



An
Bord
Pleanála

**Board Direction
ABP-309803-21**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 26/07/2021.

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

Board Order as follows:-

WHEREAS a question has arisen as to whether a change of use from shop to 'coffee shop' where the sale of coffee to visiting members of the public is the primary use of this speciality retail shop and the sale of hot chocolate, minerals, pastries, sandwiches, and rolls to visiting members of the public is a subsidiary retail use at Unit 3, 6 Railway Terrace, Naas, Co. Kildare is or is not development and is or is not exempted development:

AND WHEREAS Ziba Coffee Shop Limited care of Maguire & Associates, 6 Railway Terrace, Dublin Road, Naas, Co. Kildare W91 NYK3 requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 24th day of February, 2021 stating that the matter was development and was not exempted development:

AND WHEREAS Ziba Coffee House Limited referred this declaration for review to An Bord Pleanála on the 22nd day of March, 2021:

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) article 5(1) of the Planning and Development Regulations, 2001 (as amended),
- (e) Schedule 2 Part 4 of the Planning and Development Regulations, 2001 (as amended),
- (f) the planning history of the site,
- (g) the information submitted on behalf of the referrer regarding the nature and range of goods to be sold on the premises,
- (h) relevant Board decisions:
- (i) the report of the Inspector:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The previous use of the premises was a shop.
- (b) The use of the premises as a 'coffee shop' does not constitute use as a shop as defined in article 5(1) of the Planning and Development Regulations, 2001 (as amended), because the nature and range of goods sold, as outlined in the documentation submitted as part of the referral, consists of hot chocolate, minerals, pastries, sandwiches, and rolls to visiting members of the public is not regarded as a subsidiary use to any other retail use, and therefore does not come within the scope of paragraph (d) of Article 5 (1).

- (c) the use of the subject premises as a “coffee shop” does not come within the scope of the other elements of the definition of a “shop” as set out under paragraphs (a) – (c) and (e) - (i) of Article 5(1);
- (d) The change of use from a shop to use as a coffee shop raises issues that are material in terms of the proper planning and sustainable development of the area, including the potential for litter and management of waste arising from the use of the premises for the sale of coffee, sandwiches and other beverages and food for consumption off the premises, odour issues and the potential for differing pedestrian and vehicular traffic as compared to the former shop use and the change of use is, therefore, development within the meaning of section 3 of the Planning and Development Act, 2000 (as amended).
- (e) There are no exemptions in the Planning and Development Act, 2000 (as amended) or in the Planning and Development Regulations, 2001 (as amended), by which this development would constitute 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 from shop to ‘coffee shop’ where the sale of coffee to visiting members of the public is the primary use of this speciality retail shop and the sale of hot chocolate, minerals, pastries, sandwiches, and rolls to visiting members of the public is a subsidiary retail use at Unit 3, 6 Railway Terrace, Naas, Co. Kildare is development and is not exempted development.

Board Member: Maria Fitzgerald **Date:** 26/07/2021
Maria Fitzgerald

