



An
Bord
Pleanála

Board Direction
ABP-301644-18

The submissions on this file and the Inspector's report were considered at a Board meeting held on 29/11/2018.

The Board decided, as set out in the following Order, that

Board Order as follows:-

WHEREAS a question has arisen as to whether the current use of part of the retail unit for the preparation of hot food for consumption off the premises and associated delivery service in association with "Pizza Hut" at Sweeney's Daybreak, Monfieldstown, Rochestown, Co. Cork is or is not development or is or is not exempted development:

AND WHEREAS Sean Sweeney requested a declaration on this question from Cork County Council and the Council issued a declaration on the 27th day of April 2018, stating that the matter was development and was not exempted development:

AND WHEREAS Sean Sweeney referred this declaration for review to An Bord Pleanála on the 18th day of May 2016:

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

- (a) Section 2(1), 3(1), 5 and 127 of the Planning and Development Act, 2000 – 2018,
- (b) Article 5(1), 6, and 10 of the Planning and Development Regulations, 2001 – 2018,
- (c) Part 4 of Schedule 2 to the Planning and Development Regulations, 2001 – 2018, and
- (d) the planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The permitted use of this premises is a shop under planning permission reference number 05/5960.
- (b) The sale of hot food for consumption off the premises is considered not to be subsidiary to the main use of the premises as a shop.
- (c) Having regard to the definition of ‘shop’ under article 5(1) of the Planning and Development Regulations, 2001, as amended, the use of part of the shop for the preparation and sale of hot food for consumption off the premises has resulted in a change of use.
- (d) Having regard to the potential for material planning consequences in relation to traffic, noise and general disturbance, this change of use is considered to be material in planning terms, and this matter therefore, constitutes development.
- (e) The said use contravenes condition 4 attached to permitted application 05/5960, and
- (f) The development does not come within the scope of exemptions from the general obligation to obtain planning permission, as provided under planning legislation.

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 current use of part of the retail unit for the preparation of hot food for consumption off the premises and associated delivery service in association with “Pizza Hut” at Sweeney’s Daybreak, Monfieldstown, Rochestown, Co. Cork is development and is not exempted development.

Board Member:

Date: 03/12/2018

Terry Prendergast