



An
Bord
Pleanála

**Board Direction
ABP-301456-18**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 02/04/2019.

The Board decided, by a majority of 5:2, as set out in the following Order, that:

the operation of an Abrakababra sit in and take away hot food outlet from within the existing permitted filling station forecourt shop, at Maxol Service Station, Kingsmeadow, Cork Road, Waterford, is development and is not exempt development within the meaning of the Act

Board Order:

WHEREAS a question has arisen as to whether the operation of an Abrakababra sit in and take away hot food outlet from within the existing permitted filling station forecourt shop, at Maxol Service Station, Kingsmeadow, Cork Road, Waterford, is or is not development or is or is not exempt development within the meaning of the Act,

AND WHEREAS On the 5th day of April 2018 a declaration was issued by Waterford City & County Council stating that the operation of an Abrakababra sit in and take away hot food outlet from within the existing petrol filling station, at Maxol Service Station, Kingsmeadow, Cork Road, Waterford is development and is exempt development.

AND WHEREAS this question was referred to An Bord Pleanála by Pat Brennan on the 19th day of April 2018:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to -

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended
- (b) The definition of 'shop' under article 5(1) of the Planning and Development Regulations, 2001, as amended by the Planning and Development Regulations 2005
- (c) Articles 6,9 and 10 of the Planning and Development Regulations, 2001-2011 and Class 1 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (d) the planning history of the site,
- (e) the observations of the planning authority and of the Inspector in respect of the internal layout of the premises

AND WHEREAS An Bord Pleanála has concluded that –

1. The authorised use of these premises is as set out Planning Permission Reference No: 11/500013 as amended by Planning Permission Reference No: 15/513,
2. The change of use from the authorised use of portion of these premises to use as a sit in and take away food outlet would result in the intensification of the authorised use,
3. This intensification, having regard to the potential for traffic, noise and general disturbance would be material in planning terms and would therefore, constitute development.

4. Having regard to the definition of shop as set out in Article 5(1) and having regard to the subject development and the attendant relocation of the authorised delicatessen counter into part of the former retail sales area, the development would not be subsidiary to the use authorised by Planning Permission Reference No: 11/500013 as amended by Planning Permission Reference No: 15/513

5. There are no exemptions in the Planning and Development, Act 2000, as amended, or in the Planning and Development Regulations 2001, as amended whereby such development would be exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the operation of an Abrakababra sit in and take away hot food outlet from within the existing permitted filling station forecourt shop at Maxol Service Station, Kingsmeadow, Cork Road, Waterford, is development and is not exempt development within the meaning of the Act

Board Member:

Date: 03/04/2019

Terry Ó Niadh