

Niamh Thornton

From: Bord
Sent: Thursday 25 April 2019 16:11
To: procbordemail
Subject: FW: Message from KM_C454e_Planning
Attachments: SKM_C454e_P19042515120.pdf

From: Davina Kelly [mailto:Davina.Kelly@galwaycity.ie]
Sent: Thursday 25 April 2019 15:12
To: Stephen Sutton <S.Sutton@pleanala.ie>
Cc: Bord <bord@pleanala.ie>; Sandra Silke <Sandra.Silke@galwaycity.ie>
Subject: FW: Message from KM_C454e_Planning

Stephen,

Please find attached comments for ABP 303989-19 - No. 12 Cross Street & 1 High Street, Galway City.

Hard copy to follow.

Le meas,
Davina.

Davina Kelly

Rannóg Pleanála/ Planning Department
Comhairle Cathrach na Gaillimhe/Galway City Council,
Bothar na Chólaíste/ College Road.

Email: davina.kelly@galwaycity.ie
Web: www.galwaycity.ie
Direct Line: 091 536 410.



From: noreply@galwaycity.ie [mailto:noreply@galwaycity.ie]
Sent: 25 April 2019 16:13
To: Davina Kelly <Davina.Kelly@galwaycity.ie>
Subject: Message from KM_C454e_Planning

Galway European Capital of Culture 2020

Galway2020.ie

Tá fáilte roimh chomhfhreagras i nGaeilge nó i mBéarla.

Correspondence is welcome in Irish or in English.



Comhairle Cathrach na Gaillimhe
Galway City Council

Halla na Cathrach
Bóthar an Choláiste
Gaillimh
H91 X4K8

City Hall
College Road
Galway
H91 X4K8

Our Ref: **P/DC/3/1/19**

Your Ref: **ABP-303989-19**

Mr. Stephen Sutton,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

25th April, 2019.

For the attention of Mr. Stephen Sutton
Re: Observations on Appeal ABP-303989-19 PA Ref. P/DC/3/1/19

Dear Mr. Sutton,

The following are the observations of Galway City Council in relation to the above appeal:

Applicant:	Planning Consultancy Services on behalf of Joelee Ward.
Site Address:	No 12 Cross Street and No 1 High Street.
Description:	1) Whether the partial change of use of a shop to use as a coffee shop at ground floor level and basement level at No 12 Cross Street Galway is or is not development or exempted development. 2) Whether the proposed maintenance and conservation works to the Upper Floor façade of No 12 Cross Street is or is not development or exempted development.

I refer to the First Party Appeal by **Planning Consultancy Services on behalf of Joelee Ward** against Galway City Council's decision of 21st February 2019 that the partial change of use of a shop to use as a coffee shop at ground floor level and basement level at No 12 Cross Street Galway is development and is not exempted development.

Galway City Council would advise the following in relation to the Appeal over and above the Planning Officers report, which clearly sets out the basis for the decision.

Relevant Planning History is set out in the Planning Report.

The appellant states that:

Fáiltítear roimh chomhfhreagras i nGaeilge / Correspondence in Irish is welcomed

Seirbhísi Custaiméara / Customer Service (091) 536400 • Rphost / Email customerservice@galwaycity.ie
Gréasán / Web www.galwaycity.ie

"The proposed use of part of the shop, to use as a coffee shop, is in the interest of securing a viable commercial use for the unit. The owner intends that the unit will continue to function as a retail unit, concentrating on the sale of confectionary, nuts, healthy snacks, bottled water etc. together with cold packaged ready-made food. My client does not propose the unit to be used for the sale of hot food. However, the owner wishes to accommodate a "Coffee sales area" extending 3.5sqm on the ground floor, with a dedicated shelving area of 1.2sqm at basement level. The gross floor area of the proposed "Coffee retail element would amount to 4.7sqm or 16% of the total gross floor area. In addition, no internal seating area is proposed. The extent of the proposed "partial change of use of the shop" was clearly outlined in the floor plans which accompanied the application."

The agent also refers to a decision taken by An Bord Pleanála in 2014 for a declaration on a similar coffee sales area (2.1m²) at No 4 Quay Street. This concluded that the partial change of use of a shop to use as a coffee shop on the ground floor was not development.

The appellant contends that this coffee element is exempt as it is subsidiary to the primary use of the premises as a retail shop and that as no internal seating or toilets are provided it can be classified as for coffee sales and not as a restaurant.

Article 5 (1), Part 2 provides interpretations for the purposes of exempted development. The following is relevant to this case:

"shop" means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public—

- (a) for the retail sale of goods,
 - (b) as a post office,
 - (c) for the sale of tickets or as a travel agency,
 - (d) for the sale of sandwiches or other food for consumption off the premises, where the sale of such food is subsidiary to the main retail use,
 - (e) for hairdressing,
 - (f) for the display of goods for sale,
 - (g) for the hiring out of domestic or personal goods or articles,
 - (h) as a launderette or dry cleaners,
 - (i) for the reception of goods to be washed, cleaned or repaired,
- but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food for consumption off the premises, except under paragraph (d) above, or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

The appellant has also provided a number of appeal decisions which he considers support his case, but it is not considered that these are directly comparable to the current proposal.

Having regard to the applicant's description of development and in particular given that the coffee sales element occupies retail floor area at ground and basement level it is considered that the coffee shop element would not be subsidiary to the primary retail use and that planning permission would be required.

The Planning and Development Regulations 2001 -2013 define a "shop" in Part 2 of the Planning and Development Regulations 2001 -2013, Article 5 (1), this states the following:

Article 5 (1), Part 2 provides interpretations for the purposes of exempted development. The following is relevant to this case:


"shop" means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public—

- (a) for the retail sale of goods,
- (d) for the sale of sandwiches or other food for consumption off the premises, where the sale of such food is subsidiary to the main retail use,

In view of the above it is considered that the proposed coffee shop use at ground floor and basement level would not be subsidiary to the primary retail use is development, is not exempted development and that planning permission is required.

Conclusion:

In view of the above it is recommended that An Bord Pleanála uphold the City Council's decision and dismiss the appeal.


Director of Services,
Transportation, Planning & Physical Development.

