



Board Direction

Ref: 93.RL3444

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

The Board decided that the use of part of a shop as a coffee shop is not development, at Penneys, 32 – 37 Barronstrand Street, Waterford.

WHEREAS a question has arisen as to whether the use of part of a shop as a coffee shop at Penneys, 32-37 Barronstrand Street, Waterford is or is not development or is or is not exempted development:

AND WHEREAS Primark Limited, care of Kieran O'Malley and Company Limited of Saint Heliers, Saint Heliers Copse, Stillorgan Park, Blackrock, County Dublin requested a declaration on the said question from Waterford City and County Council, and the Council issued a declaration on the 19th November 2015, stating that the said matter is development and is not exempted development:

AND WHEREAS Primark Limited referred the declaration for review to An Bord Pleanála on the 15th day of December, 2015:

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,
- (c) the planning history of the site, including An Bord Pleanála appeal reference number PL31.219213 (planning register reference number 05/500242), whereby planning permission was granted for a substantial shop at this location, as amended under planning register reference number and 10/500208, and
- (d) the large scale of the overall shop at circa 5,000 m², and the small scale of the coffee shop involved at 120 m².

AND WHEREAS An Bord Pleanála has concluded that -

- (i) the existing use of the entire premises is a “shop” as defined in Article 5(1) of the Planning and Development Regulations, 2001, as amended by Article 3 of the Planning and Development Regulations, 2005,
- (ii) the use of the front of the premises for the consumption of food items purchased on the premises does not come within the scope of the definition of a shop, which definition does not provide for the consumption of food on the premises,
- (iii) the use of part of the shop as a coffee shop is, therefore, a change of use from use as a shop, and is considered to constitute a restaurant use, particularly given the layout, the extent of seating, and the physical separation from the retail area, and
- (iv) having regard to the substantial scale of the overall shop relative to the small scale of the coffee shop, its operation only during the opening hours of and in conjunction with the overall shop, the absence of independent access from the public street, and the absence of potential for use as an independent unit, it is considered that the change of use does not constitute a material change of use and is, therefore, not 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 of part of a shop to use as a coffee shop at Penneys, 32-37 Barronstrand Street, Waterford is not development.

Board Member: _____ Date: 16th August 2016
Fionna O’ Regan