

Brian McCutcheon
McCutcheon Halley, Chartered Planning Consultants
6 Joyce House
Barrack Square
Ballincollig
Co. Cork P31 YX97

28th February, 2020

RE: 52 & 53 North Main Street, Cork.

Dear Mr. McCutcheon

I write to you in relation to the Referral R556/20 made to Cork City Council on 24th February 2020.

Please be advised that the Planning Authority has referred the declaration for review to An Bord Pleanála.

Yours sincerely,

Linda Skillington
Administrative Officer
Development Management
Cork City Council, Civic Offices, City Hall, Cork.
Phone: 021-2389840 (Ext. 9840)
Email: linda_skillington@corkcity.ie

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924564/4321

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

52 & 53 North Main Street, Cork

2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: *Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?*

Note: only works listed and described under this section will be assessed under the section 5 declaration.

- [1] 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] 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.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Area with horizontal dashed lines for providing additional details regarding the question, works, or development.

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

| | | |
|--|---|--|
| Name of applicant (principal, | [Redacted] | |
| 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: | [Redacted] |
| | Fax: | [Redacted] |
| | E-mail address: | [Redacted] |
| Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small> | 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 |
| 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 | | |

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

Signature: Brian McCathran

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



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

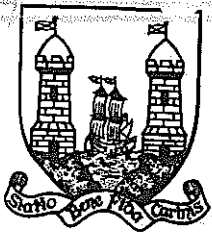
The following two enforcement files E7464 and E8067 are noted on the Cork City Council Public Planning Register in respect to no. 53 North Main Street:

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:



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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.

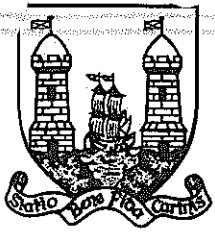
T.P. 13/35544: Permission was granted to change, front signage and to erect a new vent flue on the gable end of the eastern elevation of 53 North Main Street, Cork amended under application T.P. 12/35314. Permission granted subject to 2no. Conditions, including the omission of a proposed awning.

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

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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.



Comhairle Cathrach Chorcaí Cork City Council

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

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,

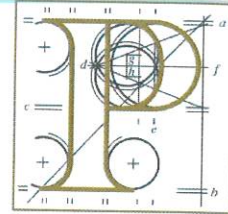

Gwen Jordan McGee
Senior Executive Planner



We are Cork.

Our Case Number: ABP-306780-20

Planning Authority Reference Number: R566/20



An
Bord
Pleanála

Cork City Council
C/O Gwen Jordan McGee
Community, Culture and Placemaking Directorate
City Hall
Cork
Co. Cork

Date: 04 March 2020

Re: Whether replacement signage is or is not development and is or is not exempted development and whether the current use as a Licence cafe/restaurant is not a material change of use from TP12/35314 and TP13/35544
52/53 North Main Street, Cork

Dear Sir / Madam,

An Bord Pleanála has received your referral and will consider it under the Planning and Development Act, 2000, (as amended). A receipt for the fee lodged is enclosed.

In order to comply with section 128 of the Planning and Development Act, 2000, (as amended), please forward, within a period of 2 weeks beginning on the date of this letter, copies of any information in your possession which is relevant to the referral, including:

- (i) details of previous decisions affecting the site;
- (ii) any correspondence that has taken place between the person(s) issued with a declaration under subsection (2)(a) of section 5 of the 2000 Act, (as amended), and the planning authority;
- (iii) the name and address of the owner of the land in question and the name of the occupier of the said land, if different;
- (iv) the names and addresses of all persons notified by you under subsection (2) of section 5 of the 2000 Act, (as amended);
- (v) where no declaration was issued by you, indicate the date that the declaration was due to be issued in accordance with subsection (2) of section 5 of the 2000 Act, (as amended).

Teil
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

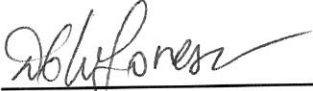
Tel (01) 858 8100
LoCall 1890 275 175
Fax (01) 872 2684
Website www.pleanala.ie
Email bord@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Please note that under section 127(3) of the Planning and Development Act, 2000, (as amended), the person by whom the referral is made shall not be entitled to elaborate in writing upon or make further submissions in writing in relation to the grounds of the referral unless requested to do so by An Bord Pleanála.

Yours faithfully,



Doina Chiforescu
Administrative Assistant
Direct Line: 01-8737133

BPRL01PA

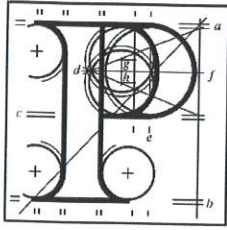
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An
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Táille Reachtúil
Statutory Receipt

| | |
|--|-------------------|
| Ainm an Chustaiméara: Name of Customer: | Cork City Council |
| Gníomhaire: Agent: | |
| Íocaíocht Faighte: Payment Received: | €110 |
| Modh Íocaíochta: Payment Method: | Cheque |
| Uimh. Aitheantais Lóisteála: Lodgement ID: | LDG-024918-20 |
| Cineál na Lóisteála: Lodgement Type: | Referral |
| Iarratas ar éisteacht ó bhéal Oral Hearing Request: | No |
| Dáta Faighte: Date Received: | 02/03/2020 |
| Faighte ag: Received by: | Emma Haughan |