



An
Bord
Pleanála

Board Direction
ABP-304519-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on November 7th, 2019.

The Board decided, on a vote of 2 to 1, as set out in the following Order, that the internal alterations to the permitted forecourt shop, and the resultant change of use of part of the building from storage area to retail area as part of the shop which are shown on the drawings attached as Appendix 1 to the referral are development and that the internal alterations, of themselves, are exempted development, but that the resultant change of use is not exempted development at Maxol Filling station, Glasheen Road, Wilton, Cork.

Board Order as follows:-

WHEREAS a question has arisen as to whether the alterations to the internal layout of the permitted forecourt shop, which are shown on the drawings attached as Appendix 1 to the referral at Maxol Filling station, Glasheen Road, Cork, are, or are not, exempted development.

AND WHEREAS The Maxol Group c/o McCutcheon Halley of 6 Joyce House, Barrack Square, Ballincollig, Co Cork, requested a declaration on this question from Cork City Council, and the Council failed to issue a declaration within the statutory period.

AND WHEREAS The Maxol Group referred this question for determination to An Bord Pleanála, on the 22nd day of May 2019.

AND WHEREAS An Bord Pleanála, in the light of the documentation submitted on file, has decided to re-word the question as follows:-

Whether the internal alterations to the permitted forecourt shop, and the resultant change of use of part of the building from storage area to retail area as part of the shop, which are shown on the drawings attached as Appendix 1 to the referral, at Maxol Filling station, Glasheen Road, Wilton, Cork, are or are not development and are, or are not, exempted development.

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” as set out in Article 5 (1) of the Planning and Development Regulations, 2001, as amended,
- (c) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended, and Class 1 of Part 4 of the Second Schedule to these Regulations,
- (d) The planning history of the subject site and in particular planning permission register reference number 09/34163 (An Bord Pleanála reference number PL28.237319), and conditions 2 and 3 of that permission,
- (e) The Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in 2012 (which Guidelines were in place at the time that the subject alterations took place), and

- (f) The report of the Inspector, including details of his internal inspection of the subject premises, as set out in his report.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The internal alterations involved the carrying out of works and therefore constitute development, as defined;
- (b) Arising from these alterations, there has been a resultant change of use of part of the approved building which, by reason of condition number 3 of planning permission register reference number 09/34163 (An Bord Pleanála reference number PL28.237319), was to be used solely for the storage of goods sold in the then approved forecourt shop, to use as part of the forecourt shop;
- (c) This change of use from storage area to part of the shop is a factual change of use, and this change of use raises material issues relevant to the proper planning and sustainable development of the area, including impacts on the residential amenities of adjoining properties through overspill parking onto adjoining streets and vehicular movements into, within and out of the site posing a traffic hazard, due to increased intensity of use and due to significant differences in the proportion of the forecourt shop used for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine would not be subsidiary to the main retail use, as compared to the proportions of such use as approved under planning permission register reference number 09/34163 (An Bord Pleanála reference number PL28.237319). This change of use would, therefore, constitute a material change of use, and is development;
- (d) The internal alterations of themselves (but not any external alterations to the building); would come within the scope of the exemption set out in Section 4

(1)(h) of the Planning and Development Act, 2000, as amended, and would therefore be exempted development;

- (e) However, the resultant material change of use would not be exempted development, as it would not be a change of use within one of the classes of use specified in Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and in any event, any claimed exemption would be restricted by reason of the restrictions on exemption set out in Article 10 (1) of these Regulations, because such change of use would contravene condition 3 of planning permission register reference number 09/34163 (An Bord Pleanála reference number PL28.237319), and would be inconsistent with the use specified for this part of the building in this condition.
- (f) There are no other provisions, under the Planning and Development Act 2000, as amended, and under the Planning and Development Regulations 2001, as amended, whereby this material change of use would be exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(b) of the Planning and Development Act, 2000, as amended, hereby decides that the internal alterations to the permitted forecourt shop, and the resultant change of use of part of the building from storage area to retail area as part of the shop which are shown on the drawings attached as Appendix 1 to the referral are development and that the internal alterations, of themselves, are exempted development, but that the resultant change of use is not exempted development, at Maxol Filling station, Glasheen Road, Wilton, Cork.

Board Member

Date: 7th November 2019

Philip Jones