



An  
Bord  
Pleanála

## Board Direction 03.RL3592

The submissions on this file and the Inspector's report were considered at a Board meeting held on January 26<sup>th</sup> 2018.

The Board decided, as set out in the following Order, that the change of use of unit no.4 Woodquay from shop to use as a restaurant for the consumption of food on the premises is development and is not exempted development.

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the use of unit no.4 Woodquay as a restaurant for the consumption of food on the premises is consistent with the conditions of Ennis Urban District Council permission 27/1416 at Unit no.4 Woodquay, Ennis, Co. Clare and is or is not development or is or is not exempted development.

**AND WHEREAS** Michael Szymacha requested a declaration on this question from Clare County Council and the Council issued a declaration on the 22<sup>nd</sup> day of May, 2017 stating that the matter was development and was not exempted development.

**AND WHEREAS** Michael Duffy on behalf of Michael Szymacha referred this declaration for review to An Bord Pleanála on the 2<sup>nd</sup> day of June, 2017.

**AND WHEREAS** An Bord Pleanála, having regard to the documentation submitted as part of the declaration and referral, has decided to reformulate the question as follows:-

“Whether the change of use of unit no.4 Woodquay from shop to use as a restaurant for the consumption of food on the premises 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) The definition of ‘shop’ under article 5(1) of the Planning and Development Regulations, 2001, as amended,

(c) Articles 6(1), 9(1) and 10(1) of the Planning and Development Regulations, 2001 as amended, and Class 1 of Part 4 of Schedule 2 to these Regulations, and

(d) The planning history of the site, including planning permission register reference number 27/1416, whereby planning permission was granted for five number shop units, which included the unit the subject of this referral,

**AND WHEREAS** An Bord Pleanála has concluded that:

(a) The permitted use of the subject unit, as granted under planning permission register reference number 27/1416 is as a shop;

(b) The proposed change of use of the unit from shop to use as a restaurant for the consumption of food on the premises would be a factual change of use and such change of use would raise material planning considerations, and accordingly would constitute a material change of use, and is therefore development;

- (c) the use of the subject premises as a restaurant does not constitute use as a “shop” as defined in Article 5(1) of the Planning and Development Regulations 2001, as amended, because a restaurant use is expressly excluded from the definition of ‘shop’ under Article 5(1) of these Regulations, and;
- (d) There are no provisions in the Act or Regulations whereby such development would be exempted.

**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 change of use of unit no.4 Woodquay from shop to use as a restaurant for the consumption of food on the premises is development and is not exempted development.

**Note 1** In arriving at its decision to reformulate the question, the Board noted the provisions of Section 5 of the Act, and confined itself to the question as to whether or not the change of use in question is, or is not, development and is, or is not, exempted development, and did not make any judgement in relation to compliance with planning permission 27/1416, other than to establish as a fact that the permitted use of the subject premises was as a shop, as questions regarding compliance with conditions of a planning permission are matters for the Planning Authority alone, and are not provided for under a Section 5 referral.

**Note 2.** The Board did not take into account the correspondence, dating from 1990, between the then Urban District Council and the developers, as this is outside the matter currently before it. In addition, as the issue in this referral is whether or not the change of use proposed is or is not development and is or is not exempted development at the present time, the appropriate legislative provisions are those now

in force, being the Planning and Development Act 2000, as amended, and the Planning and Development Regulations, 2001, as amended. Reference to previous Acts and Regulations are therefore not relevant.

*[Please issue a copy of this Direction to the parties with the Board Order.]*

**Board Member**

**Date:** 26<sup>th</sup> January 2018

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Philip Jones