



Board Direction

Ref: 09.RL3402

The submissions on this file and the Inspector's report were considered at a Board meeting held on 15th April 2016.

The Board decided, generally in accordance with the recommendation of the Inspector, that the change of use of part of the existing retail premises for the sale of hot food for consumption off the premises is development and is not exempted development, at McCann's Newsagent, Calverstown, Kilcullen, County Kildare.

WHEREAS a question has arisen as to whether the change of use of part of the existing retail premises for the sale of hot food for consumption off the premises as an ancillary part of this outlet, all at McCann's Newsagent, Calverstown, Kilcullen, County Kildare, is or is not development, or is or is not exempted development:

AND WHEREAS Mr John McCann, care of Vincent J.P. Farry & Company Ltd, of Suite 180, 28 South Frederick Street, Dublin, requested a declaration on this question from Kildare County Council, and the Council issued a declaration on 20th August 2015, stating that the use of a portion of an existing retail premises at McCann's Newsagent, Calverstown, for the sale of hot food for consumption off the premises, is development and is not exempted development:

AND WHEREAS Mr John McCann referred the declaration for review to An Bord Pleanála on 9th September 2015:

AND WHEREAS An Bord Pleanála decide to reformulate the question as follows:

"whether the change of use of part of the existing retail premises for the sale of hot food for consumption off the premises, at McCann's Newsagent, Calverstown, Kilcullen, County Kildare, is or is not development, or is or is not exempted development":

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) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended, and Part 4 of Schedule 2 to those Regulations,
- (c) the definition of 'shop' under article 5(1) of the Planning and Development Regulations, 2001 , as amended,
- (d) the planning history of the site, including planning register reference number 04/1152, whereby planning permission was granted for a shop on the ground floor, as amended under planning register reference number 07/0206, and
- (e) the observations of the planning authority and of the Inspector in respect of the internal layout of the premises:

AND WHEREAS An Bord Pleanála has concluded that -

- (i) the sale of hot food for consumption off the premises is not subsidiary to the principal shop use,
- (ii) having regard to the definition of 'shop' under article 5(1) of the Planning and Development Regulations, 2001, as amended, this has resulted in a change of use within this shop from the main retail use,
- (iii) having regard to the potential for material planning consequences in relation to traffic, noise and general disturbance, this change of use is considered to be material in planning terms, and this matter, therefore, constitutes development, and
- (iv) this development does not come within the scope of exemptions from the general obligation to obtain planning permission, as provided under planning legislation:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Act, hereby decides that the change of use of part of the existing retail premises for the sale of hot food for consumption off the premises, is development and is not exempted development, at McCann's Newsagent, Calverstown, Kilcullen, County Kildare.

Board Member: _____ Date: 25th April 2016
Fionna O' Regan