



An
Bord
Pleanála

Board Direction 28.RL3515

The submissions on this file and the Inspector's report were considered at a meeting of all available Board members held on March 27th 2017.

The Board decided, unanimously, as set out in the following Order, that the use of a former retail unit as a coffee shop on the ground floor of 11 Saint Patrick's Street, Cork, is development and is not exempted development.

In not accepting the recommendation of the Inspector that the subject use is not development, the Board had regard to the statutory definition of "shop" as set out in the Planning and Development Regulations, 2001, as amended, and considered that the use that is the subject matter of the referral involves primarily the sale of sandwiches and other food (including beverages) for consumption off the premises, and that such sale is the main retail use, and is not a subsidiary use, and that therefore the use as a "coffee shop" is not within the scope of the definition of a "shop", as set out in the Regulations. The Board was also satisfied that the change of use from the former retail use to the use as a "coffee shop", as proposed, raises external matters that are material in planning terms, and that therefore the change of use in this instance constitutes development. In this context, the Board did not consider that the removal of all customer seating and toilet facilities was sufficient to alter the situation, as compared to the Board's previous decision in respect of the subject premises, under Board referral decision RL3425, dated 2nd March 2016, since that decision referred both to the scale, nature and layout of the coffee shop AND the nature and range of goods sold on the premises.

Board Order as follows:-

WHEREAS a question has arisen as to whether the use of a former retail unit as a coffee shop on the ground floor of 11 Saint Patrick's Street, Cork is or is not development and is or is not exempted development.

AND WHEREAS Mestonway Limited, care of John Spain Associates of 39 Fitzwilliam Place, Dublin, requested a declaration on this question from Cork City Council and the Council issued a declaration on the 17th day of October 2016 stating that the matter is development and is not exempted development.

AND WHEREAS Mestonway Limited referred this declaration for review to An Bord Pleanála, on the 14th day of November 2016.

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 5(1), 6(1) and 10(1) of the Planning and Development Regulations, 2001, as amended,
- (c) The previous use of the premises as a shop,
- (d) The information submitted on behalf of the site occupier/operator regarding the scale, nature and layout of the coffee shop, including the internal layout thereof, and regarding the nature and range of goods sold on the premises, and

- (e) The report of the Inspector, including of his inspection of the subject premises.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The use of the subject 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 range of goods sold, as outlined in the documentation submitted as part of the referral, consists primarily of the sale of sandwiches and other food (including beverages) for consumption off the premises, and is not a subsidiary use to any other retail use, and therefore does not come within the scope of paragraph (d) of Article 5 (1);
- (b) 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).
- (c) The change of use from the former retail use, wherein the primary use was the retail sale of goods, to the subject use as a “coffee shop”, raises issues that are material in terms of the proper planning and sustainable development of the area, including issues in relation to the planning policy on retailing set out in the Cork City Development Plan, the potential for litter and management of waste arising from the primary use of the sale of sandwiches and other food for consumption off the premises, and the potential for differing pedestrian and vehicular traffic as compared to the former retail use, and the change of use is, therefore, “development” within the meaning of section 3 of the Planning and Development Act, 2000, as amended;
- (d) 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 change of use would constitute exempted development.

NOW THEREFORE An Bord 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 use of a former retail unit as a coffee shop on the ground floor of 11 Saint Patrick's Street, Cork, is development and is not exempted development.

Board Member:

Date: 27th March 2017

Philip Jones