

Comhairle Cathrach Chorcaí

Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

28.02.2020

Re: Referral under Section 5(4) of the Planning and Development Act, 2000 in respect to no 52 & 53 North Main Street, Cork

1.0 INTRODUCTION

This referral is made by Cork City Council under Section 5(4) of the Planning and Development Act, 2000 in respect to no. 52 & 53 North Main Street, Cork City. We enclose a cheque to the value of €110 in respect to the statutory referral fee.

This referral is structured as follows:

- Introduction and Required Details
- Background
- Grounds of Referral
- Conclusion

It should be noted that this referral is being made to An Bord Pleanála to seek to expedite circumstances related to with Enforcement Court Proceedings at Cork District Court associated with an Enforcement Notice detailed on the Public Planning Register as follows (E7464):

1. Unauthorised sign on front elevation.
2. Unauthorised use as a late night music bar in contravention of T.P.12/35314.

2.0 INTRODUCTION AND REQUIRED DETAILS

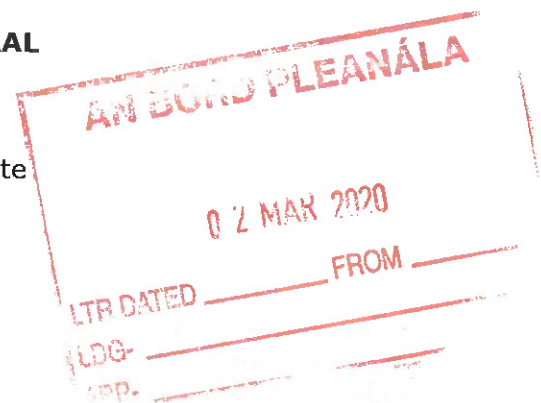
2.1 DETAILS OF PERSON MAKING THE REFERRAL

Gwen Jordan McGee
Senior Executive Planner
Community, Culture and Placemaking Directorate
Cork City Council
City Hall
Cork
Tel 021 492 4606
gwen_jordan@corkcity.ie

2.2 QUESTIONS REFERRED

The two questions on which a declaration is sought are as follows:

1. Whether replacement signage is/is not development
2. Whether current use as a Licence café/restaurant is not a material change of use from TP12/35314 and TP13/35544 at 52/53 North Main Street, Cork.



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2.3 THE REFERRAL SITE

For ease of reference, the premises which is the subject of this referral is referred to hereafter as 'the premises'.

The Section 5 application to Cork City Council identifies the site as no. 52 & 53 North Main Street Cork and includes an associated OSI 1:1000 map which outlines both premises, no. 52 & no. 53 respectively within a redline boundary.

No. 52 and 53 respectively are four storey commercial buildings on North Main Street which present two separate frontages at street level, and two individual commercial units within, the northernmost comprising "The Vicarstown Bar" and the southernmost "Black Dog Saloon & Mezcaleria". The former is a bar with a smoking area to the rear and the latter presents as a public house and late night bar with a small kitchen and small outdoor area to the rear. Planning Enforcement Notices under Section 154 have been issued pursuant to planning register references E7464 and E8067 respectively in relation to signage to the front elevation of no. 53, the use of no. 53 as a public house and late night bar (E7464) and in relation to an unauthorised extension to the rear of no. 53 (E8067).

In making this referral Cork City Council wish to draw the attention of the Board to their Inspector's Report pursuant ABP reference ABP-305107-19 in which the Inspector held that "The Board will note that a licence linked to the functioning of Nos. 52 and 53 does not bestow planning permission for a public house in No. 53 and/or the change of permission for the permitted café/restaurant use to an ancillary use." As such, Cork City Council submits that No. 52 and No. 53 for two separate commercial units.

3.0 BACKGROUND

3.1 RECENT RELEVANT PLANNING HISTORY

The following two enforcement files E7464 and E8067 are noted on the Cork City Council Public Planning Register in respect to no. 53 North Main Street:

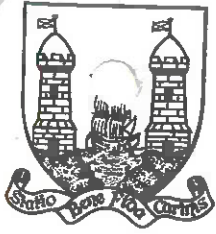
E7464: An enforcement notice was served by Cork City Council on 06.06.2019 in respect to the following as recorded on the public planning register:

3. Unauthorised sign on front elevation.
4. Unauthorised use as a late night music bar in contravention of T.P.12/35314.

A summons was served and **enforcement proceedings commenced in the District Court** following non-compliance with the above notice **on the 26th of February 2020**

E8067: An enforcement notice was served on 06.02.2020 in respect to the following unauthorised development as recorded on the Cork City Council public planning register:





Comhairle Cathrach Chorcaí

Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

AN BORD PLEANÁLA

02 MAR 2020

LTR DATED
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OP. FROM

1. Unauthorised Extension to the rear of No. 53 North Main Street. The unauthorised extension comprises usable external floor space which includes a service kitchen and associated equipment and counter. This extension is located below an existing roof to the rear (east) of 53 North Main Street.

This notice is due for inspection by the Enforcement Section following the expiration of the period identified in the notice.

R520/19 and ABP-305107-19

This premises has been subject to a determined Section 5 referral – Ref 305107: 52/53 North Main Street, Cork (R520/19) which sought a declaration on whether alterations to the internal layout of the permitted licensed premises at 52/53 North Main Street, Cork are or are not development or are or are not exempted development.

The outcome was a split decision by the Board where the Order stated that:

WHEREAS a question has arisen as to whether the alterations to the internal layout of the permitted licensed premises at 52/53 North Main Street, Cork are or are not development and are or are not exempted development;

AND WHEREAS the said question was referred to An Bord Pleanála by Black Dog Bar and Nightclub Ltd. on the 6th day of August, 2019;

AND WHEREAS An Bord Pleanála, in considering this referral, had particular regard to:

- a) sections 2, 3, 4 and 32 of the Planning and Development Act 2000 (as amended),
- b) articles 5-11 of the Planning and Development Regulations 2001 (as amended), with particular reference to articles 6(1) and 9(1)(a)(viii),
- c) Part 1 of Schedule 2 *Exempted Development – General* of the Regulations, with particular reference to Class 14,
- d) the planning history of Nos. 52 and 53 North Main Street, with particular reference to Planning Permissions Ref. Nos. 12/35314 and 13/35544, and noting that **the current use of No. 53 North Main Street presents as a public house** whose permitted use is as a licensed café/restaurant and for which no planning permission appears to exist for use as a public house either independently or associated with the public house use at No. 52 North Main Street,
- e) the submissions of the parties to the referral, and
- f) the report of the Inspector

AND WHEREAS An Bord Pleanála has concluded that:

- a) the internal alterations carried out to 53 North Main Street, including alterations in the form of stairway provision, being works which affect only the interior of the structure and which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with



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the character of the structure, are development and are exempted developments in accordance with the provisions of section 4(1)(h) of the Planning and Development Act.

- b) the alteration to the layout of No. 53 North Main Street, Cork, in the form of the provision of a 'Service Kitchen' to the rear of the premises, constitutes development which is material for the purposes of the Planning and Development Act and is not exempted development as no planning permission currently exists for this extended floorspace.

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that the alterations in the form staircase provision and other minor alterations constitute development which is exempted development and that the alterations in the form of a Service Kitchen to the layout of the permitted licensed premises at 52/53 North Main Street, Cork constitute development and development that is not exempted development.

The Planning Authority notes that while the question presented in the above section 5 was not pertaining to the use of the premises, An Bord Pleanála did note in point(d) above that **no planning permission appeared to exist for the use as a public house.**

TP 12/35314: Permission was granted for the change of use of the ground floor from retail to a licensed café/restaurant use, the widening of the front entry doors, the removal of the flat roof and installation of a new preparation kitchen within No. 53 and associated site works.

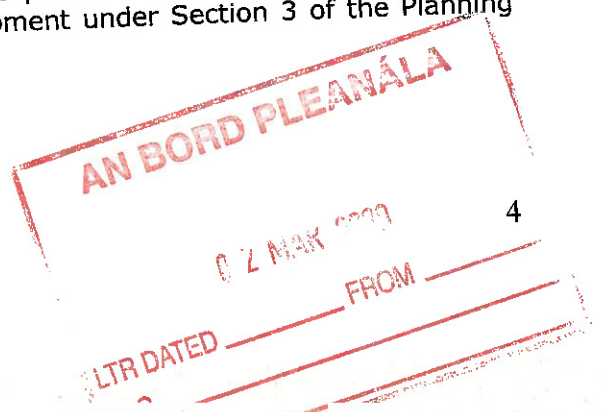
T.P. 13/35544: Permission was granted to change, front signage and to erect a new vent flue on the gable end of the eastern elevation of 53 North Main Street, Cork amended under application T.P. 12/35314. Permission granted subject to 2no. Conditions, including the omission of a proposed awning.

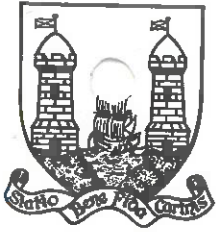
T.P. 17/37500: Planning permission was refused for retention permission for the front lit signage above ground floor window.

4.0 GROUNDS FOR REFERRAL

The two questions presented by the Messrs McCutcheon Halley on behalf of **Black Dog Bar and Nightclub Ltd.** is as follows:

1. Whether the replacement of the signage on the front elevation of No. 53 is or is not development, and is or is not exempted development under Section 4(1)(h) of the Planning and Development Acts.
2. Whether the current use of no. 53 as a licenced café/restaurant is or is not a material change of use from the use permitted under T.P. 12/35314 and T.P. 13/35544 and is or is not development under Section 3 of the Planning Act.





Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

RECORDED
DATE 17 MAR 2020
FROM

The Council wish to submit the following observations in respect to the two above outlined questions.

Signage

Question 1. Whether the replacement of the signage on the front elevation of No. 53 is or is not development, and is or is not exempted development under Section 4(1)(h) of the Planning and Development Acts.

Cork City Council notes that planning permission was granted pursuant to planning register reference T.P. 13/35544 for the provision of signage to the front of no. 53 North Main Street. The signage present at the premises does not accord with the extent of signage as identified in said permission. The front of the premises is noted to include a 'billboard' style sign, a red neon sign and lettering to the upper windows as identified in Image 1 below.

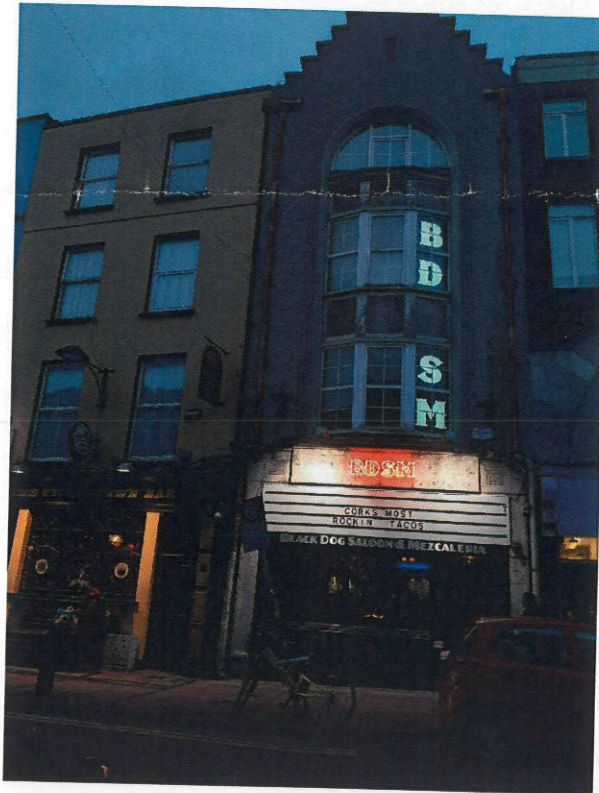


Image 1: Photo of Front of No. 53 North main Street dated 27.02.2020

The following Statutory Provisions and Other Provisions are noted: Section 4(1) of the Planning and Development Act 2000 as amended states as follows: "The following shall be exempted developments for the purposes of this Act..."



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(h) 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 82 of the Act states as follows in regard to 'Development in Architectural Conservation Areas': "82 - (1) F138 [Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of Section 4 (1), or any regulations made under Section 4(2)], the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if these works would not materially affect the character of the area.

The Council submits that Section 82 is the relevant consideration in respect to question 1 raised by Messrs McCutcheon Halley on behalf of Black Dog Bar and Nightclub Ltd having regard to the site location of the premises of within the North Main Street Architectural Conservation Area.

Having regard to the above, and discussions internally with the City Council's Conversation Officer, the Council submits that the signage to the front elevation materially affects the character of the North Main Street ACA and is not exempted development.

Use as a Licenced Café/Restaurant

Question 2. Whether the current use of no. 53 as a licenced café/restaurant is or is not a material change of use from the use permitted under T.P. 12/35314 and T.P. 13/35544 and is or is not development under Section 3 of the Planning Act.

The Council notes the words 'current use' within the referral question raised. However, the Council submits that the question raised does not reflect the '**current use**' as established under planning enforcement register reference E7464 as recorded on the public register, and equally does not reflect the 'current' use established by the appeals body in their report pursuant to planning register reference ABP-305107-19, in which the Inspector states:

"The Nature and Extent of the Existing Development The Vicarstown Bar is a public house. The Black Dog Saloon & Mezcaleria presents itself as a public house. With the exception of the small enclosed 'Service Kitchen' adjoining the outdoor area, there is no kitchen facility and no associated food preparation area. At the time of my site inspection, there was no evidence of any cooking taking place in this premises. No. 53 Main Street presents itself as an entirely separate commercial unit from the Vicarstown Bar. There is no café or restaurant in formal presentation at No. 53."

The Council would like to draw the attention of the Board to TP 12/35314 which granted permission for the change of use of the ground floor from retail to a licensed café/restaurant use. This use was not implemented and the permission expired in 2017.

02 MAR 2020
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The last use, prior to the established unauthorized use as a public house, was retail. "Shop" is defined in Part 2 5 (1) of the Planning and Development Regulations, 2001 (as amended) and does not include use as a public house:

" '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 -

...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 or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;"

No exemption exists to change the use of a premises from retail to licensed café/restaurant.

5.0 CONCLUSION

We look forward to the Board's Consideration of the question set out above. Please do not hesitate to contact this office should any further information be required.

Kind Regards,

Gwen Jordan McGee
Gwen Jordan McGee
Senior Executive Planner

AN BORD PLEANÁLA

02 MAR 2020

CTR DATED _____ FRCM _____

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3. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

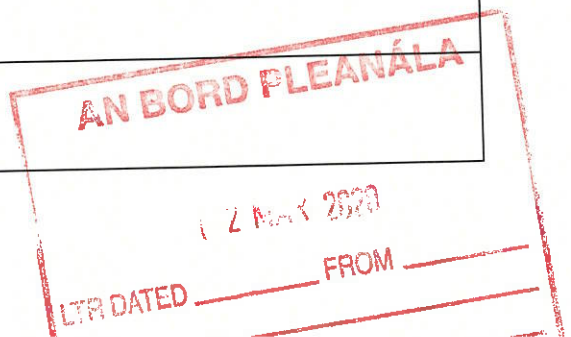
(a) Floor area of existing/proposed structure/s	470 sqm
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) _____
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):	Black Dog Bar and Nightclub Ltd.	
Applicants Address	c/o McCutcheon Halley Planning Consultants, 6 Joyce House, Barrack square, Ballincollig, Co. Cork	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Brian McCutcheon
	Address:	McCutcheon Halley Planning Consultants, 6 Joyce House, Barrack square, Ballincollig, Cork.
	Telephone:	021 4208710
	Fax:	N/A
	E-mail address:	info@mhplanning.ie
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name and address of the owner if available		



/ We confirm that the information contained in the application is true and accurate:

Signature: Bin McCutcheon

Date: 24/02/2020

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

The Development Management Section, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution

AN BORD PLEANÁLA

02 MAR 2020

LTR DATED _____ FROM _____

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ADP- _____



CORK CITY COUNCIL
CITY HALL
CORK

25/02/2020 11:50:33

Receipt No. : PLAN3/0/7820383
***** REPRINT *****

Section 5
Brian McCutcheon

COPIES OF PLANNING PERM 56000 80.00
GOODS 80.00
VAT Exempt/Non-vatable
Section 5 Brian McCutcheon

Total : 80.00 EUR

Tendered :
Customer Not Present 80.00

Change : 0.00

Issued By : Eoghan Fahy
From : Planning Dept. 3
Vat reg No.0005426M





CORK CITY COUNCIL
CITY HALL
CORK

25/02/2020 11:50:33

Receipt No. : PLAN3/0/7820383
***** REPRINT *****

Section 5
Brian McCutcheon

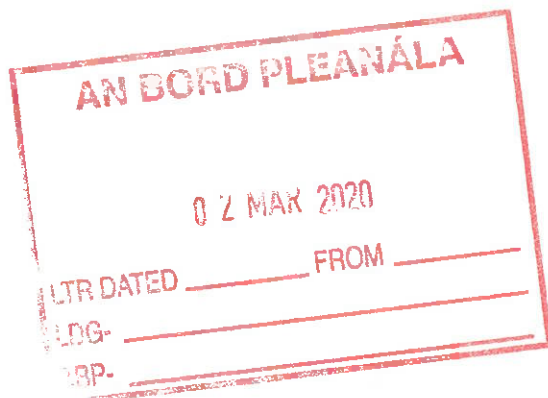
COPIES OF PLANNING PERM 56000 80.00
GOODS 80.00
VAT Exempt/Non-vatable
Section 5 Brian McCutcheon

Total : 80.00 EUR

Tendered :
Customer Not Present 80.00

Change : 0.00

Issued By : Eoghan Fahy
From : Planning Dept. 3
Vat reg No.0005426M



The Secretary
Planning Department
Cork City Council
City Hall
Cork



Re: Request for Section 5 Declaration relating to the permitted licensed premises at 52 & 53 North Main Street, Cork.

Dear Sir/Madam,

We act for Black Dog Bar and Nightclub Ltd. and submit on their behalf this request for a Declaration under Section 5 of the Planning and Development Acts, 2000 – 2018 (hereafter referred to as the Planning Act).

The Declaration is sought in relation to the property at 52 & 53 North Main Street, Cork (see Appendix I for site location). We enclose the required fee of €80.00.

There are two questions on which the Declaration is sought as follows:

- 1 Whether the replacement of the signage on the front elevation on No. 53 is or is not development, and is or is not exempted development under Section 4(1)(h) of the Planning Act; and
- 2 Whether the current use of no. 53 as a licensed café/restaurant is or is not a material change of use from the use permitted under TP12/35314 and TP13/35544 and is or is not development under Section 3 of the Planning Act.

1. Signage on the Front Elevation

While there has been a number of queries regarding the signage from Cork City Council in the past, we consider that the current signage is in substantial compliance with that permitted under planning application ref. 13/35544. This application sought permission to change the front window type, signage and new vent flue on the gable end of the east elevation of No.53 North Main Street. The drawings submitted as part of the planning application showed a signboard above the head of the window, between the two stone pillars at either end, with the historic 'meat market' carved stone plaque retained to the top (see Appendix II).

It is acknowledged that the sign which was initially erected on the premises (see Appendix II) covered the original sign board and was arguably not in accordance with the permitted details. The applicant agreed to apply for retention and following a refusal under Planning Register ref. 17/37500, this sign was removed and replaced with the signage currently existing on site. The layout and design of this signage are based on the advice given at the meeting with the Planning Authority in July 2015 and a review of the planning reports

www.mhplanning.ie

McCUTCHEON HALLEY is a limited partnership registered under the Limited Partnerships Act, 1907, registration no. 1P51Z. Registered in Ireland No. 326490. Registered office: 6 Joyce House, Barrack Square, Ballincollig, Co. Cork. Directors: Brian McCUTCHEON, BA(Econ) DipTP DipGIS MIPi (Chairman), Tom Halley, BA(Mod), MRUP BSc ARCH(Hons) Cert. Civil Eng. MIPi.

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attached to ref. 17/37500. The Council's primary concern was the reinstatement of the original stone signboard of the premises, which had been obscured by the previous marquee sign. We consider that this existing signage addresses these concerns, and is in accordance with the details permitted under ref. 13/5544 given that:

1. While no dimensions are given on the permitted drawings, the sign is generally in accordance with the permitted dimensions;
2. The sign retains and protects the key historic features by not encroaching on the vertical stone pillars or horizontal stone placard.

The only visible difference in the signage is the utilisation of a retro-style cinema signboard with horizontal font dividers and adjustable lettering. The style of signage is considered to be more modest in terms of design than the previous sign while also in keeping with the character of the street which is one of the primary entertainment areas in the city, while not detracting from the character of the existing structure. Given the detail provided in the application documents and the non-requirement to provide further details of the signage as part of compliance, we consider that the existing signage is generally in line with the permission granted under TP13/35544 and therefore should be considered as exempted development under Section 4(10)(h) of the Planning Act..

2. Use as Permitted Café/Restaurant

The planning unit comprises the combined areas of 52 and 53 North Main Street and was established by the permissions granted by Cork City Council under Planning Register ref. TP12/35314 and TP13/35544. Prior to the grant of permission under TP12/35314, the site comprised of two separate planning units: No. 52 North Main Street was an established licenced premises with a dance licence and No. 53 was a vacant retail unit.

The effect of the permission granted under TP 12/35314 was to create a new planning unit and allow 52 and 53 North Main Street to be linked together through a common outdoor seating area and for the combined area to be used as a single, licensed premises which included an ancillary use as a licensed café/restaurant. While the application form and the cover letter submitted under ref. 12/35314 referred to the proposed hours of operation of the café, this information was provided to clarify the ancillary nature of the licensed café use which was envisaged at that point in time.

No condition was attached to the permission which regulated the mix of uses; the relationship between the bar and café/restaurant; the type of food offering; the location of any café use within the overall licensed premises; or the hours of operation of any part of the licenced premises. Since the grant of permission under TP12/35314, the entire planning unit has been governed by a single licence under the Licencing Acts. As a result, the internal layout and use of the premises is regulated by the terms of the licence which is issued annually by the Court having due regard to the planning status and established use of the property and the way the premises has been managed during the preceding period.

Condition 1 of the decision to permit under ref. 12/35314 stated that:

"The Development shall be carried out in accordance with the drawings and specifications submitted to the Planning Authority on 27/06/12 except where altered or amended by conditions in this permission.

Reason: To enable the Planning Authority to check the proposed development when completed"

AN BORD PLEANÁLA

02 MAR 2020

The use of the term “drawings and specifications” rather than “plans and particulars” means that the condition refers to the dimensions and materials of the permitted works and not to any non-technical information submitted in regard to the intended operation and use of the premises. Furthermore, the reason given for Condition 1 confirms that the purpose was to allow the Planning Authority to check compliance with the terms of the permission at the point in time when the works had been completed and before the use had commenced. The condition does not regulate the use of the premises after the permitted works have been completed.

The nature and extent of the permitted use as a licenced premises was confirmed when the decision to permit under 12/35314 was appealed by a third party under ABP Case No. PL 28.241086. The appeal, which was submitted by Noonan Linehan Carroll Coffey Solicitors, highlighted the fact that:

“No 52 North Main Street is a public house, and the proposed development will be an extension to that licensed premises. It is clear from the planning application that the proposed development will require the premises at 53 North Main Street to be licensed for the sale of alcohol”.

On 11/10/2012, the City Council's responded to the grounds of the third-party appeal by stating that:

“the Planning Authority has no further comments to make on this matter”.

This implies that the Planning Authority agreed with the appellant's assessment of the nature and extent of the permitted use as a licensed premises and did not consider that the issues raised in the appeal required any amendment to the conditions attached to the decision to permit.

The permission granted under TP13/35544 also applies to the entire planning unit. Although the development description refers to elevational changes to Nos 52 and 53 North Main Street and the installation of a flue, the ground floor plan which was submitted and approved showed a number of changes to the internal layout of 52 and 53 as compared to the permission granted under 12/35314. No issues were raised with regard to these changes nor the use of the building.

In the recent decision by An Bord Pleanála under PL 28.305107 (R520/19), An Board Pleanála decided that

the alterations in the form staircase provision and other minor alterations constitute development which is exempted development and that the alterations in the form of a Service Kitchen to the layout of the permitted licensed premises at 52/53 North Main Street, Cork constitute development and development that is not exempted development

The Board Direction did not reach any formal conclusion or decision in regard to the planning status of the use. However, the reasons and considerations to which the Board had regard included the following statement under item (d):

the planning history of numbers 52 and 53 North Main Street, with particular reference to planning permissions, planning register reference numbers TP12/35314 and TP13/35544, and noting that the current use of number 53 North Main Street presents as a public house whose permitted use is as a licensed café/restaurant and for which no planning permission appears to exist for use as a public house either independently or associated with the public house use at number 52 North Main Street. (emphasis added)

The purpose of this request for a Declaration in regard to the current use of the premises is to clarify that No 53 will present as a licensed café /restaurant which complies with planning register reference numbers TP12/35314 and TP13/35544. It is proposed to amend the content of the permitted signage to confirm that No. 53 will operate as a licensed café/restaurant which is associated with, and ancillary to, the established public bar and music venue at No.52.

The key issue which may not have been given due consideration by the Planning Authority or the Board is the fact that No. 53 North Main Street is not an independent planning or licensing unit. The permissions granted under Planning Register Ref. Nos. TP12/35314 and TP13/35544 were for a planning unit which enclosed Nos 52 and 53 within the red line boundary.

The Applicant never been intended that No. 53 would operate as an independent unit and it could be argued that there is no permission for it to be operated or sold as an independent licensed café/restaurant given that the red line boundary of the relevant permissions includes No. 52 and the terms of the permissions apply to both premises. The issues relating to the nature of the permitted use of No. 53 must therefore be considered in the context that the permissions allow No. 53 to provide ancillary licensed café and restaurant services to the late-night public bar and music venue known as The Vicarstown Bar which is the long established use of No. 52 and the primary use of the overall planning unit which comprises Nos. 52 and 53.

There are no conditions attached to the relevant permissions which regulate:

- (a) the nature and extent of the primary use of No. 52 as a public house and late-night bar; or
- (b) the nature and extent of the ancillary use of No. 53 as a licensed café/restaurant; or
- (c) the way the two uses interact with each other during normal opening hours or during the occasional events when a late night extension is granted by the District Court.

A relevant precedent for the planning status of a premises where the permitted use is a mix of public bar and licenced restaurant has been established by the Section 5 Declaration issued by the Planning Authority under R 498/18 in regard to the former Rachel's Restaurant at 27/29 Washington Street and which is now trading as Dwyers of Cork. In that case the Declaration was issued in relation to a permission where the primary use was a licenced restaurant and the ancillary use was a public bar. The permission, which had been granted under TP 16/36972, includes a condition (no. 2) which requires that

"the use shall be restricted to a restaurant with ancillary bar in the area so indicated on the plans and particulars".

In the Declaration issued under R 498/18 the Planning Authority decided that while planning permission would be required to use the permitted licensed restaurant for a **separate** public bar, the permission did not preclude the use of the licensed restaurant to provide additional **ancillary** bar space for the permitted restaurant use. *"as there are too many variables and uncertainties as to whether the use would or would not be development"*. Since the Declaration was issued, there has been a significant change in the balance between the licensed restaurant and public bar use notwithstanding the specific restriction imposed by Condition 2. The current use is described as follows on the Dwyers of Cork website:

Gastropub | Open 7 Nights a week | Entertainment Venue | Bookings | Parties | breakfast | brunch | lunch and Dinner | Corporate Events | Live music 7 nights a week | Private Events

As no warning letter or enforcement notice has been issued, the Planning Authority appears to have taken the view that, where permission is granted for a mix of licensed restaurant and public bar use, the balance between the primary and ancillary use can be adjusted over time without a material change in the nature of the overall use.

Unlike Dwyers of Cork, there are no planning conditions attached to 52/53 North Main Street which require a specified area of the permitted floorspace to be used for as a licensed café/restaurant. Given that these premises are competing with each other as gastropubs and live music venues it is important that a consistent approach is adopted by the Planning Authority. The flexibility that allows the change of use from Rachel's Restaurant to Dwyers of Cork Gastropub to be deemed to be a non-material change of use should also apply to the current use of 53 North Main Street.

2. Request

We request the Planning Authority to issue a Declaration under Section 5 of the Planning Acts confirming that:

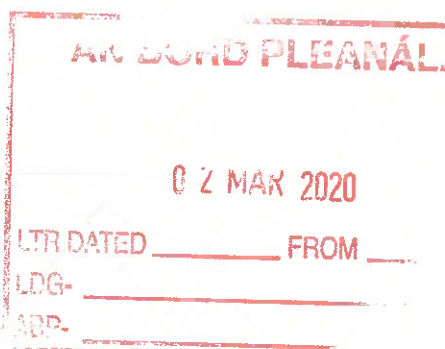
1) The replacement of the signage on the front elevation is in substantial compliance with that permitted under ref. 13/5544 and therefore is 'development' and is 'exempted development' under Section 4(10)(h) of the Planning Act;

2) The premises which is comprised of No. 52 and 53 North main Street forms a single planning unit for which permission was granted under TP12/35314 and TP13/35544 for a mix of public bar and licenced café/restaurant uses. As there has been no material change in the permitted mix of uses, the current use of No. 53 as an ancillary licenced café/restaurant to the Vicarstown Inn is not 'development' as defined under Section 3 of the Planning Acts.

Yours sincerely,

Brian McCutcheon

Brian McCutcheon
McCutcheon Halley



Appendix I: Site Location Maps @ 1:1,100 and 1:500
Appendix II: Photographs of Front Elevation Signage

