



An
Coimisiún
Pleanála

Direction
ABP-321791-25

The submissions on this file and the Inspector's report were considered at a meeting held on 19/01/2026.

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

Commission Order as follows:-

WHEREAS a question has arisen as to whether the change in use of rear yard or unauthorised beer garden (area shown outlined in red on figure 2 received by An Coimisiún Pleanála on 4th February 2025) to a smoking area at Sheila Bun's, Upper Bridge Street, Killorglin, County Kerry is or is not development or is or is not exempted development.

AND WHEREAS Kathleen Finnegan and Patrick Finnegan requested a declaration on this question from Kerry County Council and the Council issued a declaration on the 22nd day of January 2025 stating that the matter was not development.

AND WHEREAS Kathleen Finnegan and Patrick Finnegan referred this declaration for review to An Coimisiún Pleanála on the 4th day of February 2025.

AND WHEREAS An Coimisiún Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 3(1) of the Planning and Development Act 2000 (as amended)
- (b) The Planning and Development Regulation 2001 (as amended), Article 10(1) and schedule 2, part 4, class 12
- (c) The planning history files PA93/871 and PA PA22/77 (ABP313775-22)
- (d) Circuit Court order dated 26th Juen 2024 between Patrick Finnegan and Kathleen Finnegan and Tom Crowley – served under Section 160 of Planning and Development Act 2000 to 2021 as amended.
- (e) Documentation of file
- (f) The location of the site and adjoining development in the surrounding area

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) Use of the entirety of the area outlined in red on figure 2 received by An Coimisiún Pleanála on 4th February 2025 as an outdoor smoking area would constitute an intensification of the permitted use of the premises and would therefore constitute a material change of use and would therefore development.
- (b) The change of use of the entire area outlined in red to smoking area is not an exempted form of development because this change of use does not fall within the provisions of the Planning and Development Regulations 2001, Article 10(1) and Part 4, class 12 because it would be a form of development (change of use) where works have been carried without the benefit of planning permission, which are therefore unauthorised.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the change in use of the rear yard (area shown outlined in red on figure 2 received by An Coimisiún Pleanála on 4th February 2025) to a smoking area at

Sheila Bun's, Upper Bridge Street, Killorglin, County Kerry is development and is not exempted development.

Note: In making its determination the Commission noted the submission on file from the owner of the premises which stated that there was a pre-existing smoking area to the rear of the premises but that this formed just part of the area outlined in red on figure 2 received by An Coimisiún Pleanála on 4th February 2025.

Planning

Commissioner:

Date: 19/01/2026



Liam McGree