



An
Bord
Pleanála

Board Direction
ABP-304824-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on 18/12/2019.

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

WHEREAS a question has arisen as to whether the use of the covered area (coloured orange) on the supplied map marked 'x' as a Bistro Bar is or is not permitted; and the use of the uncovered area (coloured yellow) on the supplied map marked 'y' as a Terrace Bistro Dining area is or is not permitted; and whether direct access from the canal bank to the uncovered area on the submitted map marked y at point c is or is not permitted.

AND WHEREAS Mr. Myles Meagher requested a declaration on this question from Fingal County Council and the Council did not issue a declaration on this question but referred the question to the Board for determination,

AND WHEREAS Fingal County Council referred the question to An Bord Pleanála on the 1st day of July 2019 and specifically asked the Board to determine whether these matters were, or were not development and were, or were not exempted development

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4 of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (a) Class 9 of Part 1 of the 2nd Schedule of the Planning and Development Regulations, 2001, as amended,
- (b) the planning history of the site, and
- (c) the report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The permitted use of the covered outdoor seating area, having regard to the planning history of the subject lands is as a smoking area ancillary to the existing hotel and bar,
- (b) The use of the covered outdoor seating area as a bistro bar with counter and dispensing facilities and with a counter for the sale of ice cream, is a change of use from the permitted use and this change of use raises material planning matters, including the generation of noise and disturbance, with implications for residential amenity of nearby housing, and is therefore a material change of use and is development,
- (c) There are no provisions in the Planning and Development Act, 2000, as amended, whereby this development would be exempted development,
- (d) The permitted use of the uncovered area is as an open space ancillary to the hotel and bar. The use of this area for seating and as

a terraced bistro dining area is a change of use from its permitted use. Such change of use raises material planning considerations, including the generation of noise and disturbance, with implications for residential amenity of nearby housing and is not within the scope of condition 2 (c) of Planning Permission FW17A/0020-ABP O6F-248506 and is therefore a material change of use and is therefore development,

- (e) There are no provisions in the Planning and Development Act, 2000, as amended, whereby this development would be exempted development,
- (f) The use of the direct access from the canal bank to the uncovered area on the submitted map marked y at point c comes within the scope of Class 9 and is considered by the Board to be exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that the use of the covered outdoor seating area as a Bistro Bar and the uncovered outdoor area as a Terrace Bistro Dining area is development and is not exempted development and the direct access from the canal bank to the uncovered area is exempted development.

Board Member:

Date: 18/12/2019

Terry Ó Niadh

Note: In reaching its decision, the Board noted that, while the question put to the Planning Authority by Mr Myles Meagher queried whether the matters were permitted, the Planning Authority, under Section 5(4) of the Planning and Development Act, 2000, as amended, specifically requested the Board to determine

whether the matters were or were not development and were or were not exempted development and accordingly considered that the referral was valid.