



An
Bord
Pleanála

Board Direction
BD-005308-20
ABP-305791-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on 04/03/20.

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

WHEREAS a question has arisen as to whether the use of ground floor of the premises at No. 72 Main Street, Longford as a takeaway for sandwiches, coffee, buns and other such small confections, provided always that the use is subsidiary to the main use, is exempted development.

AND WHEREAS this question was referred to Longford County Council, by Liam Madden Consultant, on behalf of Philip King on the 25th day of September 2019, and the Council issued a declaration on the 9th day of October 2019, stating that the matter is development and is not exempted development:

AND WHEREAS Liam Madden, on behalf of Philip King, referred this declaration for review to An Bord Pleanála on the 29th day of October 2019:

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' under article 5(1) of the Planning and Development Regulations, 2001, as amended by the Planning and Development Regulations 2005;
- c) Articles 6(1), 9(1) and 10(1) of the Planning and Development Regulations, 2001 as amended, and Class 1 of Part 4 of Schedule 2 of these Regulations;
- d) The permitted use of the premises;
- e) The planning history of the site;
- f) The submissions on file from the referrer and from the planning authority;

AND WHEREAS An Bord Pleanála has concluded that:

- a) The permitted use of the ground floor of the subject premises is as a shop;
- b) The takeaway sale of sandwiches, coffee, buns and other such small confections, provided always that the use is subsidiary to the main use as a shop, would come within the definition of 'shop' within article 5(1) of the Planning and Development Regulations 2001, as amended, and would not therefore constitute "development" within the meaning of Section 3 of the Planning and Development Act, 2000;
- c) However should the use of the ground floor of the subject premises, change from use as a shop to a separate use by means of the implementation of a planning permission, or otherwise, then the use of the subject premises will have altered and in such circumstances the takeaway sale of sandwiches, coffee, buns and other such small confections, provided always that the use is subsidiary to the main use as a shop, would constitute a material change of use to the new separate use and the provisions under article 5(1) would not apply.

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the use of the ground floor of the subject premises, which has a permitted use as a shop, for the takeaway sale of sandwiches coffee, buns and other such small confections, for consumption off the premises, provided always that the use is subsidiary to the main use as a shop, at 72 Main Street, Longford town, Longford, is not development.

In deciding not to accept the recommendation of the Inspector, the Board agreed with the Inspector that if the permitted use of the subject premises as a shop was to change subsequent to the implementation of a planning permission for change of use to a restaurant, (and which intended change of use by means of planning application 19/155 is specifically referred to in the submissions on file from the referrer), then the use of the subject premises for the takeaway sale of sandwiches coffee, buns and other such small confections, for consumption off the premises, would constitute development and would not be exempted development. However the current permitted use of the ground floor of the subject premises is confirmed as a shop, and given the question put by the referrer relating to the 'use of the ground floor of the Philip King premises' in the referral to Longford County Council, on the 25th September 2019, and the 'use of the ground floor of the existing shop' in the referral review as submitted to An Bord Pleanála on the 29th October, 2019, and noting that on both of those dates, no planning permission was in place for a change of use at the subject premises from the permitted use as a shop, nor had any actual change in use from use as a shop been effected at the subject premises, and thus the permitted use the subject premises currently remains as a shop, the Board determined that the matter referred to by the referrer is not development.

Board Member

Date: 06/03/2020

Chris McGarry