 8.0 **Assessment**

It should be stated at the outset of this assessment, that the purpose of the referral is not to determine the acceptability or otherwise of the repurposed shipping container used as a tea/coffee take-away counter, the associated toilet, seating area, signage and utility connections in respect of the proper planning and sustainable development of the area, but rather whether or not the matters in question constitute development, and if so, fall within the scope of exempted development. Likewise, planning enforcement is a matter for the Planning Authority and does not fall within the jurisdiction of the Board.

### 8.1. **Is or is not development**

8.1.1. Having regard to Section 2(1) and Section 3(1) of the Planning and Development Act 2000 as amended, it is considered that the following elements constitute 'works' and 'development' within the meaning of the act;

- The repurposed shipping container utilised as a tea / coffee take-away counter (selling tea and coffee and associated goods), trading as The Tram Café.
- The toilets and seating area utilised as ancillary elements for The Tram Café.
- The associated signage and advertising in respect of The Tram Café.

8.1.2. I consider that the utility connections made in respect of The Tram Cafe, namely water and electricity connections, do not constitute 'works' or 'development' within the meaning of the Act. I note there are separate application processes in place outside of planning permission for connections to water services and electricity.

### 8.2. **Integrated café / toilet unit - Is or is not exempted development**

8.2.1. Having established that the 'works' undertaken amount to 'development,' the next issue to be considered is whether the development is exempted development or not. Development can be exempt from the requirement for planning permission by either Section 4 of the Planning and Development Act 2000 as amended, or by Article 6 of the Planning and Development Regulations 2001 as amended.

8.2.2. Section 4(1) of the Act defines certain types of development as being ‘exempted development.’ In this regard, section 4(1)(f) is relevant and states the following:

*(f) development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity;*

In terms of the above, the Board will note that that the works relate to lands which comprise part of a public road/footpath. It is clear from the information provided that Dublin City Council initiated an open tender process seeking proposals for parties to enter into a contract for the provision of retail units with integrated toilet facilities within its administrative area. In this instance, the process culminated in the installation of the coffee retail unit with integrated toilet facility in October 2022 at the referral site on Clonmel Street, Dublin 2. Dublin City Council has also confirmed that it issued a letter of consent to the operator to locate the integrated café/toilet unit on the public road pursuant to section 71 of the Roads Act 1993.

In terms of the requirement of section 4(1)(f) that a contract be entered into by the local authority, I consider this matter is satisfied by reason of the above, and I note that provision of the integrated unit is for a temporary period of 3 years with an option to renew for a further 2 years.

I am satisfied that the operator of The Tram Café carried out the development on behalf of, or jointly or in partnership with the local authority. In this regard, I consider that the development comprising the integrated café / toilet unit is exempted development under this section of the Act and that the restrictions on exemption, as indicated in section 4(4) of the Act, do not apply in this instance.

8.2.3. Section 178(2) of the Act notes that a city council shall not effect any development in the city which materially contravenes the Development Plan. As noted under Section 5 of this report above, Clonmel Street is not zoned and adjoining areas are subject to the Z8 – ‘Georgian Conservation Areas’ zoning, where ‘café/tearoom’ use is a permissible use. The toilets are ancillary to the café and I note it is the responsibility of the operator to manage and maintain the integrated café and toilet unit.

8.2.4. In my view the integrated café and toilet unit are compatible with the adjacent land-use and zonings. Furthermore, it is apparent that the development is in accordance

with Development Plan policies and objectives which support delivery of civic amenities across the city, some of which are set out under section 5 of this report.

- 8.2.5. Having regard to section 179 of the Act relating to local authority own development and also to the associated Article 80(1)(j) (under Part 8 of the Planning and Development Regulations 2001 as amended) relating to development for 'the construction or erection of a fire station, a library or a public toilet,' I concur with the planning authority's view that the toilet facilities provided are not public toilets as such in that they are not provided by the local authority, that they form part of an integrated café / toilet unit, with the toilets ancillary to the café and managed and maintained by the operator of the unit rather than by the local authority. As such I consider the development falls outside the scope of Part 8 of the 2001 Regulations, as amended.

### **8.3. Outdoor seats – Is or is not exempted development**

- 8.3.1. The timber clad seating provided at the eastern end of the unit forms part of the overall repurposed structure. A stand-alone timber clad seat sufficient to accommodate 2 persons is located at the western side of the café unit.

I consider that the seats which are clearly associated with and effectively part of the café unit also benefit from the exemption under section 4(1)(f) of the Act.

### **8.4. Signage – Is or is not exempted development**

- 8.4.1. A number of signage elements are attached to the café structure. These comprise one sign on each elevation displaying the text 'The Tram Café,' a menu board on the front/south elevation and another sign also on the front elevation denoting the location of the toilet facilities.
- 8.4.2. I consider that the signage affixed to the integrated café / toilet unit which is ancillary to the unit constitutes exempted development under section 4(1)(f) of the Act.
- 8.4.3. I note that the referrer refers to a freestanding sign located proximate to the unit, however on the day of the site inspection there was no freestanding sign in place. I note that there is an exemption for freestanding signs, subject to conditions and limitations, under Class 1 of Part 2 of Schedule 2 of the Planning and Development Regulations 2001 as amended.

## 8.5. Other matter

- 8.5.1. The referrer makes reference to Article 9(1)(a)(iii) of the Planning and Development Regulations 2001 as amended, relating to traffic hazard, in the context of signage and seating associated with The Tram Café potentially obstructing the views of drivers / road users at the junction of Clonmel Street and Harcourt Street, in close proximity to the LUAS line.
- 8.5.2. I note that Articles 9 and 10 are not relevant to development exempted under section 4(1) of the Planning and Development Act 2000 as amended. Section 4(1) is separate to and has primacy over the exempted development provisions of the Planning and Development Regulations 2001 as amended.

## 9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** questions have arisen as to:

- (a) Whether the repurposed shipping container utilised as a tea / coffee take away counter operating as The Tram Café (selling tea and coffee and associated goods) and the associated public toilets, is or is not development or is or is not exempted development,
- (b) Whether the outdoor seating areas ancillary to the café is or is not development or is or is not exempted development,
- (c) Whether the utility connections (electricity, water) to the café is or is not development or is or is not exempted development, and
- (d) Whether the café signage is or is not development or is or is not exempted development;

**AND WHEREAS** the said questions were referred to An Bord Pleanála by Tom Phillips of Tom Phillips and Associates on the 9<sup>th</sup> of March 2023;

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2(1), 3(1), 4(1)(f), 178(2) and 179 of the Planning and Development Act 2000, as amended,
- (b) the contract entered into by Dublin City Council and the operator for provision of the café unit with integrated toilet facilities,
- (c) the provisions of the Dublin City Development Plan 2022-2028, and
- (d) the pattern of development in the area;

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the repurposed shipping container operating as The Tram Café with a tea / coffee take away counter (selling tea and coffee and associated goods) and the associated public toilets is development and is exempted development,
- (b) the outdoor seating areas ancillary to the café is development and is exempted development,
- (c) the cafe signage is development and is exempted development, having regard to the nature of the development being works that the operator of the café carried out on behalf of, or jointly or in partnership with the local authority, the development comes within the scope of section 4(1)(f) of the Planning and Development Act 2000 as amended;
- (d) the utility connections (electricity, water) to the café is not development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Planning and Development Act as amended, hereby decides that the said development as set out at (a) to (c) inclusive, above, is development and is exempted development.

I confirm that the report represents my professional planning assessment, judgment and opinion on the matter assigned to me and that no person has

influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

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John Duffy  
Planning Inspector

11<sup>th</sup> January 2024