SECTION 5(3)(a) REFERRAL

Request for Review of Dún Laoghaire-Rathdown County Council Declaration

Unit 4, Ballinteer Road, Ballinteer, Dublin 16, D16 V343

Referrer	Marianne Lambert / Brotherhood Coffee Ltd t/a Brother Bean Coffee
Planning Authority	Dún Laoghaire-Rathdown County Council
Planning Authority Ref.	REF11626 / Declaration 749
Chief Executive Order	P/1699/26
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Prepared for submission to An Coimisiún Pleanála

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16/09/2026

Re: Review of Section 5 Declaration – REF11626 / Declaration 749
Planning Authority: Dún Laoghaire-Rathdown County Council
Premises: Unit 4, Ballinteer Road, Ballinteer, Dublin 16, D16 V343
Referrer: Marianne Lambert / Brotherhood Coffee Ltd t/a Brother Bean Coffee

Dear Sir/Madam,

I wish to refer for review pursuant to Section 5(3)(a) of the Planning and Development Act 2000, as amended, the Declaration issued by Dún Laoghaire-Rathdown County Council in respect of the existing use of Unit 4, Ballinteer Road, Ballinteer, Dublin 16.

The Planning Authority determined that:
"The use of the premises as a coffee shop/café constitutes a material change of use from the established retail shop use" and consequently, constitutes development which is not exempted development.
I respectfully disagree with that determination and request that An Coimisiún Pleanála review and overturn the Declaration.

The primary basis of this referral is that **no material change of use from the established retail/shop use has occurred in the first instance.**
The premises continues to operate principally as a small retail outlet selling goods directly to visiting members of the public through a counter-service model. Approximately 93% of all transactions are takeaway, customer seating is limited and ancillary, there is no table service or waiting staff, there is no commercial kitchen or extraction system, and there is no substantive cooking or food production on the premises.

The question is therefore not whether a change from a shop to a café constitutes exempted development.
The primary question is whether such a material change of use has occurred at all.
We respectfully submit that it has not.

We respectfully request that An Coimisiún Pleanála determine the following:
Whether the existing operation of Unit 4, Ballinteer Road, comprising the retail sale of coffee and other beverages, finished food products, packaged products, coffee products and merchandise directly to visiting members of the public through a counter-service operation, where approximately 93% of transactions are takeaway and limited customer seating is provided ancillary to that retail operation, constitutes a material change of use from the established shop/retail use and is therefore development within the meaning of Section 3 of the Planning and Development Act 2000, as amended.

Established Retail Use – No Material change of use

There is no dispute between the parties concerning the established lawful use of Unit 4.

Indeed, the Planning Authority expressly states:

"There does not appear to be any dispute that the established lawful use of the premises was previously that of a retail shop."

The Council then identifies the principal issue as whether the current use remains a shop within the meaning of Article 5(1) of the Planning and Development Regulations 2001, as amended, or whether a material change of use has occurred. We agree that this is the correct starting point.

The issue is therefore not whether the retail offering has changed from that of a previous occupier. Changes in operator, products sold, branding, layout or method of retail sale do not necessarily constitute a material change in planning use.

The relevant issue is whether the character of the use has materially changed from the established retail use. We respectfully submit that it has not.

Actual Operation of the Premises – The dominant activity remains retail

Brother Bean operates a straightforward counter-service retail model.

Customers:

- enter the premises;
- select or order products or goods for purchase at the counter;
- pay at the counter;
- receive their purchases at the counter; and
- overwhelmingly leave the premises with those purchases.

The products retailed include coffee and other hot beverages, cold and packaged beverages, pastries, sandwiches, sausage rolls, retail coffee beans, coffee-related products and Brother Bean merchandise.

The same basic retail transaction applies regardless of the product being purchased.

There is no table ordering or separate dine-in service. There is no alternative delph or crockery – everything is sold for takeaway purposes.

The customer purchases goods from the business at the retail counter.

This is fundamentally a retailer/customer transaction.

Objective Evidence – 93% of Transactions are Takeaway

The most compelling objective evidence of how the premises actually operates is the transaction data.

Approximately 93% of all transactions are takeaway transactions, with only approximately 7% involving customers consuming purchased products within the premises.

The Planning Authority acknowledges this evidence in its own report. The Planning Authority states that its assessment cannot be based solely upon the proportion of takeaway transactions.

We agree. We do not suggest that the 93% figure should be considered in isolation.

However, neither should such compelling objective evidence be substantially discounted.

A premises where approximately 93 out of every 100 transactions result in the purchased product being taken away is materially different in character from a restaurant or conventional café whose operation is principally directed towards accommodating customers for on-premises consumption. It should also be noted that while an approximate mere 7% is consumed on site – often this is of convenience or while waiting – Only approximately 7% of transactions involve

customers consuming products on the premises. Such consumption is incidental to the principal takeaway retail operation and generally involves brief use of the limited perimeter seating after products have already been ordered and purchased at the counter.
When considered alongside the other characteristics of the operation, the takeaway data provides strong objective evidence that on-premises consumption is subordinate to the principal retail function.

Absence of Restaurant/Café Operational Characteristics
The current operation lacks the principal characteristics normally associated with a restaurant or conventional seated café operation.
There is:

- no commercial kitchen;
- no substantive food preparation area;
- no cooking of meals (or any food);
- no extraction canopy or commercial extraction system;
- no deep-fat frying;
- no grilling;
- no table service;
- no waiting staff;
- no customer ordering at tables (no traditional tables – we only have a shared bench);
- no plated meal service (no delph or crockery of any style);
- no reservation or booking system;
- no hostess / reception function;
- no menus at tables;
- no service charge; and
- no alcohol licence.

These characteristics were expressly identified in the original Section 5 submission.
Significantly, the Planning Authority does not appear to dispute these underlying operational facts. Rather, the disagreement concerns the planning characterisation to be applied to them.

Food Products are Supplied as Finished Retail Goods
Food products are sourced from third-party suppliers and wholesalers or central production facilities rather than being manufactured or substantively prepared on the premises.
There is no commercial food production.
The original submission confirmed that no meals are cooked or prepared on the premises, no commercial kitchen exists, no extraction system is installed, and no deep-fat frying, grilling or food production takes place. The Planning Authority itself records these facts.
The operation is therefore materially distinguishable from a restaurant operation involving the preparation and cooking of meals for consumption by customers seated within the premises.

The Sale of Coffee and Ready-to-Consume Products Does Not Determine the Planning Use
The Planning Authority places significant weight upon the sale of coffee, hot and cold beverages and ready-to-consume food products.
We respectfully submit that the nature of individual products cannot, of itself, determine the planning use.
The sale of coffee and ready-to-consume food is also a familiar feature of contemporary convenience stores, supermarkets, delicatessens, bakeries, service stations and other retail

premises, in some cases accompanied by limited customer seating. The existence of such products or seating is therefore not, of itself, determinative of planning use.

Modern retail activity frequently involves products capable of immediate consumption.
Accordingly, the relevant question cannot simply be whether coffee or ready-to-consume food is sold.
Rather, it must be whether the overall nature, scale, operation and planning character of the premises have materially changed from retail use to a materially different café/restaurant use.
We submit that they have not.

The Physical Layout Supports the Retail Character of the Premises
The Planning Authority states that regard must be had to:
"the overall nature, scale and layout of the operation"
including the extent to which the premises facilitates consumption on site.
We agree that the layout is relevant. However, we respectfully submit that the photographic evidence supplied with the original Section 5 application supports, rather than contradicts, the continued retail character of the premises.

The photographs demonstrate a relatively small premises dominated by a retail / service counter and associated product displays.
The premises contains refrigerated retail display units containing individually packaged sandwiches and bottled beverages, countertop product displays, takeaway cups and service facilities, together with dedicated shelving containing packaged coffee beans and retail merchandise.

The customer “seating” is comparatively limited and positioned principally around the perimeter of the customer area.
There is no substantial dedicated dining area or conventional restaurant layout.
The physical arrangement is instead centred upon the selection, ordering, payment and collection of products at the counter.
This is consistent with the objective transactional evidence that approximately 93% of purchases are takeaway.
The photographs therefore provide important evidence of the relative scale and subordinate nature of the seating compared with the retail/service operation.

Customer Seating is Ancillary and subordinate
We acknowledge that limited customer seating is provided. The issue is whether that seating is of such a nature, scale and importance that it changes the overall planning character of the premises.

It does not. The seating is subordinate and ancillary to the retail operation. It provides convenience for customers waiting for orders and for the small minority who choose to consume goods already purchased at the counter. In fact, its main purposes serves as a storage bench for our stock.

There is no table ordering, waiting service or separate dine-in business. The seating does not generate an independent service or transaction. Most importantly, approximately 93% of transactions do not depend upon the seating at all.

The seating is therefore both physically and operationally subordinate to the retail use.
The existence of seating cannot, by itself, determine the planning use of the premises.
Importantly, the seating generates no separate or independent business activity.
The original submission expressly identified these characteristics.
More importantly, the retail business is not dependent upon the seating. The overwhelming majority of customers do not use it. Approximately 93% of transactions are takeaway.
Accordingly, the seating is both physically and operationally subordinate to the principal retail activity.

DLRCC's Reliance Upon ABP Ref. RL28.RL3426

The Planning Authority places particular reliance upon ABP Ref. RL28.RL3426 – 39 Princes Street, Cork, in which the Board determined that the change from retail use to a coffee shop constituted development and was not exempted development.
It is important that RL28.RL3426 is not treated as establishing a general proposition that the retail sale of coffee combined with customer seating necessarily constitutes a material change of use.
The determination arose from the particular scale, nature and layout of the Princes Street operation.
The present premises must similarly be assessed on its own facts. Unit 4 is a small counter-led operation in which approximately 93% of transactions are takeaway; there is no commercial kitchen, substantive food preparation, extraction system, waiter service or table-ordering system; and the photographic evidence demonstrates that the retail/service counter and product displays are the dominant physical features of the premises.
Accordingly, the factual characteristics which led to the determination in RL28.RL3426 should not simply be transposed to Unit 4. The relevant question remains whether the particular nature, scale, layout and operation of Unit 4 have materially displaced its established retail use.

Previous Board Decisions Demonstrate that Coffee Use Does Not Automatically Displace Retail Use

Significantly, DLRCC's own planner's report identifies a number of previous Board decisions where coffee-related activities did not constitute development.
These include:
RL61.RL3315 – No. 4 Quay Street, Galway
The partial change of use of a shop to use as a coffee shop at ground-floor level was held not to be development.
RL07.RL3023 – Keane's Garden Centre, Kilcolgan Village
A proposed coffee sales area of 16.8 sq.m within an existing retail unit was held not to be development.
RL54.RL2941 – West Street, Drogheda
The use of part of a shop as a coffee shop was held not to be development.
These decisions are important because they demonstrate that the incorporation of coffee sales and even an identifiable coffee-shop element within retail premises does not automatically constitute a material change of use.
The actual circumstances and overall character, nature, scale and operation of each premises must be examined.

The Former Camera Shop / Juice Bar Determination

A particularly relevant precedent identified in DLRCC's own report is RL28.RL2516 – No. 55 Patrick Street, Cork.

That case concerned the use of a former camera shop as a juice bar.
The Board determined that the change was not development, because the use constituted a "shop" within the meaning of Article 5 of the Planning and Development Regulations 2001, as amended.
We respectfully submit that this determination is particularly instructive.
It demonstrates that a move from traditional comparison retail to a business principally selling freshly dispensed beverages does not necessarily result in a material change from shop use.
The determining issue remains the overall character of the particular operation.

The Article 5 Definition of "Shop"
The Council's report reproduces the definition of "*shop*" under Article 5(1) of the Planning and Development Regulations 2001, as amended.
That definition includes a structure used, where the sale, display or service is principally to visiting members of the public, "for the retail sale of goods".
The principal activity at Unit 4 continues to involve visiting members of the public purchasing goods at a counter.
The products have a price.
The customer selects or orders them.
Payment is made.
The goods are supplied to the customer.
The overwhelming majority are then removed from the premises.
We respectfully submit that these are fundamentally retail transactions.

Materiality is the Critical Test
Section 3(1) concerns:
"the making of any material change in the use of any structures or other land."
Accordingly, it is not sufficient merely to identify that the nature of the retail activity has evolved or changed. The change must be material in planning terms.
Retail premises routinely change operators, product ranges, merchandising, layouts and methods of sale. The fact that a former retail unit now sells a different category of retail products does not automatically result in a material change of use.
The question is whether the character and planning consequences of the use have materially changed.

Planning Consequences Have Not Materially Changed
The original Section 5 submission expressly identified that the operation has not introduced:
- commercial cooking;
- extraction equipment;
- increased deliveries;
- food production;
- entertainment;
- evening restaurant trading;
- alcohol sales; or
- materially different servicing requirements.

The premises continues to generate the type of customer visits associated with a small retail premises: customers arrive, enter the unit, make a purchase and leave.
Indeed, because most transactions are takeaway, customer dwell time is generally short.

There is no restaurant kitchen, extraction equipment or commercial cooking giving rise to the types of odour, fumes and servicing impacts ordinarily associated with restaurant use.
We respectfully submit that the overall planning consequences remain substantially consistent with the established retail use.

DLRCC's Reference to How the Premises is "Experienced by Customers"
The Council's ultimate conclusion relies, in part, upon:
"*the overall manner in which the premises functions and is experienced by customers*".
It concludes, "*on balance*", that the use is more akin to a coffee shop/café than a retail shop.
We respectfully submit that objective evidence should carry considerably greater weight than a subjective characterisation of how a premises may be "experienced".

The objective characteristics are clear:

- Predominantly takeaway
- Counter ordering and payment.
- No table service.
- No waiting staff.
- No commercial kitchen.
- No extraction system.
- No substantive cooking.
- Finished food products sourced from third-party suppliers.
- Retail product and merchandise displays.
- Limited ancillary seating.

Taken collectively, these characteristics demonstrate that the dominant operation remains retail.

The Secondary Question of Exempted Development
Having concluded that a material change from shop to coffee shop/café occurred, DLRCC subsequently determined that Article 10 and Class 14 do not provide an exemption for such a change.
However, this is a secondary question.
It only arises if the Commission first determines that a material change of use has occurred.
Our primary submission is that the established shop use **has not materially changed.**
If no material change of use has occurred, there is no development arising from change of use for which an exemption is required.

We respectfully request that the Commission determine the referral on that primary basis.

The Planning Authority's Declaration appears to place disproportionate weight upon three factors:

1. that the business sells coffee and ready-to-consume food;
2. that limited seating is provided; and
3. that the premises can consequently be characterised as a "coffee shop/café".

We respectfully submit that this approach does not sufficiently reflect the objective characteristics of the actual operation.
The commercial description "coffee shop" should not itself determine planning use.

The relevant question is what actually occurs within Unit 4 and whether that activity represents a material change in planning use.
The evidence demonstrates that:

- the established lawful use is retail, and this is accepted by DLRCC;
- goods continue to be sold directly to visiting members of the public;
- all customers order and pay through a retail counter transaction;
- approximately 93% of transactions are takeaway;
- there is no table service or waiting staff;
- there is no commercial kitchen or substantive food production;
- there is no extraction system;
- finished food products are sourced from third-party suppliers;
- coffee beans, coffee-related products and merchandise are retailed alongside food and beverages;
- the physical layout is dominated by the retail/service counter and product displays;
- customer seating is limited, subordinate and ancillary;
- the business does not depend upon on-premises consumption; and
- the planning consequences remain substantially consistent with those of the established retail premises.

Furthermore, previous Board determinations identified within DLRCC's own report demonstrate that coffee sales, coffee-shop areas and beverage-focused operations do not automatically result in a material change from shop use. Each case turns upon its own nature, scale, layout and operational characteristics.

When those characteristics are considered in relation to Unit 4 Ballinteer Road, we respectfully submit that the evidence supports the conclusion that the established retail/shop use has not been materially displaced.

Cumulative Assessment
We do not suggest that any single characteristic identified above is determinative. Rather, the Commission is respectfully requested to consider the operation cumulatively: its approximately 93% takeaway trade; counter-only ordering and payment; absence of table service; absence of a commercial kitchen, extraction or substantive cooking; retail sale of packaged products, coffee beans and merchandise; limited ancillary seating; physical layout; and the absence of materially different planning consequences. Considered together, these characteristics support the conclusion that the established retail use has not undergone a material change.

Request to An Coimisiún Pleanála
Accordingly, I respectfully request that An Coimisiún Pleanála overturn the Declaration issued by Dún Laoghaire-Rathdown County Council under REF11626 / Declaration 749 and determine that the existing operation at Unit 4, Ballinteer Road does not constitute a material change of use from the established retail/shop use and therefore does not constitute development by reason of change of use within the meaning of Section 3 of the Planning and Development Act 2000, as amended.

I am available to meet with any representative at any time to demonstrate and discuss the contents of this submission.

Yours faithfully,

Marianne Lambert
Director / Co-Owner
Brotherhood Coffee Ltd t/a Brother Bean Coffee