



An
Bord
Pleanála

Board Direction
ABP-306017-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on 05/08/2020.

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

Board Order as follows:-

WHEREAS a question has arisen as to whether the provision of two deli counters (46 sq. metres in area) instead of one deli counter (46 sq. metres in area), within a rearranged petrol filling station forecourt building, which has permission for inter alia a 'hot food deli', 'café seating area' and retail shop, constitutes exempted development under the provisions of the Planning and Development Act, 2000 (as amended) and Planning and Development Regulations, 2001 (as amended) at Maxol Station, Kingsmeadow, Cork Road, Waterford, is or is not development or is or is not exempted development:

AND WHEREAS the question was referred to An Bord Pleanála by Maxol Limited on the 25th day of November 2019:

AND WHEREAS An Bord Pleanála considered it appropriate that the wording of the question should be reworded as follows:

Whether the alteration of the internal layout of a permitted petrol filling station forecourt building to provide two deli counters with a combined area of 46 sq. metres instead of one deli counter of 46 sq. metres and the use of one of these deli counter areas as a fast food outlet (Abrakababra) for the sale of hot food for consumption both on the premises, in a dedicated seating area, and off the premises is or is not development and is or is not exempted development.

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

- (a) Sections 2(1), 3(1) and 4(1)(h) 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) Article 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended, and Class 1 of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001 as amended.
- (d) The planning history of the site, including the description of the development and the layout of the forecourt building permitted under Waterford County Council Ref. 11/500013 and amendments granted under Waterford County Council Refs. 13/500036 and 15/513,
- (e) The nature of the Abrakebabra outlet operated on site which is considered to constitute a fast food take away use,
- (f) The observations of the referrer and of the inspector in respect of the internal layout of the premises and the nature of the uses undertaken on site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the authorised use of these premises is as set out in planning register reference number PD11/13, as amended by planning register reference numbers 13/36 and 15/513,
- (b) the sub division of permitted hot food deli floorspace would constitute development being works to the permitted structure and that these works would be exempt under s.4(1)(h) of the Act being works which only affect the interior of the structure,
- (c) that the nature of the Abrakebabra use on site is a fast food outlet which is different from a hot food deli use and constitutes a change of use which gives rise to potential for traffic, noise, odour and general disturbance would be material in planning terms and would therefore, constitute development,
- (d) The fact that there are no exemptions in the Planning and Development Act, 2000, as amended, or in the Planning and Development Regulations, 2001, as amended whereby such development would be exempted development:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(b) of the 2000 Act, hereby decides that the alteration of the internal layout of a permitted petrol filling station forecourt building to provide two deli counters with a combined area of 46 sq. metres instead of one deli counter of 46 sq. metres and the use of one of these deli counter areas as a fast food outlet (Abrakababra) for the sale of hot food for consumption both on the premises, in a dedicated seating area, and off the premises is development and is not exempted development.

Board Member:

Date: 05/08/2020

Terry Prendergast