



An
Bord
Pleanála

Board Direction
ABP-303868-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on June 19th 2019.

The Board decided, as set out in the following Order, that the operation of a toy shop in a retail warehouse in a bulky goods retail park at World of Wonder, Unit 3, Limerick Road, Shesherahkeale, Nenagh, Co Tipperary, is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the operation of a toy shop in a retail warehouse in a bulky goods retail park at World of Wonder, Unit 3, Limerick Road, Shesherahkeale, Nenagh, Co Tipperary is or is not development or is or is not exempted development.

AND WHEREAS Eanna F. O'Briain requested a declaration on this question from Tipperary County Council, and the Council issued a declaration on the 20th day of February 2019 stating that the matter was not development.

AND WHEREAS Eanna F. O'Briain referred this declaration for review to An Bord Pleanála, on the 6th day of March 2019.

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

- (a) Sections 2 (1) and 3 (1) of the Planning and Development Act, 2000, as amended,
- (b) Articles 5(1), 6(1), 9(1), and 10(1) of the Planning and Development Regulations 2001, as amended,
- (c) The planning history of the site, including planning permission register reference number N32/4101 (An Bord Pleanála reference number PL74.204846), and in particular condition 26 of that permission, which specified that the range of goods sold in the retail warehouse development shall be restricted to bulky household or other goods generally sold in bulk, including carpets, furniture, automotive products, white electrical goods and DIY items, the reason for which was to ensure compliance with the Retail Planning Guidelines for Planning Authorities, 2000,
- (d) The definitions of ‘retail warehouse’ and ‘bulky goods’ as set out in Annex 1 of the “Retail Planning – Guidelines for Planning Authorities” issued by the Department of the Environment and Local Government (2000),
- (e) Relevant case law, including Treacy - v- An Bord Pleanála [2010] IEHC 13, and Ogalas Ltd (t/a Homestore and more) - v- An Bord Pleanála [2014] IEHC 487, and
- (f) The submissions on file and the report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) unit number 5 has a permitted use as a retail warehouse under planning register reference number N32/4101 (An Bord Pleanála reference number PL74.204846);
- (b) condition number 26 of that permission restricted the goods to be sold in the retail warehouse development, which included the subject unit number 3, to

bulky household goods or other goods generally sold in bulk, in order to comply with the Retail Planning Guidelines for Planning Authorities, 2000, and accordingly the term “bulky goods” is as defined in Annex 1 of these Guidelines;

- (c) the sale of toys in this retail warehouse unit involves a substantial proportion of non-bulky goods, based on the submissions on file and the report of the Inspector, and
 - i) which does not come within the scope of the definition of activities of a retail warehouse as set out in these Guidelines, and
 - (ii) is not restricted to the sale of bulky household goods and goods generally sold in bulk as defined in these Guidelines,
- (d) Accordingly, the use of Unit 3 as a toy shop is a change of use from the authorised use of this unit as a retail warehouse, and this change of use constitutes development, being a material change of use, having regard to its retail character and its material external impacts (such as its possible impacts on town centre retailing, traffic and parking) on the proper planning and sustainable development of the area,
- (e) This material change of use:
 - (i) would be inconsistent with the use specified and included in the permission under planning register reference number N32/4101 (An Bord Pleanála reference number PL74.204846) for retail warehousing, in accordance with the definition of a retail warehouse as set out in the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment and Local Government (2000), and would therefore not be exempted development having regard to article 10(1)(c) of the Planning and Development Regulations, 2001, as amended, and

- (ii) materially contravenes condition number 26 of planning register reference number N32/4101 (An Bord Pleanála reference number PL74.204846), and would therefore not be exempted development having regard to article 10(1)(b) of the Planning and Development Regulations, 2001, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the operation of a toy shop in a retail warehouse in a bulky goods retail park at World of Wonder, Unit 3, Limerick Road, Sheshheraghkeale, Nenagh, Co Tipperary, is development and is not exempted development.

In not accepting the recommendation of the Inspector that the subject use is not development, the Board had regard to the definitions contained in the Retail Planning Guidelines as issued in 2000, which applied at the time of the planning permission for the subject development and in respect of compliance with which condition number 26 of the permission was imposed, and did not accept that the 2012 Guidelines were relevant (as determined by case law). Furthermore, the Board noted that there was no provision, in the definitions in the 2000 Guidelines, nor in condition 26 of the permission, whereby a proportion of the goods sold in these premises could be non-bulky. The Board also noted the comment of the Inspector that many stores within retail parks retail items which could not be considered bulky, and noted that a significant number of referrals had been determined by An Bord Pleanála over the past number of years in relation to such uses, almost all of which determined that use of retail warehouses for non-bulky goods was not exempted development.

Board Member

Date: 19th June 2019

Philip Jones