



An
Bord
Pleanála

Board Direction
ABP-303989-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on July 29th, 2019.

The Board decided, on a vote of 2 to 1, as set out in the following Order, that the proposed partial change of use from shop to coffee shop at No. 12 Cross Street Upper, Galway is development and is not exempted development, and that the proposed maintenance and conservation works to the upper floor façade at No. 12 Cross Street and No. 1 High Street Galway (protected structures) is development and is exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the proposed partial change of use from shop to coffee shop at No. 12 Cross Street Upper, Galway, and the proposed maintenance and conservation works to the upper floor façade at No. 12 Cross Street and No. 1 High Street Galway (protected structures) is or not development and is or is not exempted development.

AND WHEREAS Joelee Ward c/o James O'Donnell, Planning Consultancy Services of Third Floor, Ross House, Victoria Place, Eyre Square, Galway, requested a declaration on this question from Galway City Council, and the Council issued a declaration on the 21st day of February 2019 stating that the partial change of use was development and was not exempted development, and that the maintenance and conservation works were development and were exempted development.

AND WHEREAS Joelee Ward referred this declaration for review to An Bord Pleanála, on the 20th day of March 2019.

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

- (a) Sections 2, 3,4 and 57 of the Planning and Development Act 2000, as amended,
- (b) Articles 5, 6 and 10 of the Planning and Development Regulations, 2001, as amended, including the definition of “shop” set out in Section 5 (1) of the Regulations.
- (c) The status of the building as a protected structure,
- (d) The previous use of the ground floor of the subject premises as a shop,
- (e) The submissions on file, including the architectural heritage impact assessment submitted by the referrer and the report of the Heritage Officer of the planning authority,
- (f) The information submitted on behalf of the referrer regarding the scale, nature and layout of the subject premises, including photographs of the interior prior to the partial change of use, and the details submitted of the proposed internal layout thereof, and regarding the nature and range of goods proposed to be sold on the premises, and
- (g) The report of the Inspector, including of his inspection of the subject premises.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The proposed maintenance and conservation works to the upper floor facades of the two protected structures constitutes development;
- (b) These maintenance and conservation works would not materially affect the character of the protected structures, or elements of the structures that contribute to their special architectural and historic interest, and therefore would constitute exempted development pursuant to Sections 4(1)(h) and 57(1) of the Planning and Development Act, 2000, as amended.

- (c) The previous use of the ground floor of the subject premises was as a shop, with ancillary storage in the basement.
- (d) The partial change of use of the ground floor of the subject premises as a “coffee shop” does not constitute use as a “shop” as defined in Article 5 (1) of the Planning and Development Regulations 2001, as amended, because the nature and range of goods sold, as outlined in the documentation submitted as part of the referral, consists primarily of the sale of sandwiches, cold/package ready-made food and other food (including beverages) for consumption off the premises, and the remaining area, as indicated in the inspection of the premises by the Inspector, is used primarily for the sale of similar items. Accordingly, the partial change of use is not subsidiary to any other retail use, and therefore does not come within the scope of paragraph (d) of Article 5 (1).
- (e) The change of use from the former retail use, wherein the primary use was the retail sale of goods, to the subject use as a “coffee shop” raises issues that are material in terms of the proper planning and sustainable development of the area, including the potential for litter and management of waste arising from the use of the premises for the sale of sandwiches and other food (including beverages) off the premises, and the potential for differing pedestrian and vehicular traffic as compared to the former retail use, and the change of use is, therefore, development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended.
- (f) There are no exemptions in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations 2001, as amended, by which this development would constitute exempted development.

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 proposed partial change of use from shop to coffee shop at No. 12 Cross Street Upper, Galway is development and is not exempted development, and the proposed maintenance and conservation works to the upper floor façade at No. 12 Cross Street and No. 1 High Street Galway (protected structures) is development and is exempted development.

In not accepting the recommendation of the Inspector that the subject partial change of use is not development, the Board had regard to his inspection of the subject premises, and noted that the nature and range of goods sold on the premises involves primarily the sale of sandwiches and other food (including beverages) for consumption off the premises, and that such sale is the main retail use and is not a subsidiary use, and that therefore the use of the premises in question as a “coffee shop” is not within the scope of the definition of a “shop” as set out in the Regulations. The Board was also satisfied that the change of use from the former retail use to the use as a “coffee shop”, as has taken place, raises external matters that are material in planning terms, and that therefore the change of use in this instance constitutes development. Furthermore, the Board noted the reliance, by the Inspector and by the referrer’s agent, on previous referral decisions by the Board, under file reference numbers RL3315 and RL2940, both of which had decided that a “coffee shop” was within the definition of a “shop”, but had not adverted to more recent decisions by the Board, in a large number of cases, whereby the Board had subsequently determined that use of a premises as a “coffee shop” was not within the definition of use as a “shop”, including file reference numbers RL3424, RL3425, RL3426 and RL3515, and that the nature and range of goods sold on the premises is a significant factor, and the presence, or absence, of customer seating and toilet facilities is not a determining factor in this regard.

Board Member

Date: 31st July 2019

Philip Jones