



An  
Bord  
Pleanála

**Board Direction  
ABP-305094-19**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on 07/08/2020.

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

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the change of use of an existing retail unit (clothes shop) to use as a bakery including the sale of sandwiches, cakes, breads etc. for consumption on and off the premises and ancillary use of the unit for the sale of tea and coffee with ancillary seating at Unit No. 13 Manor Mills Shopping Centre, Maynooth, Co. Kildare is or is not development or is or is not exempted development.

**AND WHEREAS** Green Design Build (in their capacity as agents acting on behalf of the Natural Bakery Company Ltd.) requested a declaration on this question from Kildare Co. Council and the Council issued a declaration on 8<sup>th</sup>, July 2019 stating that the matter is development and is not exempted development.

**AND WHEREAS** Green Design Build (in their capacity as agents acting on behalf of the Natural Bakery Company Ltd.) referred this question for review to An Bord Pleanála on the 6<sup>th</sup> day of August, 2019.

**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*, as amended,
- (c) Section 4(1)(h) of the *Planning and Development Act, 2000*, as amended,
- (d) Section 4(4) of the *Planning and Development Act, 2000*, as amended,
- (e) Article 5(1) of the *Planning and Development Regulations, 2001*, as amended, and the definition of a 'shop' provided therein,
- (f) Article 10(1) of the *Planning and Development Regulations, 2001*, as amended and
- (g) the planning history of the site and the nature of the subject use.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) Modifications to the interior of the retail unit (clothes shop) at Unit No. 13 Manor Mills Shopping Centre involved the carrying out of works to the interior of the property.
- (b) The works carried out being minor nature and being works which only affect the interior of the structure or which do not materially affect the external appearance of the structure so as to render the external appearance inconsistent with the character of the structure or of neighbouring structures come within the scope of Section 4(1)(h) of the *Planning and Development Act, 2000*, as amended, and are therefore exempted development.
- (c) The use of the retail unit (clothes shop) at Unit No. 13 Manor Mills Shopping Centre as a retail bakery including the sale of sandwiches, cakes, breads, teas and coffee etc. for consumption on (with limited seating area) and off the premises represents a change of use, and such change of use would raise issues which are material in terms of the proper planning and sustainable development of the area e.g. odour issues arising from the installation of a kitchen, ovens (and other equipment), and the baking of raw materials into finished product (bread and confectionery) etc. and would, therefore, constitute a material change of use. The proposed material change of use constitutes development.

- (d) The current use of Unit No. 13 as a retail bakery which provides for the sale of food for consumption on and off the premises does not fall within the definition of a 'shop' as provided under Article 5(1) of the *Planning and Development Regulations, 2001*, as amended where a shop may include for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use. Furthermore, the definition of a shop does not include any use associated with a restaurant. Therefore, the change of use from a shop to a retail bakery does not constitute exempted development by reason of the operation of Article 10 of these Regulations (i.e. does not consist of a change of use within Class 1 Use as a shop specified in Part 4 of Schedule 2 of these Regulations).
- (e) There are no other exemptions that can be availed of under the Act or the Regulations which would render the development to be exempted development.
- (f) Therefore, the change of use of the retail unit (clothes shop) at Unit No. 13 Manor Mills Shopping Centre to use as a retail bakery including the sale of sandwiches, cakes, breads, teas and coffees etc. for consumption on (with limited seating area) and off the premises constitutes development which is not exempted development.

**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 change of use of an existing retail unit (clothes shop) to use as a retail bakery including the sale of sandwiches, cakes, breads, teas and coffees etc. for consumption on (with limited seating area) and off the premises at Unit No. 13, Manor Mills Shopping Centre, Maynooth, Co. Kildare is development and is not exempted development.

**Board Member:**

**Date:** 13/08/2020

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Maria FitzGerald