



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316236-23

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<b>Development</b>	Retention of coffee dock serving take-away refreshments and snacks, sewer connection and all associated site works.
<b>Location</b>	Ozzys Coffee Dock, Belmont, Rochestown, Cork
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	TP23/41730
<b>Applicant(s)</b>	Ozzy's Coffee Dock
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Grant Retention Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Stephen and Gemma Marshall
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	15 <sup>th</sup> March 2024

**Inspector**

John Duffy

## **1.0 Site Location and Description**

- 1.1. The appeal site which measures 0.0068 hectares is located on the northern side of a private walkway used by the public at Belmont, Rochestown, Co. Cork, and which leads to the Garryduff Woods, situated south-east of the site.
- 1.2. The site, which is accessed by way of a c 2.4 metre high double gate from the adjoining walkway is located between the end of a long rear garden of a derelict / disused single storey dwelling to the west of the site (which the applicant indicates has been used for a significant period of time as a builder's yard) and the rear private amenity spaces of 3 detached housing units to the east in Williams Court, one of which is the applicant's family home.
- 1.3. The appeal site containing a small shipping container (6 sqm) used as a café/coffee dock is enclosed by c 2.4m high fencing at its side and rear boundaries. On the day of the site visit the coffee dock was closed.
- 1.4. Lands accommodating a hockey pitch, tennis courts and Rochestown Educate Together National School are located opposite the appeal site, on the southern side of the walkway.

## **2.0 Proposed Development**

- 2.1. The proposal as set out in the public notices comprises the following:
  - Permission for retention of coffee dock serving take-away refreshments and snacks, sewer connection, and all associated works.

The café / coffee dock operating from the shipping container is c 2.6 m in height, c 2.4 m in width and c 2.8 m in depth.

The site plan indicates that foul water from the coffee unit is discharged into the existing foul water sewer connection.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a decision to grant retention permission on the 22<sup>nd</sup> of March 2023, subject to 8 no. conditions. Noteworthy conditions are as follows:

Condition 3: The proposed development site shall only be used as a café/coffee dock. No hot food takeaway shall be permitted.

Condition 4: The proposed development shall not be open to the public outside the hours of 08.00 to 19.00 Monday to Saturday inclusive, nor outside the hours of 08.00 to 18.00 Sundays or public holidays.

Condition 5: The applicant shall ensure the proposed development is serviced by a stormwater drain within the confines of the applicant's property boundary. No stormwater is to be disposed of onto a public road.

Condition 6: All stormwater from the proposed development to discharge to existing stormwater drains located within the site boundary.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report

The report of the Planning Officer dated 20<sup>th</sup> March 2023 reflects the decision to grant retention permission. The report includes the following comments regarding the proposal;

- The proposal is considered to accord with the objectives of the ZO 01 Sustainable Residential Neighbourhoods zoning which pertains to the site.
- The proposal does not detract from the primary objective of protecting residential amenity for the location.
- The proposal provides a welcome amenity to the users of the adjacent walkway.

#### 3.2.2. Other Technical Reports

Area Engineer: No objection subject to conditions, including Conditions 4 and 5 as set out above under Section 3.1.

Contributions Report: No objection subject to inclusion of a contribution condition.

### **3.3. Prescribed Bodies**

None received.

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

The Planning Officer's report refers to one submission made in relation to the proposal and provides a summary of the issues raised, as follows:

- Concerns regarding information and details submitted with the planning application
- Concern regarding the connections to services for the development proposed to be retained
- Concerns that the proposed development to be retained would lead to pollution
- Concerns that no details regarding waste disposal and cleaning have been submitted
- Concerns that the proposed development impacts on the residential amenities of the adjacent properties in the area
- Concerns that the development does not accord with the zoning of the site or with national or local guidance
- Concern that the development is contrary to the proper planning and sustainable development of the area

## **4.0 Planning History**

### **4.1 Subject site and adjoining lands**

Planning Authority Ref. 097904 – Permission granted in April 2010 for demolition of single storey dwelling, construction of 2 storey dwelling and associated site works. This permission was not implemented.

### **4.2 Site to east**

Planning Authority Ref. 134691 – Permission granted in June 2013 for 3 no. houses and associated works. This permission is implemented.

#### 4.3 **Adjoining lands to the north**

Planning Authority Ref. 2342029 – Retention permission refused in July 2023 for dog walking and dog day care centre located within former disused shed and builders' yard, provision of 5 no. kennels and WC attached to shed and fixed roadside signage, and permission to alter existing kennels to allow for provision of covered walkway and storage, provision of additional boundary fencing and all associated works. Refusal reason states, inter alia, that the proposal would constitute an inappropriate form of development, would seriously injure residential amenities, would depreciate the value of adjoining properties, and would be contrary to the zoning objective.

Planning Authority Ref. 2341731 – Retention permission refused in March 2023 for dog walking and dog day care centre located within disused existing shed and builders' yard, fixed signage, sewer connection and associated works. Refusal reason similar to that for Planning Authority Ref. 2342029.

### 5.0 **Policy Context**

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

5.1.1. The operative development plan is the Cork City Development Plan 2022-2028, under which the appeal site is zoned ZO 01 – Sustainable Residential Neighborhoods.

5.1.2. The following Development Plan policy is relevant to the proposal:

##### ZO 1.1

*.... The vision for sustainable residential development in Cork City is one of sustainable residential neighbourhoods where a range of residential accommodation, open space, local services and community facilities are available within easy reach of residents.*

##### ZO 1.2

*Development in this zone should generally respect the character and scale of the neighborhood in which it is situated. Development that does not support the primary objective of this zone will be resisted.*

#### ZO 1.3

*Primary uses in this zone include residential uses, crèches, schools, home-based economic activity, open space and places of public worship.*

#### ZO 1.4

*Uses that contribute to sustainable residential neighbourhoods are also acceptable in principle in this zone provided they do not detract from the primary objective of protecting residential amenity and do not conflict with other objectives of this Development Plan. Such uses include but are not limited to: small-scale local services including local convenience shops; community facilities; cultural facilities; hotels and hostels; live-work units; service stations (petrol filling stations); local medical services; third level education institutes; community based enterprise or social enterprises, health facilities including hospitals.*

#### Section 11.185 - Cafes / Restaurants

The positive contribution of cafés and restaurants and the clusters of such uses to the vitality of the City is recognised. The following shall be considered in assessing applications for cafés/restaurants:

1. The need to retain, protect and strengthen the vitality and multi-use function of designated centres;
2. The number/frequency of cafés / restaurants in the area;
3. The effect of noise, fumes, hours of operation, and general disturbance on nearby amenities and residents. Full details of any external extractor fans/vents and hours of operation of the development shall form part of a planning application;
4. Traffic implications including adequate and safe delivery areas;
5. Waste storage facilities;
6. Any proposed signage/advertising/lighting shall be suitable and unobtrusive.

#### Walkways

The laneway which runs immediately south of the appeal site is indicated as a Walkway on the Development Plan maps. Chapter 6 which includes information on Cork's Landscape notes that natural heritage and recreational assets are vitally important to the creation of an accessible city and that the Council will aim to create a network of natural heritage areas and recreational open / amenity spaces by promoting linkages and accessibility between such areas using walkways / cycleways to connect them where appropriate.

## **5.2. Natural Heritage Designations**

The development to be retained is not located within or immediately adjacent to any European site. The nearest European sites are Cork Harbour SPA and Great Island Channel SAC, located c 0.8 km north and c 4.5 km north-east respectively.

## **5.3. EIA Screening**

Having regard to the nature and type of development to be retained, it is considered that it does not fall within the classes listed in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 as amended, and as such preliminary examination or an environmental impact assessment is not required.

## **6.0 The Appeal**

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

The grounds of appeal may be summarised under the following headings, as follows:

Hours of operation

- Condition No. 4 of the Planning Authority's decision which relates to operational hours of the coffee dock / café to be retained allows for a significantly greater intensification of use for days and times which the applicants have not applied for and which were not advertised in the public notices or referred to in the planning application.



- The applicants' letter provided with the planning application clarified the operational times as Saturdays and Sundays only, 08.30-17.00, on the basis that these are the only viable dates to open the facility.
- The imposition of Condition No. 4 is not understood and may be an error. Request that permission be refused for the development as conditioned and that permission would not be granted for opening hours which were not sought.
- The conditions imposed do not reflect the permission sought and will give rise to loss in residential amenity in the area, including the appellant's home, east of the subject site.

#### Planning History

- The applicants assert that the lands to the west of the appellant's property are designated as commercial lands and have established commercial use. The Planning Authority's assessment has not had regard to the indicated use of the lands.
- Reference is made to the planning history of wider lands which include or adjoin the appeal site (specifically application references 09/7904 and 13/4691). The relevant planning reports for these applications makes no mention of any commercial use or activities on the lands. The planning report for application Ref.13/4691 notes the site is an undeveloped parcel of land between existing houses and comprises a residential property with a large rear garden and shed.
- Only residential use applies to the subject site. This is confirmed by successive zoning objectives in Development Plans and Local Area Plans.

#### Ownership of site and Validity of planning application

- The applicant's have declared they own the subject site and have an interest in adjoining lands. However, searches undertaken by the appellants indicate the subject site and adjoining lands are in the ownership of Mr. Jim Butler. No 'Letter of Comfort' permitting the applicants to apply for permission on the subject site has been submitted. Having regard to these circumstances it is considered that the application is invalid.

#### Other Matters

- Reference is made in the appeal to a planning application made by the applicants on an adjoining site for a facility to cater for dogs (Planning Authority Ref. 2341731 refers). Unsolicited correspondence received by the appellants' agent from one of the applicants on two occasions in March 2023 emphasises the commercial nature of the lands. The appellants are concerned that the information submitted during the planning process as also set out in the unsolicited correspondence seeks to regularise unauthorised uses and requests that such matters are assessed.
- Requests that the Board acknowledge there is no evidence of any uses on the lands other than those identified and permitted under previous applications, including the parent application Ref. 09/7904.
- Requests that the environmental consequences of unauthorised uses referred to in the appellant's submission to the Planning Authority dated 27<sup>th</sup> February 2023 are assessed.

The following supporting documentation is provided with the appeal submission:

- (i) Cover letter and Acknowledgement of appellant's submission to the Planning Authority in respect of Ref. 23/41730, dated 28<sup>th</sup> February 2023.
- (ii) A copy of the appellants submission made to the Planning Authority dated 27<sup>th</sup> February 2023.
- (iii) A copy of the applicants supporting letter submitted with the planning application.
- (iv) A copy of the Site Notice pertaining to the planning application.
- (v) A copy of the Planner's Report relating to Ref. 09/7904, dated 12<sup>th</sup> February 2010.
- (vi) A copy of the Site Location Map and Site Layout Plan relating to Ref. 09/7904.
- (vii) A partial copy of the Planner's Report relating to Ref. 13/04691.
- (viii) A copy of the Site Location and Layout Map relating to Ref. 13/04691.

- (ix) A solicitor's letter addressed to the appellants along with Land Registry information detailing the registered owner of lands relating to Folios 42354F and 55740
- (x) Email correspondence dated 24<sup>th</sup> March 2023 and 28<sup>th</sup> March 2023 from one of the applicants to the appellants agent.
- (xi) Notification of Decision relating to Ref. No. 23/41730.

## 6.2. Applicant's Response

The applicant's response to the appeal may be summarised as follows:

- The appeal is frivolous in nature.
- Confirms willingness to restrict operational hours to weekends and bank holidays only.
- The development provides refreshments for pedestrians who use the nearby Garryduff Woods; it does not generate any additional traffic. 90% of customers take away their purchases.
- The business is family run and backs onto the family home of the applicants.
- Permission was recently refused for the adjoining dog daycare facility. While the application for the café is distinct from that application and relates to a different operation, it is considered that the third party is treating both applications as one.
- The proposal has no impact on the appellants and is not proximate to their dwelling.
- The appellant's agent / engineer did not visit the subject site.
- The land is owned by the father of one of the applicant's who is a local builder. There is an existing unoccupied house located to the west of the landholding. At the end of the landholding there are 2 no. sheds which are used along with the land as a builder's yard for a period of 59 years.
- The coffee dock is situated in a corner of the builder's yard.

## 6.3. Planning Authority Response

No response received.

## 6.4. Observations

None received.

## 7.0 Assessment

I consider the main issues in determining this appeal are as follows:

- Land use / Nature of proposal and Compliance with Development Plan
- Impact on Residential Amenities
- Potential for pollution / contamination
- Hours of Operation
- Issues Arising
- Appropriate Assessment.

### 7.1 Land use / Nature of proposal and Compliance with Development Plan

- 7.1.1. Chapter 12 of the Cork City Development Plan 2022-2028 sets out the Land-use Zoning Objectives for the City. The appeal site is zoned ZO 01 – Sustainable Residential Neighbourhoods with a stated objective ‘To protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.’
- 7.1.2. Paragraph ZO 1.1 notes that the provision and protection of residential uses is a central objective of this zoning and envisages that a range of local services and community facilities are available and easily accessible to residents.
- 7.1.3. Paragraph ZO 1.4 lists various uses within this zoning objective as acceptable in principle. Examples given of such uses include small-scale local services including local convenience shops, community facilities, hotels and hostels, and service stations (petrol filling stations).
- 7.1.4. In my view the café / coffee dock use at the subject location within the settlement of Rochestown and proximate to housing is acceptable in principle subject to, inter alia,

the protection of residential amenities as articulated in the ZO 01 zoning objective and paragraph ZO 1.1 and also compliance with Section 11.185 of the Development Plan relating to cafes / restaurants.

- 7.1.5. While I note the applicant's contention that the subject lands / adjoining lands have been used for commercial uses for a significant period of time (from c 1962-3) it is the case that the appeal site (and adjoining lands) is zoned primarily for residential use, and other associated uses involving provision of local services to serve residents as set out in the ZO 01 zoning objective pertaining to the lands at this location.
- 7.1.6. In my view the proposal complies with Section 11.185 of the current Cork City Development Plan which sets out criteria for assessing cafes/restaurants. In this context, the location of the proposal adjacent to the walkway leading to the Garryduff Woods is convenient for passersby. There are no other cafes or restaurants in the immediate vicinity of the site. There are no traffic implications associated with the walkway from which the café is accessed by customers. Welfare facilities and supplies for the café are located at the applicant's family home, proximate to the café and accessed from Williams Court.

## **7.2. Impact on Residential Amenities**

- 7.2.1. The appeal submission expresses concern that the conditions applied by the Planning Authority do not reflect the permission sought and would be injurious to the residential amenities of the area, including the appellant's dwelling which is located north-east of the appeal site. In this context, it appears that the appellant is referring to the hours of operation of the cafe / coffee dock as permitted under Condition 4 of the Planning Authority's decision to grant permission to retain the development. Section 7.4 of this report set out below relates to the operational hours of the facility.
- 7.2.2. In my opinion the café / coffee dock, located immediately north-west of the walkway, is sufficiently removed from adjoining dwellings and their associated boundaries, including those of the appellants, to ensure that no undue impacts would arise from its operations. Furthermore, having regard to the design, small scale and position of

the container on the site, no undue overshadowing, overbearing or overlooking impacts arise.

### **7.3. Potential for pollution / contamination**

7.3.1. The appellants, in their submission to the Planning Authority under Point of Objection No. 2, express concern that the development to be retained results in pollution and contamination. In this context reference is made to the failure to provide facilities such as appropriate food storage and preparation, waste management control and pest control. Furthermore, the objection considers that absence of drainage facilities / toilet and washing facilities are a cause for concern.

7.3.2. In terms of waste management, I note that correspondence submitted with the application indicates that the compostable cups are disposed of by a landscaping company in their compostable waste, while the coffee granules are used as a fertiliser for flower beds. In my view this method of waste disposal is appropriate and acceptable.

7.3.3. I note the proposal relates to the retention of the café serving take-away refreshments and snacks. The applicant's response to the appeal notes that the facility backs onto the family home and this is where welfare facilities are provided. While I note the issues raised by the appellants relating to pest control, food storage and preparation, these matters relate to environmental health concerns, which are outside the scope of planning.

### **7.4. Hours of Operation**

7.4.1. Condition No. 4 of the Planning Authority's decision to grant retention permission for the café / coffee dock allows it to operate between 08.00 and 19.00 Monday to Saturday inclusive and between 08.00 and 18.00 on Sundays and bank holidays. The appellants consider the opening hours should be restricted to Saturdays and Sundays only, referencing the applicants' letter provided with the application, which indicates the café opens on Saturdays and Sundays only, for viability reasons. I note

the applicant's response to the appeal which confirms their willingness to restrict operational hours to weekends and bank holidays only.

- 7.4.2. As referenced above I am of the view that the café would not adversely impact on the amenities of adjoining dwellings given the small scale of the facility and the separation distances to neighbouring properties. I also note Paragraphs ZO 1.1 and ZO 1.4 which envisage amenities, such as that to be retained, to be readily accessible to residents.
- 7.4.3. Having regard to the foregoing, it would be appropriate, in my view, to allow the café/coffee dock to operate throughout the week as set out in Condition 4 of the Planning Authority's decision; this would allow the applicant flexibility should it become more viable in the future to operate the café during the week.
- 7.4.4. If the Board is minded to grant retention permission but curtail the operational hours, I recommend inclusion of a condition allowing the café to operate at weekends and on bank holidays.

## 7.5. **Issues Arising**

### 7.5.1. Scope of Assessment

The third party appeal includes references to a concurrent planning application (Ref. 23/41731) on an adjoining site and a previous application (Ref. 09/7904) relating to the subject site and adjoining lands. The appellants request the Board to acknowledge there is no evidence of any uses on the lands at this location other than those identified / permitted on previous applications.

In the interest of clarity this assessment relates solely to the third party appeal lodged on foot of the decision to grant retention permission made by Cork City Council in connection with Reg. Ref. 23/41730 only. It is not the Board's function to confirm or decide whether or not there is unauthorised development on lands identified by the appellants in the appeal submission. In this regard it is noted that planning enforcement is a function of the Planning Authority.

### 7.5.2. Validity of planning application

The third party appellant considers that the planning application as lodged with the Planning Authority is invalid on the basis that no 'letter of comfort' from the landowner (the father of one of the applicant's) was provided as part of the application documentation. I note however that a letter from the landowner was provided with the application authorising the applicants to use the private laneway as a right of way to the café. Having regard to this I consider it reasonable to conclude that the landowner was aware of the planning application and as such I am satisfied that the application as submitted to the Planning Authority is valid.

### 7.6. **Appropriate Assessment**

Having regard to the nature of the proposal, to the serviced nature of the site and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the proposal would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

### 8.0 **Recommendation**

I recommend that retention permission be granted subject to conditions.

### 9.0 **Reason and Considerations**

9.1. Having regard to the zoning objective of the area, the design, layout and scale of the development to be retained, and the provisions of the Cork City Development Plan 2022-2028, it is considered that, subject to compliance with the conditions set out below, the proposal would accord with the Cork City Development Plan 2022-2028, would not detract from the residential amenities of the area or surrounding properties and would not cause pollution. The proposal would, therefore, be in accordance with the proper planning and sustainable development of the area.



## 10.0 Conditions

1.	<p>The development to be retained shall accord with the plans and particulars lodged with the application submitted on the 26<sup>th</sup> January 2023, 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 and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The development to be retained shall be used as a café / coffee dock only. No hot food take away is permitted.</p> <p><b>Reason:</b> In the interest of clarity.</p>
3.	<p>The hours of operation of the café / coffee dock shall be between 08.00 hours and 19.00 hours Monday to Saturday inclusive and between 08.00 hours and 18.00 hours on Sundays and public holidays.</p> <p><b>Reasons:</b> In the interest of the residential amenities of property in the vicinity.</p>
4.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
5.	<p>The developer shall enter into water and/or wastewater connection agreement(s) with Uisce Eireann.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the</p>

	<p>Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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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

4<sup>th</sup> April 2024